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Your Ref: A753422

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Dear Ms Gibbs

**Proposed amendment of *Local Government (General) Regulation 2005 (NSW)*: an equivalent of clause 397L to apply to county councils**

Thank you for your letter dated 21 January 2021 and your invitation to provide evidence of issues that would support the proposed amendment of the *Local Government (General) Regulation 2005 (NSW)* (the 'Regulation'), specifically to expand the operation of clause 397L to include county councils.

**Basis of concerns**

The basis of our concerns arose recently when lodging a credit application with T-Corp for a major capital works project - St Helena Trunk Main Augmentation.

As a county council, we have a higher risk profile (by comparison to a general-purpose council) from a financial institution's perspective; this affects our potential borrowing power. This is predominately due to the absence of an available legislated debt recovery capability.

As a result, in assessing the above mentioned credit application T-Corp advised that multiple non-standard conditions would be imposed should the application to proceed with the borrowing be progressed. The lack of the same debt recovery strength through legislation as a general purpose council or joint organisation was a key factor considered by T-Corp when assessing the credit application.

**Evidence to support amendment to the Regulation**

**A. Misalignment of policy**

By letter dated 13 January 2021 to Council from the Minister for Local Government the misalignment in policy position as between a chairperson of a joint organisation compared to that of a county council was highlighted. This correspondence indicated that equivalence for both county councils and joint organisations was prudent and desirable.

As set out herein, there occurs a further misalignment as between joint organisations and county councils being in the ability of each to recover contributions from constituent or member councils.

Section 400ZF was inserted in the *Local Government Act 1993* (NSW) (the 'Act') in 2017 and clause 397L inserted in the Regulation in 2018 (re: creation of Joint Organisations). If the Government identified the need and 'activated' section 400ZF through clause 397L for the joint organisations, there is a strong argument that the same should occur for county councils. The precedent has been set.

As highlighted by the second reading speech for the *Local Government Amendment (Regional Joint Organisations) Bill 2017*, it is important to provide a safeguard to clarify appropriate arrangements for financial contributions to be prescribed by regulation. It should be treated and progressed as non-controversial based on what is already in place for joint organisations.

## **B. Status quo**

Currently county councils across NSW are all charging annual fees via different processes depending on their functions and their constituent councils. Where an issue around service and payment arises, the Office of Local Government currently does not have a uniform approach to handle the matter.

County councils are responsible for critical infrastructure projects within their region. This sometimes requires the ability to borrow funds to deliver regionally significant and beneficial projects.

We call on your support to amend the *Local Government (General) Regulation 2005* (NSW) whereby clause 397L applies to county councils in the same way as joint organisations.

Should you have any further questions or require clarification regarding this matter please contact Ms Jessekah Forrest, Governance Advisor – Projects, either by telephone on (0428) 471 918 or by email at: [jessekah.forrest@rous.nsw.gov.au](mailto:jessekah.forrest@rous.nsw.gov.au) .

Yours faithfully



Phillip Rudd  
General Manager