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Cr Keith Sullivan
Mayor
Oberon Council
PO Box 84
OBERON NSW 2787

DCS (A)

Dear Mayor Sullivan,

Constitutional Recognition of Local Government – A role for Councils

In June last year, following the 2010 National General Assembly of Local Government, Geoff Lake wrote to you providing an update of progress on the Australian Local Government Association's (ALGA's) campaign for a referendum on the constitutional recognition of local government and providing copies of fact sheets and a brochure designed to highlight the importance of local government to local communities. I am now writing to advise you of further progress and to invite your council to become directly engaged in the campaign for constitutional recognition.

Following the 2010 Federal Election, Prime Minister Gillard committed to holding a dual referendum on the constitutional recognition of local government and the recognition of Indigenous Australians. The referendum will most likely be held in conjunction with the 2013 Federal Election. The challenge for local government is now threefold: to ensure the referendum is held; to ensure that the type of recognition sought meets our requirements; and to make sure we have a positive result in the referendum itself.

ALGA has devoted considerable resources over the past three years to developing the case for constitutional reform and the need for reform. That need was highlighted in stark terms in 2009 by the decision of the High Court in *Pape v Federal Commissioner of Taxation*. In that case the High Court set out the limitations of the Australian Government's powers and, in doing so, clearly indicated that the Australian Government does not have the power to fund local government directly.

It is obviously in the best interests of local communities that Federal Governments, whatever their political persuasion, have the capacity to fund councils directly to achieve national objectives. This is why our preference is for a pragmatic and simple change to the Constitution (most likely to Section 96) which would allow direct funding to continue. ALGA's research shows that this simple and pragmatic change is most likely to garner the necessary public support. ALGA has not ruled out recognition of local government in a Preamble to the Constitution if one is proposed but such limited recognition alone would not meet local government's requirements and address the uncertainty highlighted by the *Pape* case.

The form of financial recognition of local government proposed by ALGA, which will not impact on the relationship between councils and state governments, has been endorsed by your local government association and all other state and territory local government associations. ALGA believes it is now important that this position also be endorsed by all councils to demonstrate to Federal and state governments, oppositions and political parties that the position has widespread support within local government.

I am therefore writing to all councils to ask them to pass a resolution in council chambers in the first few months of 2011 endorsing the position that a referendum be held by 2013 to change the Constitution to allow direct funding of local government bodies by the Commonwealth Government and also to include local government in any new Preamble to the Constitution if one is proposed. I have attached the draft text of a possible resolution for your assistance.

It is ALGA's intention that a Constitutional Declaration for Councils will be submitted for signature by council representatives at the conclusion of the 2011 National General Assembly of Local Government on 22 June 2011. ALGA's objective is that all councils will be in a position to sign the Declaration supporting financial recognition at that time.

As part of local government's campaign, it is also important to ensure that national political leaders are left in no doubt about our commitment to constitutional recognition. I am therefore also asking that councils write to the Prime Minister, the Leader of the Opposition and their local Federal Member of Parliament to advise them of councils' support for recognition after councils have passed a resolution in council chambers. I have enclosed some suggested text for such letters which you might find useful.

I will be writing to you again in the coming months with further materials which will help council in a campaign to win broad public support for constitutional recognition. While the challenge of reform is substantial, I have no doubt that by working together we can overcome any obstacles and bring about a much more sustainable and secure future for councils and local communities throughout Australia.

Yours sincerely



Cr Genia McCaffery
President