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R22/10729

26 May 2022

Essential Services Commission
GPO Box 2605
Adelaide SA 5001
Via email: escosa@escosa.sa.gov.au

Dear Sir / Madam

Re: Rates Oversight Scheme

I write on behalf of the District Council of Lower Eyre Peninsula to provide feedback to the Draft Framework and Approach (DFA) developed by the Essential Services Commission of South Australia (ESCOSA) for the enactment of the above mentioned scheme.

The District Council of Lower Eyre Peninsula considered the DFA at their meeting held 20 May 2022 and in summary, consider that while there can be benefit derived from a review of the appropriateness of the assumptions made within LTFP and AIMP's, the framework currently proposed by ESCOSA reaches well beyond that envisaged by the legislation and will impose significant resourcing and costs on Councils and their communities.

Council undertakes comprehensive consultation processes in relation to its budgets and strategic plans with its community and annually undergoes a significant financial audit process with external auditors. In reviewing ESCOSA's DFA, under this draft framework it appears there will be a further schedule of auditing of Councils which would also involve further onerous documentation preparation requirements of the Councils.

Council supports the concept of the scheme as intended by the legislation, however urge ESCOSA to reduce the scope to align with the intention and requirements outlined within Section 122 of the Act and avoid expansion into realms not intended or specified in the legislation.

The District Council of Lower Eyre Peninsula therefore provides the following detailed responses to the consultation questions posed in the DFA for ESCOSA's consideration:

(continued):

Q No: District Council of Lower Eyre Peninsula Response:	
2.1	<p><i>Overarching intent of the legal framework: Do stakeholders agree with this interpretation of the legal framework? If not, why not?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>While the legal framework is largely correct, ESCOSA is seeking to assert a wider scope than that authorised by legislation. The legislation requires ESCOSA to focus on the Long Term Financial Plan (LTFP) and infrastructure & Asset Management Plan (IAMP) and the ability to request further additional documents is incidental to these core functions. ESCOSA does not have the ability under legislation to expand the scope to any other matters it considers of interest, the relevant matters are the LTFP and AIMP. The legislation also limits the documents to be provided to those already held by Council and does not require Council to create new documents for ESCOSA.</p>
2.2	<p><i>The scope and context of the advice: Do stakeholders agree with this interpretation of the scope and context of the advice to be provided under the scheme? If not, why not?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>ESCOSA has used the objectives set out in s122(1g) to justify an additional increase in the scope of their review. Section 122(1g) reiterates the objectives set out in section 3 and merely provides that ESCOSA must have regard to the council's objective of providing for "appropriate financial contributions by ratepayers to those services and facilities". Section 122(1g) is focused on aggregate revenue sources, and it is not necessary to disaggregate this data further as proposed in the ESCOSA DFA.</p>
4.1	<p><i>The principles underpinning the analytical framework: Do stakeholders consider these principles appropriate for the analytical framework? If not, why not? How should they be changed and why?</i></p> <p>DCLEP Response: Yes, with comments as below</p> <p>The principles proposed by ESCOSA appear to be consistent with the legislative amendments and are a sound basis for designing a limited, high-level review as contemplated by the legislation.</p> <p>It is noted however, that despite indicating focus will be given to key overarching targets and measures, the scope of information proposed to be required from councils is extensive and detailed and delves into operational data.</p> <p>Council suggests ESCOSA use existing data for the review, such as that available via the SA Local Government Grants Commission to avoid adding time and costs to both Council and ESCOSA.</p>
4.2	<p><i>Applicability to the analytical framework: Do stakeholders consider this an appropriate analytical framework? In not, why not? How should it be changed and why?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>Some of the information proposed to be reviewed (e.g. cost controls, service risk profiles, demographics of ratepayers, reports of audit committees, information on a per rateable property basis) would require significant time and resources to analyse and report on with no obvious benefits derived. The legislation does not contemplate a review of day-to-day or operational matters, or such a level of detail.</p> <p>It is a fundamental principle of Local Government that elected councils are entitled to make changes to the manner in which services are provided and DCLEP notes that this is done with a greater level of consultation and oversight than any other level of Government. ESCOSA advice should be limited to high-level advice enabling council members to understand the implications of revenue decisions in reference to the LTFPs and IAMPs.</p>

Q No: District Council of Lower Eyre Peninsula Response:	
4.3	<p><i>Relevance of historical Trends: Do stakeholders consider this an appropriate analytical framework? If not, why not? How should it be changed and why?</i></p> <p>DCLEP Response: Yes, historical trends provide some insight, however do not provide a complete picture of the reasoning for changes in any given year.</p> <p><i>What historical information is needed from each Council?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>The DFA proposes the collection of historical data going back to 2007-08. Councils are only required to hold detailed information for 7 years under State Record requirements and while historical trends are important, they provide little context to decision making.</p>
4.4	<p>The period for which historical data is provided should reflect the timeframe anticipated within the proposed scheme, i.e. four years, and a request for historical information for a longer period is not supported.</p> <p>Council also note the template forms contained in the DFA which will require the creation of new data and consider this imposition on resourcing to be excessive. ESCOSA should utilise existing data and formats and councils should not have to fund the creation of new documents for a body that has been created for the purpose of providing high level 'advice'.</p>
4.5	<p><i>Account for scale: Do stakeholders agree that where it is useful to do so, information should be normalised on a per rateable property basis?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>Council rates are not a fee for service. All levels of government require people to provide a contribution towards the cost of running the government and the level of service provided within councils are varied and at the discretion of the elected members. Council does not support the use of one metric and consider that meaningful conclusions can still be drawn by ESCOSA by looking at total revenue sources.</p>
4.6	<p><i>Accounting for inflation: Do stakeholder agree that the use of CPI is an appropriate index to utilise when considering Councils operating income and expenditure growth over time? If not, why not? How should it be changed and why?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>The LG Act provides discretion for Councils to determine the reasonable assumptions to be used in the LTFP and are required to publish those assumptions within that plan. ESCOSA should only review whether the assumptions are reasonable and consistent.</p> <p>The proposal to remove of the discretion provided in the Local Government Act 1999 for a Council to determine the reasonable assumptions to be used in the development of the LTFP is strongly rejected. These assumptions may include consideration of the Local Government Price Index (which accounts for the costs of items usually purchased by councils as opposed to CPI which accounts for the costs of items usually purchased by households), endorsed Enterprise Bargaining Agreements, the ABS wage price index as well as other actual cost factors which collectively provide a more accurate representation of inflation pressures on councils.</p> <p style="text-align: right;">(continued):</p>

Q No: District Council of Lower Eyre Peninsula Response:	
4.6 cont'd	<p>It is concerning to Council that ESCOSA would assume to know the level of services valued by this community better than the Elected Members that were elected by this community. Increases above CPI or any other measure are generally due to a Council seeking to provide an additional service or facility or in response to legislative cost increases outside of Council's control. If that has been the determination of the elected body and consultation on the Annual Business Plan has been undertaken, it is not ESCOSA's role to imply that the Council, nor the community, are not entitled to make those decisions.</p>
4.7	<p><i>Key questions to address: Do stakeholders consider these to be appropriate questions for implementing the analytical framework? If not, why not? How should they be changed and why?</i></p> <p>DCLEP Response: Yes, in part. Refer explanatory comments below</p> <p>The first three questions are consistent with the intent of s122 of the Act and outline what is required of a high-level review of the relevant matters. ESCOSA's review should look for trends in the three key financial indicators. There are already mechanisms within the LG Act requiring Council's to report on achievements against strategic plans and bodies that monitor this (such as Audit Committee's) and s122 does not require ESCOSA to audit whether a council has successfully implemented it's LTFP, this would be merely duplicating processes that are already undertaken under the Act.</p> <p>The DFA also delves into Council's 'service risk profile' which is not considered by s122 of the Act. Reviewing ratepayer demographics, practical implementation, cost control mechanisms all requires an extensive review of detail well outside of the scope of s122 and will require significant resourcing from both Council and ESCOSA, adding to the costs associated with the scheme.</p> <p>Council agrees that ESCOSA should review the three key financial indicators, however contend that it is not ESCOSA's role to verify or audit the data contained in the LTFP or the ratios. Councils already have external auditors, elected members and audit committees to assess that detail.</p>
4.8	<p><i>Key questions to address: Do stakeholders consider the proposed approach to a material amendment appropriate? If not, why not? How should it be changed and why?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>It is not necessary for ESCOSA to further constrain the definition of 'material amendments' when this definition is already outlined within the Australian Accounting Standards. The standards are what should be used.</p>
4.9	<p><i>Comparison of historical trends to any revised SMP: Do stakeholders consider this an appropriate approach to the analytical framework to assess the key questions in Table 5? If not, why not? How should the approach be amended and why?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>Council does not support any further expansion of the proposed review and adding further analysis will result in increased costs to councils. Reviewing audited financial statements and audit committees are all matters regulated under other parts of the LG Act and ESCOSA does not need to duplicate tasks already provided for elsewhere within the Act.</p> <p>As outlined above, while the expression 'all relevant information' is contained within s122, it must be read in the context of that section (strategic plans) and does not expand to other areas that fall outside of s122. (continued):</p>

Q No: District Council of Lower Eyre Peninsula Response:	
4.9 cont'd	<p>When considering the graphs that are intended to be used by ESCOSA to report on Councils, income should be separated by rates, grants/subsidies and fees and charges to more accurately reflect an individual Council's financial situation. The District Council of Lower Eyre Peninsula own and operate the Port Lincoln Airport as a self-funding business activity and this income (and expenditure) would misrepresent true rating impacts and distort the ratios and graphs intended for use by ESCOSA.</p> <p>Furthermore, the use of the term 'CPI constrained' will lead to unreasonable criticism of councils that justifiably increase rates greater than CPI and will have a practical effect of capping council rates to the CPI rate. 'Rate capping' was not supported by Parliament and the assertion that councils should be CPI constrained is rejected.</p>
4.10	<p><i>Content of the advice: Do stakeholders consider this an appropriate approach to developing the content of the advice that the commission provides to each council? If not, why not? How should the approach be amended and why?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>The content of the advice proposed by ESCOSA goes well beyond the scope contemplated by s122. S122 of the Local Government Act provides ESCOSA with the authority to provide advice on Council's LTFP and IAMP, therefore ESCOSA should be considering whether the assumptions a Council has used to develop those plans (whatever those assumptions may be) are appropriate and reasonable for the individual Council's situation.</p>
4.11	<p><i>Publication of the advice: Do stakeholders consider this an appropriate approach to adopt for the publication of the advice, given the legal framework? In not, why not? How should the approach be amended and why?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>ESCOSA proposes that councils publish their advice in full within the Annual Business Plan (ABP). It is foreseeable that the advice may provide extensive explanatory and supporting analysis and will impact the size and readability of the ABP. Therefore Council suggests ESCOSA consider the creation of an executive summary section in the advice and require only this summary to be published in the ABP.</p>
4.12	<p><i>Alignment with the legal framework: Do stakeholders consider the analytical framework aligned with the legal framework? If not, why not? How should the approach be amended and why?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>As outlined in detail above, Council does not agree that the proposed framework aligns with the legal framework as it includes matters well beyond the scope of s122 of the LG Act.</p>
4.13	<p><i>Alignment with the overarching principles for the analytical framework: Do stakeholders consider the analytical framework to be aligned with the overarching principles for its development? If not, why not?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>As outlined in detail above, Council believes the proposed framework includes matters and a level of detail beyond the scope of s122 of the LG Act.</p>

Q No: District Council of Lower Eyre Peninsula Response:	
5.1	<p><i>Guidelines and information provision: Do stakeholders consider publishing the guidelines and proforma excel template no later than the start of each the relevant financial year appropriate? In not, why not? How should the approach be amended and why?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>ESCOSA should restrict the documents required by council to those already held by council and limit any requirements to create new documents such as those proposed in the DFA. This will reduce the workloads of both ESCOSA and council administration.</p> <p>The proposed framework implies ESCOSA has discretion to interrogate the financial undertakings of individual Councils which is likely to require Council administration to develop and prepare documents and information purely for the purpose of ESCOSA enquiries. Whereas the intention of section 122 does not provide a financial audit function for the framework. ESCOSA must confine itself to using only the investigative powers bestowed by s122 of the Local Government Act.</p>
5.2	<p><i>Timing of information provision: Do stakeholders consider the proposed timing for information provision appropriate?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>Council does not support ESCOSA having the power to vary the statutory deadline set out in section 122(1e) of the Act. The timeframe set out in s122 was based upon feedback from 68 councils and takes into account the workloads of finance staff and the timing of when certain documents would become available.</p>
7.1 & 7.2	<p><i>Reasonable costs:</i></p> <p><i>Do stakeholders agree with the Commission's approach to allocating its projected indicative costs across the first cycle of the scheme? If not, why not? How should the approach be amended and why?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p><i>Do stakeholders agree with the Commission's approach to addressing any material difference between its actual costs and its projected indicative costs? If not, why not? How should the approach be amended and why?</i></p> <p>DCLEP Response: No, refer explanatory comments below</p> <p>Former Minister Vicky Chapman previously advised parliament that the costs of the review were likely to be in the order of \$20,000 per Council. ESCOSA now propose a process that would cost each council \$52,000 per review. Council contends that this increase in costs anticipated is due to the increased breadth of ESCOSA's interpretation of the scope and that ESCOSA have not demonstrated how this proposed scope expansion will benefit councils or the community.</p> <p>Should ESCOSA limit its review to the matters intended under s122 of the Act, the costs associated with the review should be significantly reduced.</p> <p>Furthermore, it is unreasonable to require councils to pay for the set up and development of the scheme. S122 (1k) provided for ESCOSA to charge councils for costs incurred 'in relation to the council' and makes no mentions of overheads, IT requirements of recruitment costs being recuperated from councils and these costs should be paid by the State Government.</p>

Q No: District Council of Lower Eyre Peninsula Response:	
7.3 & 7.4	<p><i>Should councils be billed directly or via the LGA?</i></p> <p><i>When should councils be billed and with what frequency?</i></p> <p>DCLEP Response: Refer explanatory comments below</p> <p>Councils should be invoiced directly, rather than through the LGA to reduce double handling of invoices and the requirement for LGA to participate in the administration of the scheme.</p> <p>Council supports the spreading of payments over four years given that the current costs proposed by ESCOSA would require a 0.74% rate increase in the year of DCLEP's review simply to pay for this scheme.</p>
7.5	<p><i>How should costs be allocated between councils?</i></p> <p>DCLEP Response: Refer explanatory comments below</p> <p>Provided that ESCOSA keep within the scope envisaged by s122, Council supports the equal apportionment of costs of the scheme between councils as a review of a larger council LTFP and AIMP is unlikely to require more time than that of a smaller council.</p>

The District Council of Lower Eyre Peninsula supported and remain supportive of an oversight scheme, however the Draft Framework and Approach reaches beyond the intent of the legislation and will require significant resourcing from both Council and ESCOSA.

Should you have any queries relating to this matter, please do not hesitate to contact the undersigned.

Yours faithfully

