24 August 2006

Regulation Review
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

Dear Sir or Madam,

Please find attached Bankstown City Council's submission concerning the Draft Report of the Investigation into the Burden of Regulation and Improving Regulatory Efficiency.

Council welcomes the opportunity to provide input into what is a vital issue for local communities throughout the state. I trust that the attached submission will assist the Tribunal in its deliberations in this area.

Should you require any further information, please feel free to contact Mr Greg Brown, Group Manager Strategy and Governance, on 9707-9526.

Yours sincerely,

Mr Richard Colley
General Manager
Bankstown City Council

Bankstown City Council

Submission to the IPART Inquiry into the Burden of Regulation and Improving Regulatory Efficiency

Bankstown City Council welcomes the opportunity to comment on the Draft Report arising from the above investigation. Council firmly believes that excessive and unnecessary regulation imposes significant costs on the Bankstown community. In addition, Council itself is subject to a plethora of regulation and accordingly, many of these costs are borne by Council.

This submission responds to a number of issues raised in the Draft Report and considers their impact on Council and the broader community. In particular, the following issues and their regulatory impact on Council are examined:

1. Regulatory process issues to improve the efficiency of regulation in the future;

2. Facilitating more efficient regulations across jurisdictions;

3. Reducing existing unnecessary burdens, including those relating to BASIX, children's services, explosives (fireworks), grants administration, planning and development assessment, and public land management.

Council trusts that this submission assists the Tribunal in its deliberations and in formulating a Final Report.

1. Addressing regulatory process issues to improve the efficiency of regulation in the future

1.1 Regulatory Impacts on Local Government in NSW

As the Tribunal has noted consistently throughout the Draft Report, while regulation is essential for a well-functioning economy and society, it can have a number of adverse impacts. Council therefore welcomes the various initiatives outlined in the Draft Report that seek to address issues surrounding regulatory processes as they impact on business in NSW. However, Council believes that these proposals must also consider the impact that regulation has on other sectors in the community, most notably local government.

Local government has a broad range of responsibilities, and therefore plays a large role in social and economic development, most notably through land use planning, infrastructure management and localised service delivery. Accordingly, regulatory imposts on local government have broader impacts throughout the community, including on the business sector.

As creatures of state legislation, local councils are by their very nature subject to a tremendous amount of state regulation. This includes legislation and regulation concerning governance structures; revenue raising; service delivery; infrastructure management; reporting obligations; and the manner in which councils carry out their own growing regulatory functions in areas such as land use planning, development approval and local law enforcement.

As the Tribunal has noted in the Report, bad regulatory processes can produce regulation that is overly burdensome or complex, creating unnecessary and unreasonable costs. The experience of local government in recent years has been that bad regulatory processes have resulted in the development of increasing amounts of regulation that has significantly overburdened local government.

Since the early 1990s, the amount of regulation affecting councils has expanded significantly. This has included a myriad of new regulatory requirements relating to planning and reporting, corporate management processes, the manner in which councils perform their traditional regulatory responsibilities, how councils manage their own assets and lands, and regulation devolving a range of new regulatory functions to councils. Much of this regulation, particularly that relating to corporate planning and reporting, is not necessarily harmful, ensuring in many instances that councils operate effectively and efficiently. Such regulation would probably be self-imposed by Bankstown Council as a matter of good self-governance in the absence of prescriptive state regulation.

However, the lack of consultation and consideration of impacts behind much of the regulation affecting local government has also produced some regulation that is overburdensome, costly and completely disproportionate to the supposed community benefit. Various examples of such regulation are discussed in detail throughout section 3 of this submission.

Regulation affecting local government can also be complex, unclear or simply defective, making compliance difficult, costly and creating great uncertainty within the sector and the community as a whole. As a result, such regulation is not only costly to councils, but fails to deliver outcomes originally envisaged by state policy makers. Various examples are again discussed in section 3.

Much of this regulation, whether good or bad, has been developed and imposed without regard to the actual ability of councils to finance or deliver it. A major issue is whether the regulatory environment under which local government operates equips it to meet the financial costs that very system imposes on it. Is regulation imposed on local government proportionate to the extent that councils can actually meet the costs of compliance?

The system of rate pegging, which lies at the heart of the NSW local government regulatory system, has made effective regulatory compliance near impossible. Rate pegging prevents councils from raising the funds they need to meet the plethora of regulatory standards and functions being conferred

upon them by the NSW Government. This fundamental contradiction within the local government regulatory system, that is, growing regulatory costs coupled with financial regulation that prevents councils from raising adequate funds to meet them, is a glaring example of over-regulation resulting in a level complexity and incongruity that is effectively impossible to comply with. These issues are explored at length in the recently released *Final Report of the Independent Inquiry into the Financial Sustainability of Local Government* (the Allan Inquiry). Council commends this Report to the Tribunal.

Ultimately, the costs of poor regulatory practice in relation to state regulation of local government are born by the community as a whole, as councils' abilities to manage infrastructure, deliver services and perform their own regulatory functions are seriously undermined. Therefore, Council is of the firm view that the broader impacts of regulation on local government are worthy of the Tribunal's consideration.

1.2 Addressing regulatory processes to improve regulation of local government

The Tribunal has noted on page 35 of the Draft Report that improvements to regulatory processes have the potential to address the causes of current unnecessary regulatory burdens and minimise problems recurring with future regulation. Bankstown City Council is firmly of the view that if good regulatory practice was applied consistently in relation to the formulation of regulation affecting local government, many of the current problems facing the sector could be potentially alleviated. It would also ensure a decrease in the number of instances where bad regulation imposed on or through local government fails to deliver outcomes envisaged by state policy makers.

Council notes that as reported on page 61 of the Draft Report, in New Zealand a Regulatory Impact Statement (RIS) is required for all policy proposals that are submitted to Cabinet that will result in government Bills or statutory requirements. This extends the scope of the regulatory process beyond that of just considering the interests of business. This means that potential impacts on all sectors of the public, including other levels of government and the entire non-government sector, are considered when new regulation is introduced.

In line with such an approach, Council would like to propose changes to the materiality threshold proposed by the Tribunal in relation to RIS's under Recommendation 6 of the Draft Report. Council is supportive of the proposal that the government undertake an RIS for principal and amending Regulations and other regulatory instruments "that are likely to impose an appreciable burden on *any sector of the public*", but cannot understand why this same threshold is not extended to Bills, which under the recommendation, will only require an RIS when having "a significant impact on *business and/or on competition*." It is therefore Council's submission that Recommendation 6 be amended so as to require that *an RIS also be prepared for Bills that are likely to impose an appreciable burden on any sector of the public*.

Council maintains that by extending the scope of regulatory assessment in this way, regulation impacting on local government would be roped in to the

overall regulation process. Therefore, this should be reflected in the Tribunal's various and laudatory recommendations relating to reform of the regulatory process. Accordingly, Council would like to submit the following:

- Recommendation 1 - the proposed expanded role of the Minister for Regulatory Reform should also include responsibility for regulation impacting on local government;

- Recommendation 2 - the proposed Better Regulation Office should also consider the impacts of regulation on local government;

- Recommendation 3 - all departments and agencies, not just the Department of Local Government, should publicly report on regulatory issues that impact on local government. This would include the devolvement of responsibilities along with the overall level of regulation imposed on councils;

- Recommendation 4 - the proposed Government consultation policy should ensure that local government is properly consulted in relation to proposed regulation that impacts on councils;

- Recommendation 7 - the proposed NSW best practice regulation guidelines should apply to regulatory proposals impacting on local government;

Council is also supportive of Recommendation 9, which proposes that government departments adopt stronger risk analysis and assessment in the development and administration of the enforcement framework. Councils are often expected to be implementers of regulations they have no role in drafting. Therefore, when enforcement responsibilities are devolved to local government, departments and agencies should have to consult closely with councils. This would not only serve the interests of those councils affected, but also ensure that in formulating such regulation, the government would benefit from the on the ground expertise of local government.

Similarly, local councils should be adequately consulted and involved in the regulation monitoring and review processes proposed in recommendations 10 and 11. Too often, when problems arise in a policy area involving local government, councils are blamed for being 'inefficient' or negligent in their responsibilities. The blaming of councils in relation to problems in the development approval system is a good example of this (this issue is discussed at length in section 3.5 of this submission). The involvement of local government in monitoring and reviewing the effectiveness of regulation would potentially reduce the incidents of this unproductive blaming, and ensure that the actual source of regulatory problems are identified and therefore rectified.

2. Facilitating more efficient regulations across jurisdictions in the future

2.1 Cross-jurisdictional tension between state and local governments in NSW

Bankstown City Council concurs with the Tribunal's findings relating to the frustration associated with cross-jurisdictional regulatory overlap and inconsistency between the state and federal governments. As well as affecting Council directly in some instances, this is an issue that affects the community as a whole. Council therefore welcomes the recommendations proposed by the Tribunal in the Draft Report to improve processes surrounding cross-jurisdictional regulatory overlap.

However, Council is of the view that the Tribunal should also pay consideration to cross-jurisdictional tensions that exist between local and state governments in NSW. There are, for example, instances of overlap between the two jurisdictions, especially with regard to regulatory layering in the area of planning and development assessment. This issue is discussed further in section 3.5.

However, the greatest area of tension between the two spheres of government is the gradual shifting of unfunded mandates from the state to councils. This issues was alluded to in section 1 and was examined in detail in both the recent *Final Report of the Independent Inquiry into the Financial Sustainability of Local Government* (the Allan Inquiry) as well as the Report of the House of Representatives Standing Committee on Economics, Finance and Public Administration's Inquiry into Local Government and Cost Shifting, *Rates and Taxes: A Fair Share for Responsible Local Government* (the 'Fair Share Report'). Both of these Reports found the practice of shifting various responsibilities, including regulatory compliance enforcement, service delivery and asset management, creates tremendous costs for local government and undermines the ability of councils to properly perform their roles.

The practice creates a two major problems from a regulatory point of view. The first was discussed at length in section 1, and relates to the fact that these new responsibilities represent forms of state regulation that create excessive costs for councils. The second relates to the issue of accountability. As the Tribunal correctly maintains throughout Part 3 of the Draft Report, accountability for regulation is essential for the effective functioning of regulatory processes. However, when the state government, seeking to achieve a policy outcome, uses local government to enforce a regulation, it effectively evades accountability and responsibility for the adverse impacts of that regulation. Regulation of planning and development assessment is yet again a good example of where this occurs. This issue is discussed in section 3.5.

It should be noted that as a result of the above-mentioned *Fair Share Report*, all three spheres of government recently signed an Intergovernmental Agreement concerning the practice of cost shifting. However, Council believes that given the impact of these cross-jurisdictional tensions between

the local and state spheres in NSW on the wider community, this issue should be considered in the Tribunal's deliberations.

2.2 COAG National Reform Agenda

Council notes the Tribunal's considerations of the regulatory reform program under the COAG National Reform Agenda in part 4.2 of the Draft Report. In particular, Council notes the Tribunal's support for the provision of funding to states and territories as part of this program, to be modelled on the recently wound-up National Competition Policy (NCP) payment program.

Unlike other state governments, the NSW Government refused to share NCP payments with councils. This was in spite of the fact that local government made a worthy contribution to the overall competition dividend and bore much of the brunt of competition reform. Accordingly, Council would like to submit that the Tribunal recommend that if local government is exposed to and expected to undertake further regulatory reform under the COAG National Reform Agenda, the NSW Government grants to local councils a reasonable share of the proposed funding.

3. Reducing existing unnecessary burdens

Council would like to respond to some of the proposals made in the Draft Report to reduce existing burdens in relation to regulatory areas involving or affecting Bankstown City Council. In addition, Council would also like to draw the Tribunal's attention to an area not considered in the Draft Report, regulation surrounding the management of public land.

3.1 BASIX

While being laudable in its aims, the introduction of BASIX has involved additional workloads and costs for Council, and contributed to the overall slowing down of the development approval system (this issue is discussed in much more detail in section 3.5). The system typically accounts for around 25% to 50% of the time taken to assess smaller scale development applications because of the time taken to check plans against the BASIX certificate and to inevitably chase the applicant to amend their plans to comply. Given the time and financial costs that the system is adding, Council is supportive of Recommendation 33 of the Draft Report, especially the proposal to undertaken a post implementation review of the system within five years, including an updated cost-benefit analysis.

3.2 Children's services

Bankstown City Council is not directly involved in the provision of childcare services. Instead, Council provides facilities to community childcare organisations at peppercorn rents to enable them to deliver services to the community at highly subsidised rates.

Accordingly, Council is not directly required to seek and comply with state and federal government licensing and accreditation systems. However, as the owners and providers of these childcare facilities, Council is typically expected to ensure compliance with building standards mandated by the NSW *Children's Services Regulation 2004.*

In recent years, changes to these standards relating to the provision of indoor and outdoor space requirements, laundry rooms, staff rooms, toilets, nappy change areas and safety glass have imposed significant costs. Council is not necessarily opposed to the value of these standards and the role they play in ensuring the provision of quality childcare. But like many of the City's infrastructure assets, many of Council's childcare centre buildings are quite old and were built at a time when such rigorous standards were not in place. New standards can therefore require quite significant renovation and maintenance work to be carried out, imposing significant costs.

The issue is exacerbated by the prescriptive and overly precise nature of these standards, especially in regards to indoor and outdoor space requirements. Often, these standards cannot be accommodated within an existing building without the imposition of serious costs. Council would therefore like to submit that these standards be formulated according to a more flexible and outcomes-based approach.

Council is also concerned at the lack of consultation and even forewarning involved in the formulation and implementation of such standards. This not only makes compliance difficult, but also undermines Council's commitment to prudent financial and asset management. Typically, when Council is aware of a new standard being introduced, it has time to plan and budget for the change. But when new childcare building standards are introduced overnight, Council has to find significant amounts of unbudgeted funding. An example was the introduction of standards relating to safety glass, which required Council to spend more than $100,000 to ensure its childcare centre buildings complied. There was no forewarning or consultation from the Department of Community Services in relation to this standard, meaning Council had been unable to budget or plan for the necessary expenditure. Nothwithstanding this, Council recognised the merit of the initiative, but was unable to plan for it.

Council believes that recommendations proposed by the Tribunal relating to reform of regulatory processes would serve to alleviate these concerns by requiring adequate consultation with those affected by proposed regulation. Presumably, in the case of the introduction of new standards for childcare centre buildings, councils would be among the many organisations consulted ensuring, at the very least, adequate forewarning.

3.3 Explosives (fireworks) - Notification and approval requirements

Bankstown City Council concurs with the finding of the Tribunal that "local councils are best placed to determine whether or not and when fireworks displays are appropriate in their LGA." There are a number of safety hazards

associated with fireworks displays and councils are typically best placed to assess these risks and approve or refuse permission to hold a display.

What's more, Workcover has recently streamlined processes for professional pyrotechnicians so that they can operate under the one Workcover permit, only needing to go to Council for a new permit on each separate occasion. Formerly, pyrotechnicians would have to apply for a Workcover permit on each separate occasion. Therefore, especially given the potential safety hazards, Council believes it is unreasonable for stakeholders in this area to complain of excessive regulatory requirements.

Council rejects the Tribunal's assertion that "there appears to be scope to streamline the process through better communication." As mentioned above, the process has already been significantly streamlined on the part of Workcover. Council's processes and requirements are made clear to stakeholders when applying for permits and as stated above, are entirely appropriate given the potential safety hazard. Professional pyrotechnicians are typically already well informed of these processes. While it may be argued that there is perhaps room for better general communication with private residents concerning processes for gaining permits for fireworks displays, councils are able to do this without the need for more state government regulation.

Accordingly, Council is opposed to Recommendation 43 of the Draft Report, which proposes the development of a standard policy for adoption by local councils. The process for applying for fireworks displays is already well known in the professional pyrotechnical community, and councils are capable of providing further assistance to private residents without the need for more encumbering state regulation. Furthermore, a standard policy would inhibit the ability of councils to respond to these matters in a flexible manner appropriate to local conditions and community needs. In an area as potentially hazardous as fireworks displays, this flexibility is absolutely necessary.

3.4 Grants administration

Council welcomes the Draft Report's detailed consideration of the excessive regulatory burdens associated with grant administration in NSW. Council relies on a range of grant funding from various state departments including capital grants for community and sporting facilities, operational grants for community and environmental services, grants relating to core council functions such as roads maintenance and library management, and general assistance grants.

Administrative burdens associated with applying for such grants have been growing at an exponential rate. As the Tribunal has correctly pointed out, often the cost and time associated with applying for grants outweighs the financial value of the grant. This is especially so for smaller grants. Grant funding agreements and application forms are typically overly detailed, lengthy, and strewn with legalese. A good example of a grant program involving an overly burdensome application process is the library

development grants program, which the Tribunal has already considered in detail. The process associated with applying for these grants is so onerous that it is generally not worthwhile to apply for grants less than $100,000.

What's more, as the Tribunal has noted, forms, processes and requirements vary from department to department. This has meant that council has had to dedicate a significant amount of resources towards capturing and processing data for the purpose of supplying it to different departments in different formats so as to have access to recurring grant funding programs. It has also meant that Council is required to 'reinvent the wheel' when it applies for different types of grant programs administered by different government departments.

The issue is compounded when grants are refused. Council understands and appreciates that there must be an approval process, but finds it frustrating when typically no reasons or explanations for the refusal of a grant are given. This means that Council has no way of improving its processes or even assessing the likelihood of success of re-applying in the future.

Council is also concerned at the growth of excessive and unreasonable conditions attached to grants. An example is the addition into funding agreements administered by the Department of Ageing, Disability and Home Care requiring that the Department be allocated a portion of equity in funded capital facilities. Such a condition diminishes the status of the funding as a grant and imposes quite a burdensome future financial cost on Council. This makes it very unattractive for Council to pursue such funding.

Council is therefore very supportive of the Tribunal's recommendations relating to streamlining grant administration processes. In particular, proposals for common systems, guiding principles, templates and forms, as well as centralised electronic administration, would remove an appreciable cost and time burden for Council.

However, Council is concerned about the Tribunal's enthusiasm for the growing trend in NGO funding away from a grants style model to contracted service delivery. Council is concerned that this trend, exhibited most recently in new Department of Community Services funding arrangements for community services, is overly focussed on governance and financial capacity at the expense of quality and experienced service delivery. Council is also concerned that many of the community groups who will be denied funding under this model will instead turn to Council for replacement funds, placing greater pressure on Council's already stretched community grants program.

3.5 Planning and development assessment

As the Tribunal has rightly noted in the Draft Report, an efficient planning and development system is essential for a healthy economy and a well-functioning and environmentally sustainable urban society. However, as the Tribunal has broadly found, the current system in NSW is plagued by unnecessary time delays and confounding complexity.

While being in agreement with the Tribunal in this regard, Council believes that there is little evidence to support the generalised assertion that excessive time delays associated with development assessment have arisen as a result of council 'underperformance.' To this extent, Council rejects the Tribunal's findings that recently introduced NSW government planning reforms, aimed squarely at stripping away the planning powers of so-called 'under performing' councils will streamline and improve the efficiency of the system. Council also believes that other less draconian, but nevertheless quite costly reforms such as the introduction of a standard LEP, will have little impact on improving development assessment times.

Council is of the firm view that the planning and development assessment system in NSW is failing because of the trend in recent years to overburden and unnecessarily complicate arrangements by way of excessive and disproportionate state government regulation. The source of the problem is primarily the state's policy postition which, born of a desire to support and maintain protection of state-significant environmental and social standards against major development, tends to extend excessive regulatory requirements to all forms of development, including those that can only be described as minutiae. This tendency is the result of an unwillingness to consult with and listen to local government when formulating planning regulation, as well as a reluctance to allow councils to use their on-the-ground expertise to resolve local and trivial matters without the interference of state government agencies. It is submitted that this approach is nonsensical when local government deals with over 125,000 development matters every year, whereas the Department of Planning, who are typically responsible for developing state planning policy, processes only about 400.

Reforms introduced in 1998 to allow private certification of building approvals was a major step in overburdening the system with excessive regulation. As the Tribunal correctly notes on page 28 of the Draft Report, pro-competition regulatory reform can often involve the replacement of one set of regulations with another that is typically more complex to administer and comply with. This has certainly been the experience in relation to the system of private certification.

The majority of approvals dealt with by local councils are small and trivial. Prior to 1998, Councils could regulate such work by way of building approvals, which were usually fast and easy to deal with, and allowed councils and developers a degree of flexibility in dealing with changes that arose during construction. However, since 1998 all development has required planning approval prior to building approval, bringing a raft of minor and trivial matters into the heavily regulated, inflexible and process-oriented planning system. Even small changes to plans that inevitably arise during the construction process are exposed to more planning approval. While it may be argued that Council could absolve itself of some of this work by increasing the range of development that could be approved as exempt or complying development, it has been Council's experience that this impacts adversely on building

standards, as there is no real pressure on builders to comply with development requirements.

This fundamental change has greatly increased the workload of councils. Prior to 1998, Bankstown Council would typically deal with around 600 Development Applications (DAs) and 2000 building approvals. These numbers are now reversed. It is interesting that the Tribunal has noted that there is currently a shortage of planners in local government, exacerbating problems for local councils. Council, however, is of the view that rather than there being an undersupply of planners, there is an oversupply of unnecessary planning work.

Exacerbating the problem is the excessive complexity of growing layered regulation, an increasing overabundance of planning instruments, and the associated concurrence/referral process involving numerous state government agencies. As noted above, the aim of state policy makers in developing this labyrinthine system is typically to achieve or maintain state significant environmental and social outcomes in the face of urban development. However, due to the expansion of work requiring development approval noted above, as well as the prescriptive nature of much of this layered regulation, an increasing amount of minor and trivial work is exposed to this unnecessary, time-consuming and costly regulation.

This type of regulation is the major source of time delays in the development approval system. Council finds it extremely frustrating that local government is continually blamed for time delays when the reality is that the biggest factor slowing down approvals are either requirements for councils to comply with excessive concurrent regulatory requirements from the state government, or the need to await referrals from state government agencies.

For example, Council is continually required to make referrals to the Roads and Traffic Authority (RTA) for minor works that involve a main or regional road, such as work on a residential driveway. Similarly, Council is required to refer certain forms of building work near any kind of open channel to the Department of Natural Resources (DNR) under Part 3A of the *Rivers and Foreshores Improvement Act 1948*. A desktop review of approvals received from the RTA and DNR under these requirements reveals that they are always standardised and only in very rare conditions have requirements in addition to those already required by Council. Yet typically, these referrals add around 40 days to assessment times.

Another example is the impact of the Georges River Regional Environment Plan (REP). This plan requires advertising for minor development that delays DAs by 28 days. It also has a knock on effect when approvals are modified and further advertised notification is required. While such requirements might be appropriate for matters of significant public interest, such as a proposal to undertake sand mining on the Georges River, it is hardly necessary for routine and trivial matters, such as a proposal to undertake building work to a factory that may be up to 2 kilometers from the River. Normally, consent for such a minor proposal could be fast tracked in 10 days. The issue is even more

frustrating when Council has in place its own environmental and biodiversity plans that are a lot more advanced than the Georges River REP and benefit from Council's on the ground experience.

In addition, requirements relating to threatened species, heritage and a myriad of other issues can significantly slow down what should be routine development approvals relating to minor proposals. The BASIX system, as discussed in section 3.1 has also played a role in slowing down the overall process.

As can be seen, complex, layered and concurrent planning regulation plays a major role in slowing down the development approval system and placing further pressure on council workloads. Council therefore commends the Tribunal for proposing in Recommendation 58 of the Draft Report that state agencies work to remove unnecessary integrated development requirements, consolidate the number of SEPPs and REPs, and streamline concurrence processes.

Council would also like to submit the following proposals to help further improve the operation of the planning and development system:

- In relation to the approval of trivial or minor building work, Councils should be able to formulate an 'as of right' development category that can't be refused once set criteria is met. Councils would then only be required to issue building certificates and be able to regulate construction activities in a manner similar to the pre-1998 system. This would remove a great deal of minutiae from the planning system, reducing workloads and thereby increasing efficiency and overall approval times; and

- In relation to concurrent regulatory requirements impacting on minor work, state agencies should be able to engage councils as agents to undertake referrals of low-grade regulatory matters. This would remove the need to refer minor matters to different agencies, significantly improving approval times.

Finally, Council believes that state planning regulation would operate a great deal more efficiently if the broad reforms to regulatory processes outlined in section 1.2 of this submission were implemented. This would mean that in developing planning regulation, state agencies would be required to consult with local government and provide Regulatory Impact Statements. Presumably, this would ensure that state policy makers would cease to look solely at big picture issues in relation to urban development and would consider ways to exclude minor and trivial matters from the reach of such well intentioned, but poorly executed, regulation. Further, proposed regulatory implementation monitoring and review systems would ensure that when problems arise in the planning and development system, instead of policy makers pointing the finger solely at local government and responding by introducing even more unnecessary and unproductive regulation, actual solutions were rationally examined and steps taken to improve the overall functioning of the system.

3.6 Public land management

Although not considered specifically by the Tribunal in the Draft Report, regulation relating to the management of land by local councils is a good example of overburdensome regulation where compliance costs for councils far exceed any negligible community benefits.

Part 2 of the *Local Government Act* sets out in minute detail how councils must classify, use, formulate plans for and develop their own land. Procedures are typically burdensome, over-prescriptive and confusing to the public at large.

Councils are severely restricted in the manner in which they may use land classified as 'community land'. Such land cannot be sold, leased and must have a plan of management, including objectives and performance targets. Such plans are formulated according to an onerous public participation process that typically attracts little interest. Community land must also be sub-categorised, and each sub-category of land may only be managed in a prescribed fashion. Further restrictions are placed on land affected by the *Threatened Species Act* or the *Fisheries Management Act*, and land deemed to have 'significant natural features' or 'cultural significance.' Furthermore, councils are severely restricted in terms of what access it grant to residents and businesses over certain community land for the purposes undertaking building work on their own adjoining property, creating significant burdens.

Councils have greater scope in relation to the management of land classified as 'operational.' However, the process for reclassifying community land as operational is similarly overburdensome. Councils must place the proposal on public notice, invite submissions, and conduct a public hearing facilitating by an independent person. This costly and time-consuming process rarely attracts any public interest, and therefore serves little public benefit.

Councils are even further restricted in the manner in which they may deal with land over which, usually for historical reasons, they hold a trust over by virtue of it being Crown Land. The use of such land is severely regulated by the *Crown Lands Act*. Any changes to this land requires time-consuming approval processes involving the Department of Lands, and involves extensive public notice requirements including advertising and public gazettal. Typically, despite these additional burdens, such lands are no different than ordinary parks.

Council takes its responsibility to properly manage public land, with an appropriate level of input from the public, quite seriously. However, the regulatory regime described above delivers negligible community interest or benefit, and places significant cost and time burdens on councils. Council is firmly of the view, as it is with other similarly burdensome forms of regulation, that local government is usually in the best position to determine how to manage its own affairs. And ultimately, it is Council who is

accountable to the public through the electoral process for its performance on land management.

Heavy regulation imposed from above by the state government does little to aid the process, and in fact, actually makes the job more difficult. As has been noted elsewhere, a more rigorous regulatory process involving appropriate consultation with local government and adequate consideration of the impacts of regulation affecting councils in the formulation, implementation and review of regulation would potentially alleviate many of these types of problems, and prevent them from occurring in the future.

4. Conclusions

As has been illustrated in this submission, although Council performs a number of regulatory functions, it is itself subject to a large, and at times excessive, amount of regulation from the NSW state government. While much of this regulation is not harmful, a tremendous amount of it either imposes excessive and costly burdens or leads to adverse outcomes not envisaged by state policy makers. In addition, the overall effect of local government regulation has resulted in a situation where increasingly, local government is struggling to meet these regulatory obligations both in terms of its finances and capacity.

As councils essentially exist to serve local communities, it is ultimately the broader community, including the business sector, that bears the costs of these regulatory failings. Council would therefore encourage the Tribunal to pay due consideration to the many suggestions that have been raised in this submission to improve the regulation of local government. In particular, there is a clear need for regulation impacting on local government to be included in the Tribunal's proposals for better regulatory processes. In addition, suggestions raised in relation to reducing specific regulatory burdens affecting local government would also streamline processes, reduce costs, and ensure the delivery of intended state policy outcomes.

Through these suggestions, it is hoped that the Tribunal can duly consider regulation impacting on Council in its Final Report, and thereby further formulate and refine recommendations that will produce the best outcome for the Bankstown community.