

# The Preservation of Local Government Records in New South Wales: Historical and Current Legislative Requirements (Part I)

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*This is part I of a paper presented to the New South Wales Branch of the Records Management Association, Local Government Chapter, Annual General Meeting, 9 June 1982. It outlines current legislation affecting the preservation of local body records in NSW with emphasis on the inadequacies inherent in this legislation. The current attitude of the State Archives Authority and other collecting institutions is discussed.*

## **INTRODUCTION**

For the purposes of brevity and because I believe the problems facing those in local government relating to the preservation of their records are escalating, I will confine my remarks to the historical and current legislative requirements for councils in New South Wales to preserve records, what recent moves have been taken to alter such provisions, and proposals for the future role and responsibility for local government to preserve its records.

Because the retention of valuable records equals time, effort and money, the retention of valueless records also equals time, effort and money. In the current and future climates of cost-effectiveness and financial restraint coupled with a wider freedom of information movement and demands for greater access by the public to information held by public bodies, local government councils will be faced increasingly with the decision of what to do with their records — to retain or destroy, and what to retain or destroy.

If retention is decided on, where should the records be stored, how should they be stored, should they be in the custody of the council, the

council library, offered to another library or historical society, to a collecting archives or be in a microfilm format? Whose responsibility is it or should it be to preserve local government records?

The greater involvement of local government in the local community has resulted in an increasing volume of information which councils have had to deal with in their records systems and has led to more complex groups of records and a diversification of series. For example, in the City of Sydney Council Archives, records prior to 1900 include the main series of council and committee minutes, committee reports, letters received and sent, financial records, (ledgers, journals, day books, cash books etc.), rate books, assessment books, annual reports and photographs. Other records which are still in departmental custody include building plans, survey plans and allied records. Due to the change and increase in functions, the number of series created by each department after 1900 is in excess of the pre-1900 total for the whole of the council's records.

The real need of councils in the 1980s is to establish guidelines for the orderly disposal of their records so that valuable records are preserved and useless records are destroyed. Despite new developments in records management, modern technology and equipment, better classification and indexing systems and better file tracking plans, the problem of decisions of disposal of records still remains.

It has been recognised by most professionals operating in the local government records area, however, that legislative guidelines are non-existent and that assistance from the Department of Local Government and the Archives Office of NSW is almost negligible, due to budgetary restraints and the lack of legislative muscle.

In order to understand the present situation and the current and future moves to change it, regarding the preservation of local government records, one needs to look at how the present situation has evolved.

## **LEGISLATIVE CONTROL**

### **(a) The City of Sydney: The Sydney Corporation Act of 1842**

The first local government council in NSW was the Municipal Council of Sydney, which was provided for in 1842 in "An Act to declare the Town of Sydney to be a City, and to incorporate the Inhabitants thereof".<sup>1</sup> The preservation of local government records in New South Wales commenced with the incorporation of the City of Sydney.

In this original Act, the section dealing with records, reads,

and be it enacted, that the charters, deeds, muniments, and records of the Corporation, or relating to the property thereof, shall be kept in such place as the Council from time to time shall direct; and the Town Clerk for the time being shall have the charge and custody thereof, and be responsible for the same.<sup>2</sup>

The first Act establishing a local government council in New South

Wales did provide partly for the preservation of its records — that is, the town clerk, was to maintain them and have the custody of them. However, no provision for selective retention was made and hence, no provision for the rational destruction of any records. This original section was repeated in subsequent amending acts regarding the City of Sydney until 1879.

The Sydney Corporation Act of 1879 (43 Vic. No. 3, 4/7/79) changed the original section of the 1842 Act to read,

The Town Clerk shall have the charge and custody in the Town Hall or such other place in Sydney as the Council shall direct of the Common Seal and of all charters, grants, deeds, muniments and records of the Corporation or Council relating to the property thereof as well as all rolls of citizens ballot-papers ballot-boxes and all books letters and documents not relating to accounts.<sup>3</sup>

Whilst the 1842 Act provided for records generally, the 1879 Act specifically provided for certain classes of records to be maintained — the legal records, property records, citizen lists, and “all books, letters and documents not relating to accounts” — in other words, provision was made for all non-financial records.<sup>4</sup> Subsequent amendments to the Sydney Corporation Act did not further provide for the preservation of records, even the Local Government (Areas) Act of 1948 which constituted an enlarged City Council from the smaller municipalities of the inner city and the City omitted the subject.<sup>5</sup>

The subsequent Local Government (City of Sydney Boundaries) Act of 1967, which provided for a diminished City Council area did stipulate that the Finance Joint Committee (comprising the Auditor General or his representative, the Under Secretary of the Department of Local Government, the town clerk of the City of Sydney, a Commissioner, a town clerk nominated by the Local Government Association of NSW and another person), was “to determine what books, documents, records and papers of the Council of the City of Sydney are to be handed over to each transferee Council”.<sup>6</sup>

The most recent Local Government (City of Sydney Boundaries) Act of 1981, by which the City of Sydney and the Municipality of South Sydney were united did not provide for the preservation of records at all or guidelines on the unification of the two records systems, despite a public comment by the Lord Mayor on 8 January, 1982, that the “principal cause” of the “troubles” of the South Sydney Municipal Council was a “very inadequate filing and record system”.<sup>7</sup>

#### **(b) The Municipalities Act of 1867**

The Municipalities Act of 1858 provided for a voluntary system of incorporation of municipal councils. In the original Act of 1858, no provision was made for records. In the amending Act of 1867, Section 112 read as follows:—

The common seal and all charters deed muniments and records of the Corporation or relating to the property thereof shall be kept in such place and in such custody as the Council shall direct.<sup>8</sup>

This provision was similar to that of the original Sydney Corporation Act of 1842, with the exception of the phrase relating to the records being in the custody of the Town Clerk who was to be responsible for them.

The Municipalities Act remained in force until the more encompassing Local Government Act, which resulted in the Local Government Act of 1919. Thus prior to the passing of the Act in 1919, other New South Wales councils had no direction on the question of the preservation or the destruction of their records.

### **(c) The Local Government Act of 1919**

It was not until 1919, that councils had a statutory responsibility for the preservation of at least some of their records. Section 49 of the Local Government Act provided for the future promulgation of Ordinances relating, amongst other matters, to "the preservation of the books and records of the council" (subsection h).<sup>9</sup> This was done in 1945 with the amendment of Ordinance 1 to provide for the "Preservation of Records" under Section 55 and "Records" under Section 56.

In the amended Ordinance, Section 55a read:

the following records of the Council shall not be destroyed, viz. Minute Book, Register of Legal Documents, Register of Correspondence, Legal Documents, Register of Returning Officers' Declarations of elections and of polls and those declarations.

The inclusion of the preservation of the Council minute books can easily be understood — they are the core record of Council decisions and all previous Acts had provided for the creation and maintenance of the minute books.

The preservation of legal documents and their registers are vital in the council's legal transactions often relating to the conveyance, resumption and disposal of council-owned and private property. The provision for the preservation of election records is likewise comprehensible, as the proper administration and conduct of polls is an issue of paramount importance to all elected bodies.

What is significant in Section 55a of Ordinance 1 are the omissions — records which councils commonly call on from the past in the course of current administrative transactions, and which closely relate to the other defined permanent records — such as rate and valuation records, building and development applications and plans, engineering plans, including subdivision plans, correspondence files, etc. Other glaring omissions are the records created by Council in a non-paper format, for example, microfilm and EDP tapes. The Ordinance has not yet caught up with

recent technological changes to record-keeping, although other Acts have attempted to, for example, the Evidence (Reproductions) Act of 1967.

Section 55b provided for other records of the Council to be destroyed "or otherwise disposed of if the Council so decide" (which could include donations to a library or other archives), after the expiration of six years from the last entry therein or transaction thereon.

Financial records are provided for separately, and in fact, can be destroyed within the six year limit — providing that the auditor "shall have reported that such record or paper is of no further value" and that Council passes a resolution "to that end". Tape recordings of the proceedings of meetings of the Council and of Council committees may be destroyed after three months, an inclusion in 1970. Thus, Section 55 of Ordinance 1 in fact makes more provision for the destruction of local government records than for their preservation.

Section 56 provides for the town clerk to have custody of records and access by the public to council records. Council has to approve access to records by members of the public. The City of Sydney has provided for this in its access forms, where the archivist and another senior servant approve of access, under delegated authority, except on matters deemed to be sensitive.

In conclusion, there is little legislative muscle to compel councils to retain records of historical and cultural value and there is little guidance on the decisions regarding the destruction of records. Recently, there have been moves to have this situation changed.

## **RECENT MOVES TO ALTER LEGISLATIVE CONTROL**

### **(a) The Archives Office of NSW and the Department of Local Government.**

It was not until the passage of the NSW Archives Act in 1960, that further reference in legislation was made to the preservation of local government records. Prior to the passage of the Archives Act, the Mitchell Library and the Archives Office of NSW had both considered the problems of preserving local government records. The Mitchell Library, in fact, received a number of deposits from local councils which became defunct, mainly by the means of amalgamations. These collections are by no means complete in the survival of the core records of the councils.

With the Archives Act of 1960, the possibility of the declaration of local councils as public offices could be exercised either individually or collectively. This was possible under Section 2(3) whereby any office or body (including a local authority) specified in the governor's order could be declared a "public office" for the purposes of the Act.<sup>10</sup>

Once a council was proclaimed as a public office, all of its records would

become public records as defined in the Act. The consequence of this would be that reference would have to be made to the NSW Archives Authority before any disposal decision or action was allowed. Section 2(3), however, has never been acted on, the chief obstacles being those of resources — of storage space and staff. One philosophical obstacle has been seen as — should local government records (i.e. records of autonomous bodies) be transferred to a central archives and records repository at all or should they be the responsibility of the individual Council?

Time elapsed until February, 1979, when the Archives Authority requested the principal archivist to prepare a report on the problems associated with the preservation of local government records and whether consideration should be given to declaring Councils as public offices. The Archives Authority appears to have been in favour of this proposal and recommended action to be taken to have councils declared as public offices.<sup>11</sup>

In September, 1979, a meeting of representatives of the Local Government Association, a few councils, and the Archives Office was held but no conclusion was evident. The idea further lapsed when funds were not available to extend the Government Records Repository at Kingswood and in October, 1979, a cut was made in the maximum number of staff allowed. In December, 1979, the Archives Authority decided to defer further discussions and the matter went into abeyance.

The Department of Local Government resuscitated the matter in September, 1980, and wrote to the Archives Office concerning preserving local government records and also recommended they be proclaimed public offices. The question was again considered by the Archives Office in October, 1980, but the burden on storage and staffing resources precluded this possibility. The Department similarly communicated with the Local Government and Shires Association of NSW, which the Local Government Association publicised in a circular in December 1980 sent to member Councils.<sup>12</sup>

The Local Government Association circular outlined the reasons behind the communication — that more and more councils had undertaken microfilming, and were requesting permission from the Department of Local Government to destroy the original hard copies. The Department was to issue a circular regarding microfilming and the provisions of the Evidence (Reproductions) Act, 1967. "Prior to the circular being issued, consideration is being given to the proclamation of Councils throughout the State as public offices under Section 2(3) of the Archives Act, 1980".<sup>13</sup>

The Local Government Association could see "no objection in principle to the proclamation of Councils as public offices under the Archives Act, but before expressing a final opinion to the Department, we would appreciate the comments of Councils in the matter".<sup>14</sup>

Councils were circularised and, whilst statistics were not kept on councils who replied, of the councils who did reply, the majority were in favour of councils being proclaimed public offices under the Archives Act. Subsequently, on 23rd February, 1981, the Department of Local Government was notified of the results of the survey and there the matter has rested.<sup>15</sup> Once again, the restrictions of storage space, staff and finance has precluded this option going ahead at this time.

### **(b) The Sydney History Group**

The Sydney History Group, formed in 1975, is active in publishing, research and information dissemination concerning the history of Sydney. In 1979 the Group applied unsuccessfully for a cultural grant from the State Government to undertake a survey of local government records in Sydney, "for the use of future researchers".<sup>16</sup> Despite the setback, the Sydney History Group decided to begin the survey on a restricted basis and, to publish such findings. This has been done in their *Sydney Gazette* of December 1981.

A standard letter was sent to all Town and Shire Clerks, outlining the history and objects of the Sydney History Group. In addition, the current situation of retention of local government records was outlined and the significance of local government records was highlighted. The group also sought temporary access to Council records for the purposes of recording the records surveyed.

Voluntary workers were instructed by member archivists on the basic tenets of archival administration and practice and a standard checklist was provided, which included the five vital series, provided for by clauses 55 and 56 of Ordinance 1. Eleven other series were also outlined for inclusion in the survey.

The Councils surveyed were: Blue Mountains City Council, Fairfield Council, Leichhardt Municipal Council, Mosman Municipal Council, Willoughby Municipal Council, Woollahra Municipal Council, Mitchell Library (which holds a collection of records of defunct Councils) and the Council of the City of Sydney.

A total analysis of the series of records preserved by the Councils and a comparison of completeness of series has yet to be done. The survey should be seen as a valuable starting point to disseminating information on the presence of local government records.

### **(c) Collecting archives**

Only a few "collecting archives" for local government records exist in New South Wales on substantial basis. Some Councils have deposited records with their own municipal libraries. These are not included. Two examples of "Collecting archives" are the Mitchell Library and the Riverina College Archives and Records Service.

(i) *The Mitchell Library*, substantially a manuscript library, nevertheless has collected some records of local government councils, which are defunct. This has been the case with records that "had nowhere else to go" and which the library thought worth preserving. The Mitchell Library, however, has stopped collecting local government records due to restrictions on finance and staff.

(ii) *Riverina College Archives and Records Service*, located in Wagga Wagga, was formerly established in May, 1979, with the appointment of a full-time, professional archivist. One of its main functions include providing "facilities for the collection, preservation and consultation of records of permanent administrative and historical importance to the Riverina".<sup>17</sup>

Any person or body in the Riverina may deposit material. The collections include local government records. Records of the Mitchell S.C., Junee M.C., Tumbarumba S.C., Narrandera M.C., Yanco S.C., Illabo S.C., and Kyamba S.C. have so far been deposited dating from the 1880s to the 1970s. The archivist at the archives, Don Brech, has consistently argued in favour of regional archives, particularly for local government records. This would be feasible, particularly for smaller councils and for those in country areas. It is an option which the Sydney Branch of the Society of Archivists has considered.

## CONCLUSION

Primary legislation governing the practice and administration of local government in New South Wales, the Sydney Corporation Act of 1842, the Municipalities Act of 1858 and 1867 and the Local Government Act of 1919, has required councils to preserve few of the records which they create. In practice, few councils have preserved more series of records than they are obliged to do under these Acts.

The significance of local government records to current administrative actions and their potential as a future source for historical research and an integral part of our local cultural heritage, led the Sydney Branch of the Australian Society of Archivists to outline a Branch policy on local government records in 1981. Subsequently, a workshop and seminar on the problem of local government records was sponsored on 15-16 October, 1981.

Part II of this article, to be published in the next issue of *Archives and Manuscripts* will outline the Branch's policy, the results of the workshop and seminar and the establishment of the Local Government Records Action Committee and its endeavours to effect legislative changes in New South Wales in the area of the preservation of Local government records.



**FOOTNOTES**

1. NSW, Act 6 Vic 3, 20/7/1842
2. *ibid*, Section 100.
3. NSW, Act 43 Vic No 3, 4/7/79, Section 52.
4. Financial records were provided for in Sections 218 to 220, and Assessment Books in Sections 103, 111 and 113.
5. NSW, Act No 30, 1948.
6. NSW, Act No 48, 1967, Section 20, (1c)
7. *Daily Mirror*, 8/1/82, p15.
8. NSW, Act 31 Vic No 12, 1867, Section 112.
9. NSW, Act No 41, 1919.
10. Cross, D.J., "Current Policy and Practice in Retention and Management of Local Government Records in NSW", in *Local Government Records: Control Management, Preservation and Use*, Australian Society of Archivists/Library Association of Australia, 1982, p29.
11. *ibid*, p32.
12. NSW Local Government and Shires Association, *General Circular*, No 6, 1980.
13. *ibid*, p2.
14. *ibid*, p2.
15. Local Government Association, *File*, 5214A.
16. Sydney History Group, "Survey of Local Government Records", in *Local Government Records . . .*, op cit, p78-82.
17. Brech, D., "A Regional Approach to Local Government Records in New South Wales: A Discussion Paper" in *Local Government Records . . .*, op cit, pp72-73.