

Metropolitan Local Government Reform



Transfer of assets and liabilities Guiding principles for district boundary adjustments

Prepared for the Metropolitan Reform Implementation Committee by the Human Resources Subcommittee

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1. Introduction

1.1 Terms of Reference

In July 2014 the *Transfer of Assets and Liabilities sub-committee* of MetRIC first convened. The sub-committee chaired by DLGC and comprised of representatives from WALGA and LGMA, was established to develop a document for inclusion in the Reform Toolkit that provided guidelines for the fair and equitable splitting of assets and liabilities. This will expand on the information currently available on the Toolkit on this matter.

The *Guiding Principles* relate to situations where there are district boundary adjustments. Where there is an amalgamation of two or more local governments to form a new local government there is no need to consider apportionment of assets and liabilities, since they become wholly the assets and liabilities of that new merged local government.

Several local government finance practitioners have participated in the development of the *Guiding Principles*.

The *Guiding Principles* developed provide local governments with a framework for a negotiation process between relevant parties. An effective negotiation process may eliminate the need for the Minister to impose direction through Governor's Orders.

If local governments are unable to reach agreement, the establishment of an arbitration panel or some other process may be considered to adjudicate where disputes arise. A panel could assist the Department in the preparation of Governor's Orders dealing with the division of assets and liabilities, in situations where agreement cannot be reached between local governments.

1.2 Background

Proposed changes to reduce the number of metropolitan local governments will take effect from 1 July 2015.

These *Guiding Principles* identify a range of issues that local governments will be required to consider in relation to their existing assets and liabilities.

Where a local government is abolished or a boundary change occurs, what happens to the property, rights and liabilities [*for the purposes of this practical guide read Assets and Liabilities where legislative provisions use the term "property, rights and liabilities"*]

of that local government will depend on the principles of the Local Government (Constitution) Regulations and the Governor's orders made under schedule 2.1 of the *Local Government Act 1996* (the Act).

If two districts A and B amalgamate to form a new entity C, the property, rights and liabilities of local governments A and B become the property, rights and liabilities of new local government C.

If the whole of the district of local government B is incorporated into the district of local government A, the property, rights and liabilities of local government B become the property, rights and liabilities of local government A. Local government B is abolished in this scenario.

However, if the whole of one district is incorporated into multiple districts, or only part of a district is incorporated into another district or multiple districts, the matter becomes less clear-cut.

Schedule 2.1, clause 11(2) of the Act states that where an order is made under section 2.1, any local governments affected by the order are to negotiate as to any adjustment or transfer between them of property, rights and liabilities.

If matters cannot be resolved by negotiation then the Governor may, by order, give directions on these matters.

The relevant legislative provisions in relation to dealing with property, rights and liabilities are outlined more fully in Appendix A.

1.3 Negotiation Process

It is presumed that the negotiation process will ordinarily resolve the transfers of property used for 'traditional service purposes' (parks, reserves, community buildings, roads, footpaths and other infrastructure) with these being transferred to the local government in whose district they will be situated. However, there may be exceptions to this. If as the result of a Governor's order, a facility such as a municipal depot or waste processing facility is in an area incorporated into another local government, negotiations would likely result in ownership of these remaining with the continuing local government which they service.

If the local government which previously owned the depot or waste transfer facility is disestablished, ownership of the property in these would ordinarily transfer to the local government which is primarily serviced by the depot and waste transfer facility.

If the depot and waste transfer station become shared facilities which service more than one local government, ownership would need to be negotiated. This may be decided by the physical locality of each, however, they may be considered as part of an overall distribution of property among affected local governments.

Other property (including cash, investment in land in fee simple, vehicles, plant and equipment) would need to be negotiated between affected local governments. Where part of a district is transferred to another district(s) there may not need to be any transfer of other property and the affected local governments could agree for this to be retained in the ownership of local government A. This could also include property in land transactions and even trading undertakings that are situated in the part of the district transferred.

However, should negotiation fail to resolve the allocation of property, rights and liabilities a process needs to be in place to resolve the matter.

1.4 Exempt Disposition

Where, as the result of negotiations under schedule 2.1 cl 11(2) affected local governments reach agreement on the adjustment or transfer between them of property, rights and liabilities, such transfers can occur without further Governor's order or requirement to give local public notice. The transfer of land is also an exempt disposition under the Act s 3.58 (5) (d) and the *Local Government (Functions & General) Regulations 1996* reg 30 (1) and (2) (c) (iii).

However, evidence may be required to satisfy banking institutions, the Registrar of Titles and licensing authorities to transfer ownership in property. While transfers between continuing local governments can be easily achieved, transfer from a disestablished local government is problematic, given that the local government would cease to exist after commencement day and would no longer be a legal entity to give effect to the transfer.

Similarly, transfer of ownership in property to a proposed new local government cannot occur before commencement day as the proposed new local government would not exist as a legal entity until commencement day.

Whether this can be addressed through Governor's order or be overcome by prescription, is yet to be determined.

Notwithstanding, a local government that will become disestablished on 30 June 2015 has the right to be party to any negotiations about matters concerning assets and liabilities until it no longer exists.

Ideally agreement on any matters involving such a local government should be resolved before it becomes disestablished. In such case, the legal transfers could then occur on 1 July 2015, even if in practical terms physical transfers occur at a later date.

Issues surrounding contractual obligations that apply beyond 30 June 2015, either already existing or required to be established during the current financial year in the lead-up to change (e.g. core technology) also require examination and resolution.

1.5 Document Structure

This document is designed to focus primarily on suggested negotiated outcomes for various assets and liabilities, based on past experience within the local government sector. Some issues are likely to be contentious in nature for all or several metropolitan local governments. Issues that are considered to only have localised impact are not included.

The tabular structure approach to the discussion of individual asset and liability groups mirrors that used in the Queensland Department of Local, Sport and Recreation publication titled *“Transferring Areas Allocation Methodology”* (December 2007 FINAL).

Assets and Liability classes and sub-classes are presented in the order in which they appear in the Department’s Accounting Manual and local governments’ Annual Financial Statements. Additional or alternative groupings may be used by local governments reflecting their own individual naming conventions. The order of presentation may assist the orderly storing/collection of accounting transaction documentation that supports the allocation of accounting balances to the new local governments.

1.6 Arbitration Process

The application of the suggested outcomes outlined in these Guidelines during a negotiation process will resolve a significant number of issues.

However, there may be situations where parties cannot resolve mutually satisfactory outcomes and the need will then arise to resolve individual issues outside of the direct negotiation process.

Initially, local governments may attempt to achieve consensus through a Mediation process.

If this fails to resolve a matter it is suggested that an independent Arbitrator or Arbitration Panel may facilitate progression to an outcome that all parties will accept.

This is discussed further in Section 4.

1.7 Asset and Liability Valuation at Changeover

The final recorded values of assets and liabilities as at 30 June 2015 will not be known until the financial statements for 2014-15 have been prepared and audited.

The actual assets and liabilities to be transferred should have been identified prior to 1 July 2015. The value that these are taken up by the receiving local government should be the same as the values recorded by the disestablished local government. The receiving local government will take the values up in its books at 1 July 2015 based on the best available information at the time.

These values would be confirmed during the course of the 2015-16 financial year and adjusted as necessary prior to being reported in that year's financial statements.

1.8 Rates Related Issues

There are several specific issues associated with the rating process that may be outstanding on 30 June 2015. Generally, the receiving council will take responsibility for all matters related to a property.

1.9 Regional Councils

Adjustments to local governments' boundaries will affect participants of regional local governments.

Rights and liabilities of local governments which are members of a regional local government would be set-down in the establishment agreement prepared under s3.61(2) of the Act and be subject to the restrictions on borrowings under s6.21(1) and (1a).

Boundary adjustments will require many of the existing establishment agreements to be reviewed. This will be dealt with in a separate guide.

2. Transferring Areas Principles

The following Principles are considered to have general applicability. It is recognised that there may be circumstances where alternative viewpoints or additional factors may impact on outcomes:

- The methodology recognises the nature of structural change i.e. one based on boundary adjustment and the desire to continue service delivery;
- The service delivery aspect requires that affected local governments reach agreement on the use of physical assets and hence, that discussions with respect to staff transfer must necessarily occur;
- Physical assets within transferring areas transfer, unless the particular asset services the entire local government area in which case some sharing of the asset or facility should be considered (refer 1.3 for suggested negotiation process);
- Only assets within the transferring areas are subject to transfer, regardless of perceived past investments made by ratepayers and the State;
- Therefore, it is the application of funds and the financial items that are to be considered, not the source of the funds or financial items. An exception to this may be where the source of cash assets is from a particular area (e.g. for public open space) which has to be spent in a geographical area;
- There is no compensatory aspect to the transfer process. Receiving councils receive the asset base within the transferring area at nil cost together with the corresponding rate base of the transferring area;
- The methodology recognises certain assets of being of such significance that these are subject to long term shared arrangements;
- The methodology proposes a cost recovery model based on annual operations and maintenance costs for the facility being shared or jointly used by local governments or residents. There must be some aspect of cost recovery associated with the use of these physical assets, as the receiving local government will incur annual costs which should be shared equally;
- The principle incorporates a cash adjustment approach in recognition of the value of certain financial assets and liabilities that should notionally be subject to transfer but which from a practical perspective will remain with the transferring

local government or one of the receiving local governments in the case of a split;
and

- The methodology is also cognisant of the need for the outcome of the allocation process to be transparent and adequately recorded to satisfy any regularity/legislative requirements.

3. Application of Methodology

The following tables illustrate how the Transferring Areas Methodology could be applied to Asset and Liability classes and sub-classes. Suggested negotiation outcomes are provided. Potentially contentious or problematic issues that may require particular attention are highlighted.

Current Assets

Item 1: Cash and Cash Equivalents

| Item | Unrestricted/ restricted | Asset Type | Suggested Negotiation Outcomes |
|------|-----------------------------|--|---|
| 1.1 | Unrestricted | Unrestricted Municipal fund cash | Retained by local government A if a continuing local government but may be considered in overall negotiations to achieve an equitable distribution of property, rights and liabilities Otherwise negotiate transfer to new local government (s) |
| 1.2 | Restricted | Trust fund cash (including bonds and deposits) that relates to a specific area or district | Transfer to the local government in whose district the specific area for which the bond or deposit is held, will be situated Unidentified Trust Fund monies that cannot be related to an area or issue (e.g. deposit monies not claimed) could be treated in a similar manner to unrestricted cash |
| 1.3 | Restricted | Trust fund cash in lieu of open space or developer contributions | Transfer to the local government in whose district the plan of subdivision or proposed development is located |

| Item | Unrestricted/ restricted | Asset Type | Suggested Negotiation Outcomes |
|------|-----------------------------|--|---|
| | | | Investigate the basis of the developer contribution schemes for particular conditions that may apply |
| 1.4 | Restricted | Other Trust fund cash that can be related to specific land | Transfer to the local government in whose district the specific land, for which the cash is held, is located |
| 1.5 | Restricted | Other Trust fund cash (if it cannot be related to land) | Retained by local government A if a continuing local government otherwise negotiate transfer to new local government to hold Monies held for 6 years or more should be assessed to determine if the Unclaimed Monies Act applies |
| 1.6 | Restricted | Cash Reserve established for a purpose specific to a part of the district (e.g. unspent funds raised from a service charge or specified area rate) | Transfer to the local government in whose district, to which the cash relates, will be situated |
| 1.7 | Restricted | Cash Reserve established for a purpose specific to a part of the district (e.g. to fund the rehabilitation of a waste site) | The right to the Cash Reserve should be with the local government which has the liability for the future rehabilitation of the waste site. If negotiations result in the liability remaining with local government A then the Cash Reserve should be retained by local government A |
| 1.8 | Restricted | Cash Reserve established for a | Transfer relevant portion to the local government in whose district |

| Item | Unrestricted/ restricted | Asset Type | Suggested Negotiation Outcomes |
|------|-----------------------------|--|--|
| | | purpose that also applies to other parts of the district of local government A or other part of the district transferred | <p>the land transferred will be situated. If this is part of a waste charge to fund bin replacement, base the apportionment on the numbers of bins in each relevant area</p> <p>If the Cash Reserve relates to plant replacement, apportion on the basis of age/depreciated value of plant distributed</p> <p>The appropriate apportionment will be determined on a case by case basis and the most relevant factors to be considered e.g. geographic area, population will depend on the particular Reserve</p> |
| 1.9 | Restricted | Other Cash Reserves | <p>Retained by local government A if a continuing local government otherwise negotiate transfer to new local government (s). If Cash Reserve is for say leave provision or workers' compensation insurance premiums and staff relocate to other local governments, transfer their related portion to the relevant local government where staff are employed</p> <p>The liability transfers with the particular Reserve</p> |
| 1.10 | Restricted | Municipal fund cash that relates to grants for specific works to be | Transfer the specific grant or portion of monies held to the local |

| Item | Unrestricted/ restricted | Asset Type | Suggested Negotiation Outcomes |
|------|-----------------------------|---|---|
| | | undertaken in part of the district transferred | government in whose district the specific works will be undertaken |
| 1.11 | Restricted | Municipal fund cash that relates to rates imposed and collected for specific works to be undertaken part of the district transferred? | Transfer the portion of the monies held to the local government in whose district the specific works will be undertaken Monies held for recoverable works would be similarly treated |

Item 2: Investments

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|-------------|---|
| 2.1 | Investments | <p>Retained by local government A if a continuing local government but may be considered in overall negotiations to achieve an equitable distribution of property, rights and liabilities.</p> <p>Otherwise negotiate transfer to new local government (s)</p> <p>The disposal or transfer of illiquid assets e.g. mortgage backed securities that have a high credit rating but very limited marketability in the secondary market could impact on the negotiation and determination of a fair transfer value</p> <p>Impaired assets to be transferred at impaired value with any subsequent gain accruing to the new entity</p> <p>The impact in relation to parcels of land purchased by a local government for investment purposes that are outside the current boundaries of that local</p> |

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|------------|--|
| | | government, is dealt with in section 5 of this Table |

Item 3: Trade and Other Receivables

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|---|---|
| 3.1 | Rates and Charges (including Emergency Services Levy) | <p>Where a district is abolished and transferred to another district or districts, rates that remain unpaid would be recovered by the local government in which the relevant property is situated after commencement day. [LG(C) Regulations r 6(4)(e)]</p> <p>Where part of a district of a continuing local government is transferred to another district, rates that remain unpaid would be recovered by the local government in which the relevant property is situated, after commencement day. [LG(C) Regulations r 5(4)(d)]</p> <p>Notwithstanding that the regulations transfer the right to recovery of rates to the local government in whose district the relevant property is situated, if the continuing local government has expended funds in anticipation of recovering rates for these, this may be a consideration in the overall negotiation of transfer of property, rights and liabilities</p> |
| 3.2 | Sundry Debtors | Sundry debtors are unlikely to be a "... matter or procedure under a written law ..." and therefore not captured by regulations 5(4)(d) or 6(4)(e). Accordingly, these would need to be negotiated but would typically remain with the continuing local government (A) from whom part of its district was transferred. This would be the |

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|----------------------------|--|
| | | <p>case even if the debtor was raised in relation to land transferred to another district (B) assuming that local government A had provided some service, for which the debt was raised, prior to commencement</p> <p>Fines issued under local laws could be the responsibility of a continuing local government or be transferred to another local government on a negotiated basis</p> |
| 3.3 | GST Receivable | <p>Net GST receivable from or payable to the Australian Taxation Office should be concluded by the local government responsible for the originating transactions</p> <p>There may be situations where corrections are required post July 2015 for adjustments required to; and errors that relate to; pre July 2015 transactions</p> |
| 3.4 | Loans – Clubs/Institutions | <p>Rights to recover self-supporting loan debtors would be with the local government which after commencement day has the liability for the loan</p> <p>Loans to be based on the final location/boundary of club and existing Loan Agreements should be transferred to/from the new entity</p> |
| 3.5 | Prepayments | Allocate on basis of underlying transaction |

Item 4: Inventories

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|--------------------|---|
| 4.1 | Fuel and Materials | Stock inventory is likely to be immaterial in value and if local government A is not abolished, would remain with the continuing local government A |

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|----------------------|--|
| | | <p>If local government A is abolished, affected local governments would consider the ownership of stock during negotiations</p> <p>The outcome for items such as depot materials may depend on the product type. Specific materials could be split on the basis of the geographical location of the asset</p> |
| 4.2 | Land Held for Resale | <p>The ownership of land held for resale could be decided in accordance with the criteria in Item 5 below. However, if the land held for resale was financed through untied municipal funds (or gifted), then negotiations should result in this remaining with continuing local government A. If local government A is abolished, this would be apportioned between affected local governments as part of overall property negotiations</p> |

Item 5: Property, Plant and Equipment

Local governments are currently transitioning to fair valuation of all asset classes. As at 30 June 2015 all asset classes will be valued on a common valuation base i.e. fair value.

However, local governments may well have fair valued classes of assets at different times and on the basis of assumptions that differ.

Local governments will be required to address this issue and value all acquired assets on the same basis as existing, so as to reflect these values in their 2015-16 financial statements.

This issue also applies to Item 6. Infrastructure.

Land

In accordance with s 6.14 of the Act, a local government may invest money in the municipal fund or the trust fund that is not, for the time being, required by the local government for any other purpose, as trust funds may be invested under the *Trustees*

Act 1962 Part III. Therefore under s 6.14 of the Act, a local government can invest in land; which would be held in fee simple.

A local government can also hold land in fee simple that is not a consequence of investing money in accordance with s 6.14 and which may have been purchased through a budget allocation or which has been the property of a local government for many years.

The land may be situated in the district of local government A or could be in any other district. There is, in principle, nothing to prevent local government A owning property in district B. In fact local government A might purchase investment property in a number of districts.

As a general principle, the starting point is that the mere fact of a boundary change will not cause any alteration in the pre-existing property ownership - of land held in fee simple - of continuing local governments.

The treatment of Endowment Lands will require consideration/negotiation.

If local government A has invested money in land (in accordance with s 6.14), negotiations should consider the circumstances set-out in the following table.

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|--|---|
| 5.1 | <p>District A is abolished and the whole of district A is included in district B.</p> <p>Both districts A and B are abolished and a new district C established</p> | <p>All property, rights and liabilities would become the property, rights and liabilities of local government B (or local government C if example 2 applies)</p> <p>Points 5.1 - Point 5.5 are captured by the following Principles to consider in negotiating the transfer of land held in fee simple</p> |
| 5.2 | <p>District A is abolished and part of district A is included in district B and part in district C</p> | <p>Local governments A, B, and C would negotiate up until commencement day with local governments B and C continuing negotiations after commencement day if not previously agreed.</p> <p>Negotiations would need to consider the various matters included in items 5.6 to 5.15 of this table</p> |

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|---|--|
| 5.3 | District A is abolished. A new district H is established. A portion of former district A is included in district C and a portion in district D. The remaining portion of former district A is included in district H. | <p>Local governments A, C, and D would negotiate up until commencement day with local governments C, D and H continuing negotiations after commencement day if not previously agreed.</p> <p>Negotiations would need to consider the various matters included in items 5.6 to 5.15 of this table</p> |
| 5.4 | Part of district A is abolished and incorporated into district B (with local government A continuing) | <p>The boundary change may not cause any alteration in the pre-existing property ownership of land held in fee simple by local government A.</p> <p>Local governments A and B would negotiate on this and consider the various matters included in items 5.6 to 5.15 of this table</p> |
| 5.5 | Part of district A is abolished and part of ward A is incorporated into district B and part into district C (with local government A continuing) | <p>The boundary change may not cause any alteration in the pre-existing property ownership of land held in fee simple by local government A. Local governments A, B and C would negotiate on this and consider the various matters included in items 5.6 to 5.15 of this table</p> |

Principles to consider in negotiating the transfer of land held in fee simple

If property used for ‘traditional service purposes’ (parks, reserves, community buildings and other infrastructure) are situated on land held in fee simple, these would be transferred to the local government in whose district they will be situated.

The source of funds invested is likely to be of particular significance in how other land held in fee simple is dealt with.

In circumstances where it is not possible to allocate all fee simple land equitably, then some of the land may have to be sold and cash then disbursed as agreed. Alternatively,

cash adjustments may be required between affected local governments with one retaining fee simple title in exchange for cash being provided to the other. In all instances negotiations and agreement should be based on the current market value of the land (market value of the investment).

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|--|--|
| 5.6 | The funds invested in land comprise trust fund bonds or deposits that relate to a specific area or district | Transfer the land to the local government in whose district the specific are will be situated and where the purpose for which the bond or deposit is held, relates |
| 5.7 | The funds invested in land comprise trust fund cash in lieu of open space or developer contributions that relate to a specific area or district | Transfer the land to the local government in whose district the plan of subdivision or proposed development is located |
| 5.8 | The funds invested in land comprise other trust fund cash that can be related to specific land or district | Transfer the land to the local government in whose district the specific land, to which the trust funds relate, is located |
| 5.9 | The funds invested in land comprise other trust fund cash (if it cannot be related to land or a specific district) | The land is retained by local government A if a continuing local government otherwise transfer to new local government to hold |
| 5.10 | The funds invested in land comprise cash reserves established for a purpose specific to part of the district (e.g. raised from a service charge, specified area rate) | Transfer the land to the local government in whose relevant part of the district will be situated |
| 5.11 | The funds invested in land comprise cash reserves established for a purpose specific to part of the district which has an associated liability (e.g. to fund the rehabilitation of a waste site situated in the relevant part of the district) | The right to the land purchased with the cash reserve funds should be with local government which has the liability remaining with local government A then the cash reserve should be retained by local government A |

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|---|---|
| 5.12 | The funds invested in land comprise cash reserves established for a purpose that also applied to other parts of the district of local government A including another part of the district transferred (e.g. part of waste charge to fund bin replacement) | <p>Transfer relevant portion to the local government in whose district the land transferred will be situated - in this instance based on number of bins</p> <p>The land may need to be sold for cash to be distributed in lieu of transfer of freehold land</p> |
| 5.13 | The funds invested in land comprise other cash reserves not specifically related to any part of district A transferred | <p>Retained by local government A if a continuing local government otherwise negotiate transfer to new local government(s)</p> <p>If cash reserve is for say leave provision or workers' compensation insurance premiums and staff relocate to other local government. This may require land to be sold or municipal fund cash to be apportioned accordingly</p> <p>Workers compensation apportionment could be based on the individual claims experience</p> |
| 5.14 | The funds invested in land comprise municipal fund cash that relates to grants for specific works to be undertaken in part of the district transferred | Transfer the land purchased with specific grant or portion of monies held to the local government in whose district the specific works will be undertaken |
| 5.15 | The funds invested in land comprise other municipal fund cash not related to the land transferred | Retained by local government A if a continuing local government but may be considered in overall negotiations to achieve an equitable distribution of property, rights and liabilities. Otherwise transfer to new local government(s) |
| 5.16 | Buildings | The shared use of buildings would be subject to negotiated Service Level |

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|-------------------------------|---|
| | | <p>Agreements between the owners of the building and the service users</p> <p>More than one local government may require access to a facility for service delivery in respective areas</p> |
| 5.17 | Capital Works In Progress | Allocate on the same basis as that applied to the related completed asset |
| 5.18 | Vehicles, Plant and Equipment | <p>Ownership of vehicles, plant and equipment would be negotiated between affected local governments. The starting point is that the mere fact of a boundary change may not cause any alteration in the pre-existing ownership of vehicles, plant and equipment of a continuing local government. This will depend on the extent and impact of a boundary change on a continuing local government</p> <p>Where two or more local governments are combined into a new local government, ownership of vehicles, plant and equipment transfers to the new local government. However, this may result in some property being surplus to requirements</p> <p>Matters to be considered in negotiations could include:</p> <p>Whether staff transferred to another local government as a result of the boundary change have been allocated a vehicle or require a vehicle for their employment?</p> <p>Are there sufficient remaining vehicles available to service the continuing local government?</p> <p>Do plant and equipment items service particular parks, buildings or infrastructure</p> |

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|--------------|---|
| | | <p>transferred? If so, ownership of the plant and equipment should also be transferred.</p> <p>Note the comment in the section titled “Exempt Dispositions” (<i>section 1.4</i>). A Governor’s order or other evidence may be required to satisfy licensing authorities before ownership of licenced vehicles, plant and equipment can be effected</p> |
| 5.19 | Other Assets | <p>The status of contracts already entered into or that will be renegotiated or entered into before</p> <p>1 July 2015 will need to be addressed e.g. software contracts extending beyond 12 months. An approach that takes into account that several local governments have contracts with particular vendors would be beneficial and may foster a holistic approach to negotiations</p> |

Item 6: Infrastructure

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|--|--|
| 6.1 | Includes all sub-classes such as Roads, Footpaths, Drainage, Parks and Ovals | Allocate by geographical location |
| 6.2 | River Walls | Current issues surrounding the ownership of River Walls will impact many local governments that have borders with the Swan River and will require a negotiated outcome |
| 6.3 | Commercial Car Parks | Allocate by geographical location |

Item 7: Intangibles

| Item | Asset Type | Suggested Negotiation Outcomes |
|------|------------|--|
| 7.1 | Easements | Negligible value therefore should be capable of resolution Follow geographic location |

Liabilities

Item 8: Trade and Other Payables

| Item | Liability Type | Suggested Negotiation Outcomes |
|------|--------------------------------|---|
| 8.1 | Trade Payables | Allocate on basis of underlying transaction Unallocated liabilities notionally allocate and value on basis of the proportion of the value of general rate revenue associated with transferring area Part A to the equivalent value for the transferring area part B or alternative |
| 8.2 | Other Payables | Allocate on basis of underlying transaction Unallocated liabilities notionally allocate and value on basis of the proportion of the value of general rate revenue associated with transferring area Part A to the equivalent value for the transferring area part B or alternative |
| 8.3 | Accrued Interest on Debentures | Allocate on basis of underlying transaction Unallocated liabilities notionally allocate and value on basis of the proportion of the value of general rate revenue associated with transferring area Part A to the equivalent value for the transferring area part B or alternative |
| 8.4 | GST Payable | Net GST receivable from or payable to the Australian Taxation Office should be |

| Item | Liability Type | Suggested Negotiation Outcomes |
|------|----------------------------|---|
| | | <p>concluded by the local government responsible for the originating transactions</p> <p>There may be situations where corrections are required post July 2015 for adjustments required to; and errors that relate to; pre July 2015 transactions</p> <p>It can be anticipated that suppliers will issue tax invoices in the wrong council name</p> |
| 8.5 | Accrued Expenses | <p>Allocate on basis of underlying transaction</p> <p>Unallocated liabilities notionally allocate and value on basis of the proportion of the value of general rate revenue associated with transferring area Part A to the equivalent value for the transferring area part B or alternative</p> |
| 8.6 | Accrued Salaries and Wages | Would go with employee |
| 8.7 | Other | Allocate on basis of underlying transaction |

Item 9: Borrowings

| Item | Liability Type | Suggested Negotiation Outcomes |
|------|----------------|---|
| 9.1 | Bank Overdraft | <p>Bank overdrafts - divide by rate base. However it would be expected that Councils should 'put their house in order' prior to amalgamation and extinguish bank overdrafts</p> |
| 9.2 | Debentures | <p>Allocate on basis of underlying transaction</p> <p>Where borrowings are general in nature, allocate in proportion to rateable property value of each transferring area or some other negotiated distribution outcome depending on particular circumstances</p> |

| Item | Liability Type | Suggested Negotiation Outcomes |
|------|----------------|--|
| | | <p>Allocation should be on a fair and equitable basis with the result being that no local government is disadvantaged by being encumbered with a disproportionate level of debt</p> <p>Check security arrangements that currently exist over debt and determine appropriate action</p> <p>Underground Power Scheme borrowings should remain with the area in which the project is undertaken or apportioned if the area is split between entities. Other specific purpose borrowings for assets should be handled the same way</p> |

Item 10: Provisions

| Item | Liability Type | Suggested Negotiation Outcomes |
|------|-----------------------|--|
| 10.1 | Employee Entitlements | Annual and Long Service Leave - would go with the employee |

Item 11: Other Liabilities

| Item | Liability Type | Suggested Negotiation Outcomes |
|------|------------------------------|---|
| 11.1 | Payments Received in Advance | <p>Allocate on basis of underlying transaction</p> <p>Appropriate apportionment methodology for value of prepaid cards to be determined</p> |
| 11.2 | Bonds, Deposits & Retentions | Allocate on basis of underlying transaction |

Contingent Liabilities

Any contingent liability would usually remain with a continuing local government; however this would need to be negotiated by all affected local governments. Such liabilities are generally land related and it is assumed that the liability would transfer to the local government in whose district the land associated with the contingent liability is located.

Insurance would cover the majority of cases, although not all. Where insurance covers the potential liability, the impact of transferring this to another local government is minimised.

If the contingent liability is not covered by insurance, any likely future impact would need to be considered in the overall negotiated outcomes.

| Contingent Liabilities | Suggested Negotiation Outcomes |
|--|---|
| Liability for Future Environmental Remediation | Subject to the <i>Contaminated Sites Act 2003</i> , any liability associated with future remediation of contaminated sites would need to be negotiated if land is transferred from a continuing local government to another local government. |
| Liability for Future Expenditure Commitments Related to Developer Contribution Schemes | The status of existing Developer Contribution Schemes where areas covered by schemes are impacted by boundary adjustments will require clarification. This issue may equally have implications for the reporting of Contingent Assets |

4. Arbitration Process

4.1 Background

A Governor's order under the Act s9.62 (1) could be made at the time of the order which brings about a boundary change or abolition, directing local government A to transfer relevant land and other property to local government B (or C).

In the preparation of a Governor's order the principles set-down in this guide are likely to be used to determine any adjustment or transfer between affected local governments.

However, as a matter of practicality, any order directing transfer would likely be made subsequently, to allow sufficient time for the local governments to complete the negotiation process required by Schedule 2.1 cl 11 (2) of the Act.

However, should negotiation fail to resolve a matter of the allocation of property, rights and liabilities a process needs to be in place to resolve the matter.

4.2 Options

4.2.1 Department of Local Government and Communities (DLGC)

DLGC provides its own advice to the Minister, who makes a determination based on that advice. In 1998 the Minister decided on the financial arrangements surrounding the transfer of Maylands from the City of Stirling to the City of Bayswater, after the two councils had been unable to agree and requested him to adjudicate.

4.2.2 Local Governments

The local governments attempt to reach a compromise solution by individually or jointly seeking and funding external professional advice.

Mediation could form part of this process which if successful may lead to development of a Memorandum of Understanding between the parties.

4.2.3 Independent Arbitrator or Arbitration Panel

A single Arbitrator or more typically an Arbitration Panel consisting of an odd number of people is utilised. The individuals should have no "interest" in the outcome of the case.

Arbitrators may be selected by the parties to the dispute or by the Minister acting on DLGC's advice.

Local governments currently mainly utilise the services of a small number of accounting/auditing firms, which have specialist sector knowledge. Arbitrators could be selected from these firms. In addition, legal representation is likely to be necessary.

All parties would be obliged to agree to the results of Arbitration.

DLGC would be represented at Panel deliberations by a senior officer (on a non-voting basis).

Appendix A

Dealing with a local government's property, rights and liabilities where an order is made under section 2.1 of the *Local Government Act 1995*.

1. Applicable Legislation

Provisions of the *Local Government Act 1995* and the *Local Government (Constitution) Regulations 1998* apply where district boundaries are changed or a district is abolished.

Section 2.1 of the *Local Government Act 1995* (the Act) provides in part:

2.1 State divided into districts

- (1.)The Governor, on the recommendation of the Minister, may make an order —
 - a) declaring an area of the State to be a district;
 - b) changing the boundaries of a district;
 - c) abolishing a district; or
 - d) as to a combination of any of those matters.
- (2.)Schedule 2.1 (which deals with creating, changing the boundaries of, and abolishing districts) has effect.

Section 9.62 of the Act provides:

9.62. Governor may give directions as consequence of making an order

- (1.)Where under this Act the Governor makes an order, the Governor may, either then or subsequently, by order, give any directions the Governor thinks necessary to give effect to the order.
- (2.)Without limiting the operation of subsection (1), directions given under that subsection may modify the operation of this Act.

Schedule 2.1 clause 11 of the Act provides in part:

11. Transitional arrangements for orders about districts

- (1.)Regulations may provide for matters to give effect to orders made under section 2.1 including —
 - (a) the vesting, transfer, assumption or adjustment of property, rights and liabilities of a local government;
 - (b) the extinguishment of rights of a local government;
 - (c) the winding up of the affairs of a local government;
 - (d) the continuation of actions and other proceedings brought by or against a local government before the taking effect of an order under section 2.1;

- (e) the bringing of actions and other proceedings that could have been brought by or against a local government before the taking effect of an order under section 2.1;
 - (f) if the effect of an order under section 2.1 is to unite 2 or more districts, the determination of the persons who are to be the first mayor or president, and deputy mayor or deputy president, of the new local government;
 - (g) the continuation of any act, matter or thing being done under another written law by, or involving, a local government.
- (2.) Subject to regulations referred to in subclause (1), where an order is made under section 2.1 any local governments affected by the order (including any new local government created as a result of the order) are to negotiate as to any adjustment or transfer between them of property, rights and liabilities.
- (3.) Where an order is made under section 2.1 the Governor may, by order under section 9.62(1), give directions as to any of the matters set out in subclause (1) if, and to the extent that, those matters are not resolved by regulations referred to in that subclause or by negotiation under subclause (2).

Regulation 5 of the *Local Government (Constitution) Regulations 1998* (LG(C) Regulations) applies where a change to district boundaries occurs and provides (in part):

- (1) In this regulation —
commencement means the commencement of the order referred to in subregulation (2).
- (2) This regulation applies if an order is made under section 2.1 changing the boundaries of a district (“**district A**”).
...
- (4) If as a result of the order the area of district A incorporates a part of the area of another district (which is not abolished) (“**district B**”), then on commencement —
...
- (d) if a matter or procedure under a written law in relation to any land in that part of district B has not been completed before commencement, any function performed in respect of that land under that law before commencement, whether by local government B or another person, has effect as if it had been performed by local government A or that other person and the matter or procedure may be completed by local government A or that other person;

Regulation 6 of the LG(C) Regulations applies where a district is abolished and provides in part:

- (1) In this regulation —
commencement means the commencement of the order referred to in subregulation (2).
- (2) This regulation applies if an order is made under section 2.1 abolishing a district (“**district A**”).
- (3) On commencement —
 - (a) local government A is disestablished;

- (b) all offices of members of the council of local government A cease to exist.
- (4) If on commencement the whole of the area of district A is included in the area of one other district (“**district B**”), whether by means of a boundary change to an existing district or by means of a declaration of a new district, then on commencement —
- (a) the property, rights and liabilities of local government A become those of the local government B;
- ...
- (e) if a matter or procedure under a written law in relation to any land in district A has not been completed before commencement, any function performed in respect of that land under that law before commencement, whether by local government A or another person, has effect as if it had been performed by local government B or that other person and the matter or procedure may be completed by local government B or that other person;

Where an order is made under s 2.1 of the Act, Schedule 2.1 of the Act has effect. Schedule 2.1 cl 11(1)(a) allows for regulations to be made which transfer property, rights and liabilities of a local government in consequence of an order made under the Act s 2.1.

The LG(C) Regulations expressly provide for certain legal consequences upon a boundary change:

- regulation 5 applies where district A is not abolished and a ward of district A is included in the area of another district (district B) or a part of another district (district B) is incorporated into district A; and
- regulation 6 applies where district A is abolished and the whole of district A is included in the area of one other district (district B).

Both of these regulations deal with a matter or procedure under a written law in relation to land that has not been completed (e.g. recovery of unpaid rates and service charges); however, r 5 does not deal with the adjustment or transfer of property, rights or liabilities of a local government.

Similarly, r 6 does not make any provision for dealing with local government property, other rights or liabilities upon a boundary change where:

- district A is abolished and included in the area of more than one other district; or
- district A is not abolished and part of district A is included in the area of another district (district B) (or other districts).

In these circumstances, Schedule 2.1 cl 11 (2) of the Act applies. This clause requires any local governments affected by the order to negotiate as to any transfer of property, rights and liabilities.

Schedule 2.1 clause 11 (3) provides that where an order is made under s 2.1 of the Act, the Governor may by order under s9.62 (1) of the Act give directions to matters not resolved by the LG(C) Regulations or by negotiation.

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