

## HEALTHY, SUSTAINABLE, AND EQUITABLE FOOD SYSTEMS: GROWING THE ROLE OF LOCAL GOVERNMENT?

BELINDA REEVE\*

*Urgent global and national action is required to address the health, sustainability, and equity challenges created by the dominant food system. However, there is increasing recognition of the important role that local governments can – and do – play in food system transformation. Focusing on New South Wales, and drawing on empirical research undertaken as part of a multi-year study, this article describes how local governments leverage their powers and functions under key pieces of state legislation to introduce a wide range of policies and programs on food growing, processing, distribution, sale, consumption, and disposal. It also describes the legislative, financial, and practical barriers to council action and concludes with a call for legislative reform that would strengthen the role of local governments in creating a healthy, sustainable, and equitable food system.*

### I INTRODUCTION

Providing healthy and sustainable food to the world's population is one of the 21<sup>st</sup> century's most profound challenges. This article analyses the role of local governments in addressing this challenge. Using data from a four-year research project, it explores how councils in New South Wales ('NSW') use powers and functions granted by state legislation to develop policies and initiatives that contribute to a healthy, sustainable, and equitable food system.

The worldwide prevalence of obesity nearly tripled between 1975 and 2016, reaching 14% by 2019.<sup>1</sup> As well as the adoption of more sedentary lifestyles,

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1 Chrysoula Boutari and Christos S Mantzoros, 'A 2022 Update on the Epidemiology of Obesity and a Call to Action: As Its Twin COVID-19 Pandemic Appears to Be Receding, the Obesity and Dysmetabolism

increases in obesity and overweight have been fuelled by a global ‘nutrition transition’ away from healthier (and more sustainable) diets based on legumes, grains, and vegetables, and towards unhealthy diets characterised by increased consumption of animal protein and energy-dense, ultra-processed foods (and beverages) high in fat, salt, and sugar.<sup>2</sup> The nutrition transition is, in turn, driven by global forces such as the rising dominance of large, multinational agri-food businesses, the commodification of food, and liberalised international trade, which have also contributed to unsustainable, industrialised models of agricultural production, and inequities such as unjust labour conditions for food sector workers.<sup>3</sup> Recent geopolitical events have led to rising levels of global hunger, as war in Ukraine, climate change, and the COVID-19 pandemic have put pressure on supply chains, created volatility in food markets, and raised food prices, particularly in poorer regions already experiencing food insecurity.<sup>4</sup>

Australia is no exception to these challenges: unhealthy diets are now the third most important risk factor in the national burden of premature deaths and illness,<sup>5</sup> making a significant contribution to Australia’s high levels of obesity and overweight (experienced by 67% of adults in 2017–18) and to preventable non-communicable diseases (‘NCDs’), such as cardiovascular disease and Type 2 diabetes.<sup>6</sup> Food insecurity affects an estimated 4% of the Australian population, according to Australian Bureau of Statistics data.<sup>7</sup> However, measurement of food insecurity is controversial, and more comprehensive techniques tend to produce a significantly higher rate.<sup>8</sup> Levels of food insecurity are much higher among specific

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Pandemic Continues to Rage On’ (2022) 133 *Metabolism* 155217:1–7, 2 <<https://doi.org/10.1016/j.metabol.2022.155217>>.

2 See, eg, Barry M Popkin, ‘The Nutrition Transition and Obesity in the Developing World’ (2001) 131(3) *Journal of Nutrition* 871S, 871S <<https://doi.org/10.1093/jn/131.3.871S>>.

3 Jennifer Clapp, *Food* (Polity Press, 3<sup>rd</sup> ed, 2020).

4 See, eg, Mohamed Behnassi and Mahjoub El Haiba, ‘Implications of the Russia-Ukraine War for Global Food Security’ (2022) 6 *Nature Human Behaviour* 754 <<https://doi-org/10.1038/s41562-022-01391-x>>; Sylvia Gralak et al, ‘COVID-19 and the Future of Food Systems at the UNFCCC’ (2020) 4(8) *Lancet Planetary Health* e309 <[https://doi.org/10.1016/S2542-5196\(20\)30163-7](https://doi.org/10.1016/S2542-5196(20)30163-7)>; Food and Agriculture Organisation et al, *The State of Food Security and Nutrition in the World 2022: Repurposing Food and Agricultural Policies to Make Healthy Diets More Affordable* (Report, 2022) ch 2 <<https://doi.org/10.4060/cc0639en>>.

5 Australian Institute of Health and Welfare, *Australian Burden of Disease Study: Impact and Causes of Illness and Death in Australia 2018* (Report No 23, Australian Burden of Disease Study Series, 2021) 65.

6 Australian Institute of Health and Welfare, *Impact of Overweight and Obesity as a Risk Factor for Chronic Conditions* (Report No 11, Australian Burden of Disease Study Series, 2017) 1–2; ‘Overweight and Obesity’, *Australian Institute of Health and Welfare (Cth)* (Web Page, 19 May 2022) <<https://www.aihw.gov.au/reports/australias-health/overweight-and-obesity>>.

7 Australian Bureau of Statistics, *Australian Health Survey: Nutrition* (Catalogue No 4364.0.55.009, 10 June 2015) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/4364.0.55.009>> (‘*Australian Health Survey*’).

8 For example, the *Foodbank Hunger Report 2021* used the United States Department of Agriculture’s 18 question Household Food Security Survey Module (‘HFSS’), rather than relying on two questions, as in the 2011–12 *Australian Health Survey* (n 7). The report found that 28% of Australians could be categorised as food insecure, and 17% as severely food insecure: Foodbank, *Foodbank Hunger Report 2021* (Report, 2021) 3 <<https://reports.foodbank.org.au/foodbank-hunger-report-2021/?state=au>> (‘*Foodbank Report*’). See also Lucy M Butcher et al, ‘Utilising a Multi-item Questionnaire to Assess Household Food Security in Australia’ (2019) 30(1) *Health Promotion Journal of Australia* 9.

population groups such as Aboriginal and Torres Strait Islander peoples, migrants, and refugees,<sup>9</sup> and also increased during the COVID-19 pandemic.<sup>10</sup> Groups experiencing food insecurity are at greater risk of obesity and NCDs, creating a ‘double burden’ of malnutrition.<sup>11</sup>

The dominant, industrialised model of food production, distribution and consumption has profoundly negative environmental impacts.<sup>12</sup> Agriculture consumes 70% of total global ‘blue water’ withdrawals from rivers and aquifers,<sup>13</sup> and between 3.5–4.8% of energy production,<sup>14</sup> while food production is the single largest cause of global environmental change.<sup>15</sup> In Australia, food eaten by consumers is estimated to contribute 14.2% of the nation’s greenhouse gas emissions.<sup>16</sup> Conversely, the global food system has already been impacted by climate change (including yields of key crops in Australia, such as wheat),<sup>17</sup> and the degradation of key supporting environmental systems.<sup>18</sup> These health, environmental, and equity challenges are increasingly understood using a food system perspective (defined as ‘[t]he web of actors, processes and interactions involved in growing, processing, distributing, consuming, and disposing of foods’),<sup>19</sup> reflecting a growing awareness of the interconnections between these challenges, and the need for policies addressing these interconnections, as well as the fundamental drivers of unsustainable and unhealthy food systems.<sup>20</sup> Researchers and global governance bodies have called for

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- 9 *Foodbank Report* (n 8) 8; Sue Booth and Alison Smith, ‘Food Security and Poverty in Australia: Challenge for Dietitians’ (2001) 58(3) *Australian Journal of Nutrition and Dietetics* 150.
  - 10 *Foodbank Report* (n 8) 22–4; Katherine Kent et al, ‘Prevalence and Socio-Demographic Predictors of Food Insecurity in Australia during the COVID-19 Pandemic’ (2020) 12(9) *Nutrients* 2682:1–20 <<https://doi.org/10.3390/nu12092682>>.
  - 11 Booth and Smith (n 9).
  - 12 This model of food production (now widespread globally) is characterised by the increasing use of industrialised forms of food production (such as factory farming), crop homogenisation and the loss of genetic diversity, high use of pesticides and herbicides in food growing, and increasing consolidation and market concentration along the food supply chain, which is now dominated by a small number of large, transnational agribusinesses: see, eg, Philip McMichael, ‘A Food Regime Analysis of the “World Food Crisis”’ (2009) 26(4) *Agriculture and Human Values* 281 <<https://doi.org/10.1007/s10460-009-9218-5>>.
  - 13 Roberto Capone et al, ‘Food System Sustainability and Food Security: Connecting the Dots’ (2014) 2(1) *Journal of Food Security* 13, 16.
  - 14 Morgan Bazilian et al, ‘Considering the Energy, Water and Food Nexus: Towards an Integrated Modelling Approach’ (2011) 39(12) *Energy Policy* 7896, 7898 <<https://doi.org/10.1016/j.enpol.2011.09.039>>.
  - 15 Walter Willett et al, ‘Food in the Anthropocene: The EAT–Lancet Commission on Healthy Diets from Sustainable Food Systems’ (2019) 393(10170) *Lancet* 447, 449 <[https://doi.org/10.1016/S0140-6736\(18\)31788-4](https://doi.org/10.1016/S0140-6736(18)31788-4)>.
  - 16 Beatriz Reutter et al, ‘Food Waste Consequences: Environmentally Extended Input-Output as a Framework for Analysis’ (2017) 153(1) *Journal of Cleaner Production* 506, 511 <<https://doi.org/10.1016/j.jclepro.2016.09.104>>.
  - 17 Deepak K Ray et al, ‘Climate Change Has Likely Already Affected Global Food Production’ (2019) 14(5) *PLoS One* e0217148:1–18, 5 <<https://doi.org/10.1371/journal.pone.0217148>>.
  - 18 Patrick Webb et al, ‘The Urgency of Food System Transformation is Now Irrefutable’ (2020) 1(10) *Nature Food* 584, 584–5 <<https://doi.org/10.1038/s43016-020-00161-0>>.
  - 19 International Panel of Experts on Sustainable Food Systems, *The New Science of Sustainable Food Systems: Overcoming Barriers to Food Systems Reform* (Report, May 2015) 3 <<https://www.fao.org/agroecology/database/detail/en/c/453669/>>.
  - 20 *Ibid* 17. See also Corinna Hawkes, Kelly Parsons and Rebecca Wells, *Brief 2: Understanding the Food System* (Report, 2019) 4 <<https://openaccess.city.ac.uk/id/eprint/22795/>>.

a ‘Great Food Transformation’ in order to make progress towards the United Nations’ Sustainable Development Goals, the *Paris Agreement*,<sup>21</sup> and other international and national policy agendas.<sup>22</sup> These include Australia’s *National Preventive Health Strategy 2021–30* and *National Obesity Strategy 2022–32*, which together articulate the need for a healthy and sustainable food system.<sup>23</sup>

While the transformation of food and agricultural systems requires comprehensive global and national action, there is increasing recognition of the important role played by local governments. In many jurisdictions, local governments have adopted innovative food system initiatives, sometimes acting in the absence of state or federal leadership.<sup>24</sup> For example, in 2008, Los Angeles City Council placed a moratorium on the opening of new fast-food restaurants in a low-income area of the city,<sup>25</sup> while governments in cities such as Detroit and Vancouver have supported urban agriculture and other community food initiatives,<sup>26</sup> promoting multiple objectives such as smaller-scale food production, localised food supply chains, community economic development, and resident empowerment.<sup>27</sup> Cities and municipalities in both the ‘Global South’ and the ‘Global North’ increasingly link such initiatives together via comprehensive, dedicated food system policies, which integrate economic, social, environmental, and health concerns, and address multiple dimensions of the food supply chain.<sup>28</sup> These policies are sometimes accompanied by new governance mechanisms such as Food Policy Councils: multi-stakeholder initiatives representing different forms of collaboration between local or state governments, civil society organisations, and businesses, which drive the development and implementation of food system policies.<sup>29</sup>

21 *Paris Agreement*, opened for signature 22 April 2016, [2016] ATS 24 (entered into force 4 November 2016).

22 Willett et al (n 15) 448–9; Scott Slater, Philip Baker and Mark Lawrence, ‘An Analysis of the Transformative Potential of Major Food System Report Recommendations’ (2022) 32(1) *Global Food Security* 100610:1–11 <<https://doi.org/10.1016/j.gfs.2022.100610>>.

23 Department of Health (Cth), *National Preventive Health Strategy 2021–30* (Report, 2021) 52–4; Health Ministers’ Meeting, *National Obesity Strategy 2022–32* (Report, 2021) 31–9.

24 Belinda Reeve et al, ‘State and Municipal Innovations in Obesity Policy: Why Localities Remain a Necessary Laboratory for Innovation’ (2015) 105(3) *American Journal of Public Health* 442 <<https://doi.org/10.2105/AJPH.2014.302337>>.

25 Roland Sturm and Deborah A Cohen, ‘Zoning for Health? The Year-Old Ban on New Fast-Food Restaurants in South LA: The Ordinance Isn’t a Promising Approach to Attacking Obesity’ (2009) 28(6) *Health Affairs* w1088 <<https://doi.org/10.1377/hlthaff.28.6.w1088>>.

26 Samuel Walker, ‘Urban Agriculture and the Sustainability Fix in Vancouver and Detroit’ (2016) 37(2) *Urban Geography* 163 <<https://doi.org/10.1080/02723638.2015.1056606>>.

27 Rachel Slocum, ‘Anti-racist Practice and the Work of Community Food Organizations’ (2006) 38(2) *Antipode* 327, 328–9 <<https://doi.org/10.1111/j.1467-8330.2006.00582.x>>..

28 Brent Mansfield and Wendy Mendes, ‘Municipal Food Strategies and Integrated Approaches to Urban Agriculture: Exploring Three Cases from the Global North’ (2013) 18(1) *International Planning Studies* 37 <<https://doi.org/10.1080/13563475.2013.750942>>; Jill K Clark, Brian Conley and Samina Raja, ‘Essential, Fragile, and Invisible Community Food Infrastructure: The Role of Urban Governments in the United States’ (2021) 103(1) *Food Policy* 102014:1–9 <<https://doi.org/10.1016/j.foodpol.2020.102014>>.

29 Kiah Smith et al, *Food System Governance in Australia: Co-creating the Recipe for Change* (Discussion Paper No 3, Food Systems Program, Global Change Institute, University of Queensland, November 2017) 9–10; Clare Gupta et al, ‘Food Policy Councils and Local Governments: Creating Effective Collaboration

Global initiatives have also been established to foster cooperation and information sharing between local governments on food system governance, including the C40 Cities Climate Leadership Group,<sup>30</sup> the United Nations' *New Urban Agenda*,<sup>31</sup> and the *Milan Urban Food Policy Pact*, a voluntary international protocol with 140 signatory cities committed to promoting 'sustainable food systems that are inclusive, resilient, safe and diverse, that provide healthy and affordable food to all people in a human rights-based framework, that minimise waste and conserve biodiversity while adapting to and mitigating impacts of climate change'.<sup>32</sup> These agreements emphasise the need to strengthen multilevel governance and build political support for local government action.<sup>33</sup> They also demonstrate global support for the idea of local governments playing a central role in food system governance.

There is growing momentum for Australian local government action on food systems, but the extent of engagement varies considerably, and dedicated food system policies remain relatively rare.<sup>34</sup> Australian local governments face significant practical, legislative, and political challenges to engaging in food system governance. There are more than 500 local governments in Australia, but local government is not recognised in the *Australian Constitution*, and remains a 'creation of the states', with state and territory legislation determining its role and the scope of its powers.<sup>35</sup> Traditionally, local governments were limited to a relatively narrow range of functions,<sup>36</sup> although legislative reforms in the 1990s granted them greater flexibility in the services they could provide to their communities.<sup>37</sup> However, this expansion of functions has not been accompanied

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for Food Systems Change' (2018) 8(Suppl 2) *Journal of Agriculture, Food Systems, and Community Development* 11 <<https://doi.org/10.5304/jafscd.2018.08B.006>>.

30 'Food Systems Network', *C40 Cities* (Web Page, 2023) <<https://www.c40.org/networks/food-systems-network/>>.

31 Comprising a series of non-binding commitments on sustainable urban development, including sustainable use of resources, and ensuring equitable access to nutritious and affordable food: *New Urban Agenda*, GA Res 71/256, UN Doc A/RES/71/256 (25 January 2017, adopted 23 December 2016).

32 Milan Urban Food Policy Pact, 'Milan Urban Food Policy Pact' (Policy Pact, 15 October 2015) 2 <<https://www.milanurbanfoodpolicypact.org/the-milan-pact/>>.

33 Grace Muriuki et al, *Urban Food Systems: A Renewed Role for Local Governments in Australia* (Discussion Paper No 2, Global Change Institute, University of Queensland, March 2017) 3.

34 Amy Carrad et al, 'Australian Local Government Policies on Creating a Healthy, Sustainable, and Equitable Food System: Analysis in New South Wales and Victoria' (2022) 46(3) *Australian and New Zealand Journal of Public Health* 332 ('Australian Local Government Policies') <<https://doi.org/10.1111/1753-6405.13239>>.

35 Chris Aulich, 'Australia: Still a Tale of Cinderella?' in Bas Denters and Lawrence E Rose (eds), *Comparing Local Governance: Trends and Developments* (Palgrave MacMillan, 2005) 193. A 1988 attempt to change the *Constitution* to acknowledge local government was unsuccessful. However, local authorities have, more recently, been accorded state constitutional status: Peter Williams and Paul J Maginn, 'Planning and Governance' in Susan Thompson and Paul J Maginn (eds), *Planning Australia: An Overview of Urban and Regional Planning* (Cambridge University Press, 2<sup>nd</sup> ed, 2012) 34, 39.

36 Aulich (n 35) 197.

37 Brian Dollery, Joe Wallis, and Percy Allan, 'The Debate that Had to Happen but Never Did: The Changing Role of Australian Local Government' (2006) 41(4) *Australian Journal of Political Science* 553, 555; David Clark, *Bluett's Local Government Handbook New South Wales* (Lawbook Co, 17<sup>th</sup> ed, 2012) li-iv.

by an increase in financial resources,<sup>38</sup> and the devolution of services from central government, accompanied by ‘cost shifting’ (where higher levels of government fund service provision by councils and then later remove financial support), has created a ‘financial stranglehold’ on many councils.<sup>39</sup> This is particularly the case given that local governments’ capacity to tax is limited to ‘rates’ on the unimproved or improved value of property,<sup>40</sup> and that there is a growing expectation by state governments that councils become more entrepreneurial and engage in commercial activities (thus reducing their financial burden on state governments).<sup>41</sup>

Further limiting local governments’ role in food system governance is the absence of clearly outlined statutory responsibilities for food (except for food safety),<sup>42</sup> with many also lacking the technical or financial capacity to develop and implement food system policies.<sup>43</sup> The absence of a comprehensive food and nutrition policy framework at federal and state levels leaves local governments without the necessary support to respond to the health, equity, and environmental challenges posed by the dominant food system,<sup>44</sup> or to leverage opportunities for economic growth or improvements to social wellbeing offered by local level food systems initiatives.<sup>45</sup>

There are untapped opportunities to strengthen the role of local governments in food system governance, despite these legislative, political and resource constraints. Local government and other legislation require councils to act for the benefit of local communities, which they are closer to than their state or federal counterparts, giving them unique insight into community needs, and enabling the delivery of locally relevant programs.<sup>46</sup> Local governments also offer opportunities for community engagement and participation in local level food system governance, aligning with a growing body of research stressing the desirability of participative and democratic approaches to governance in this sphere.<sup>47</sup> While the challenges posed by food system sustainability and healthy eating are not traditional local government concerns, these issues are interconnected

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38 Dollery, Wallis and Allan (n 37) 565. See also Steven Allender et al, ‘Moving beyond “Rates, Roads and Rubbish”: How do Local Governments Make Choices about Healthy Public Policy to Prevent Obesity?’ (2009) 6(1) *Australia and New Zealand Health Policy* 20:1–8, 4 <<https://doi.org/10.1186/1743-8462-6-20>> (‘Moving beyond “Rates, Roads and Rubbish”’).

39 Andrew H Kelly, ‘The Development of Local Government in Australia, Focusing on NSW: From Road Builder to Planning Agency to Servant of the State Government and Developmentalism’ (Conference Paper, World Planning School Congress, 4–8 July 2011) 12.

40 Aulich (n 35) 194. Other sources of local government income are explored further below in Part II(E).

41 Ibid 201.

42 Muriuki et al (n 33) 10.

43 See Steven Allender et al, ‘Policy Change to Create Supportive Environments for Physical Activity and Healthy Eating: Which Options are the Most Realistic for Local Governments?’ (2012) 27(2) *Health Promotion International* 261 <<https://doi.org/10.1093/heapro/dar018>> (‘Policy Change to Create Supportive Environments’).

44 Nick Rose et al, ‘Food Systems and the Role of Local Government’ (Discussion Paper, The Australian Food Network and Victorian Local Governance Association, May 2017) 10.

45 Muriuki et al (n 33) 4.

46 Ibid 6–7.

47 Ibid. See also Peter Andrée et al, ‘Introduction: Traversing Theory and Practice’ in Peter Andrée et al (eds), *Civil Society and Social Movements in Food System Governance* (Routledge, 2019) 1.

with a wide range of established local policy areas, such as land use planning, infrastructure development, transport, environmental conservation, and economic and community development.<sup>48</sup> Further, new opportunities have emerged for local governments to play an expanded role in food systems governance. For example (and as explained below), public health legislation in several Australian states has devolved public health functions from state to local governments, granting them a legislative mandate to act on food system challenges such as diet-related NCDs.<sup>49</sup>

This article explores how the legislative powers and functions of Australian local governments can – and are – being used to create policies and programs that contribute to a healthy, sustainable, and equitable food system, encompassing food growing, processing, distribution, sale, marketing, consumption, and disposal. It draws on empirical findings from a four-year Australian Research Council funded project that aimed to explore the role of law, regulation, and policy in enabling local governments and communities to contribute to a healthy, sustainable, and equitable food system. This multi-disciplinary, multi-methods project included four sub-studies and incorporated: (i) critical analysis of the legal and regulatory frameworks that establish and empower local governments; (ii) in-depth case study analysis of local government food system policies and programs, and community-based food system initiatives, as well as investigation of the barriers to and enablers of policy and program development and implementation; and (iii) the identification of options for policy and legislative reform to strengthen local level governance of the food system.<sup>50</sup>

One sub-study identified all local government policies in NSW and Victoria that contained food system-related objectives or actions and evaluated these documents against a framework of recommendations for local government action on food systems (referred to below as the ‘Policy Mapping Study’).<sup>51</sup> This framework was created by synthesising Australian literature that contained recommendations for local government action on creating a healthy, sustainable, and equitable food system, and international policy documents such as the Milan Urban Food Policy Pact,<sup>52</sup> and contained 34 recommendations divided into the domains of: Health and Wellbeing; Sustainability and Environments; Economic Development; Food Waste; Food Quality and Safety; Social Policy; and Planning Frameworks.<sup>53</sup> A second sub-study involved focus groups with six local governments (three in each

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48 Muriuki et al (n 33) 7; Heather Yeatman, ‘Action or Inaction? Food and Nutrition in Australian Local Governments’ (2008) 12(9) *Public Health Nutrition* 1399 <<https://doi.org/10.1017/S1368980008004114>>.

49 Carrad et al, ‘Australian Local Government Policies’ (n 34) 333.

50 Belinda Reeve et al, *Healthy, Sustainable, and Equitable Food Systems: Growing the Role of Local Governments?* (ARC Discovery Project: DP190102494, \$422,000). For further information about this research project, see: ‘Strengthening Local Food Systems Governance’, *University of Sydney* (Web Page) <<https://law-food-systems.sydney.edu.au/>>.

51 See Carrad et al, ‘Australian Local Government Policies’ (n 34); Amy Carrad et al, *The Role of Australian Local Governments in Creating a Healthy, Sustainable, and Equitable Food System: Results of a Policy Mapping Study in New South Wales and Victoria* (Report, November 2021) (‘Policy Mapping Study’).

52 Milan Urban Food Policy Pact (n 32).

53 This framework was originally developed in a pilot study for the main project. See: Belinda Reeve et al, ‘The Role of Australian Local Governments in Creating a Healthy Food Environment: An Analysis of Policy Documents from Six Sydney Local Governments’ (2020) 44(2) *Australian and New Zealand*

state) identified as examples of ‘best practice’ from the Policy Mapping Study (ie, scoring highly against the framework of recommendations) and representing different geographical areas, local government area sizes, population compositions, and levels of socioeconomic advantage (referred to below as the ‘Focus Group Study’). These focus groups explored motivators for, and processes of, food system policy-making and implementation, and the barriers to, and enablers of, these processes. They also provided the opportunity for local governments to reflect on the policy, legislative, financial, and other supports that would enable them to take further action on food systems.<sup>54</sup>

In combination with a close analysis of relevant legislation (local government law, along with environmental and planning, public health, and food safety laws), this article uses the findings of these two sub-studies to explore how local governments use their functions and powers to undertake food system-related activities. This analysis is supplemented by reference to other Australian research on how councils can use each of these legislative regimes to achieve food system objectives. I also draw on Australian literature on urban planning and food systems to identify opportunities for how NSW local governments could use planning frameworks to promote a healthy, sustainable, and equitable food system. While including a wide range of documents, the Policy Mapping Study excluded key planning instruments developed by local governments in NSW (Local Strategic Planning Statements (‘LSPS’), Local Environment Plans (‘LEPs’), and Development Control Plans (‘DCPs’)) and Victoria (Planning Schemes), due to their size and technicality. Further (at the time of writing), there was little Australian research that systematically evaluated how local governments use planning instruments to achieve food system-related objectives, meaning that the section of this article on urban planning focuses on making recommendations for how the planning framework could be used by local governments to achieve these aims, rather than describing initiatives already underway.

I use NSW as a case study and in some places, draw on Victoria for comparative purposes, as it was the comparator state in the main research project. NSW and Victoria were chosen for the main project due to differences in their legislative frameworks, particularly their public health legislation.<sup>55</sup> This enabled an analysis of whether – and if so how – the laws that create and empower local governments shape their capacity for action on food system governance, and whether these differences lead to variation in the extent to which they develop policies aimed at securing a healthy, sustainable, and equitable food system.

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*Journal of Public Health* 137 <<https://doi.org/10.1111/1753-6405.12968>> (‘The Role of Australian Local Governments in Creating a Healthy Food Environment’).

54 See Amy Carrad et al, *Food System Innovation and Policy at the Local Level: A Report on Six Local Governments in New South Wales and Victoria* (Report, May 2022) <<https://law-food-systems.sydney.edu.au/>> (‘Report on Six Local Governments’); Amy Carrad et al, ‘Local Innovation in Food System Policies: A Case Study of Six Australian Local Governments’ (2022) 12(1) *Journal of Agriculture, Food Systems, and Community Development* 115 <<https://doi.org/10.5304/jafscd.2022.121.007>> (‘Local Innovation in Food System Policies’).

55 See Part IV below.



Further, Victoria has a long history of investing in local government initiatives on diet-related health, which is absent in NSW. This is partly thanks to the work of the Victorian Department of Health, and the Victorian Health Promotion Foundation ('VicHealth'), an independent, statutory health promotion agency, which provided \$5 million to eight Victorian local governments to address food security as part of its 2005–10 *Food for All* program.<sup>56</sup> More recently, VicHealth launched a local government partnership with an explicit focus on building council capacity in food system policy-making.<sup>57</sup> These differences between the two states also make Victoria an appropriate comparator for the purposes of this article.

Parts II–V of the article describe key pieces of legislation that establish and empower local governments, and how these laws can – and are – being leveraged by local governments to implement policies and programs on the food system. I focus on local government law; environmental and planning law; public health law; and the food regulatory system. Although local governments have functions under a diverse range of other legislative regimes,<sup>58</sup> these laws grant local governments powers and functions that are central to their engagement with food system-related issues such as increasing food security, promoting good nutrition, and improving food system sustainability. In each section, I also explore the practical, financial, and/or legislative barriers faced by local governments in using each legislative regime to undertake food system-related activities, given the broader context of local governments as the 'Cinderella' of the Australian system of governance, as explained above. Part VI concludes the paper by setting out a proposal for reforms that would provide greater state government support for the important food system work already undertaken by NSW local governments, as well as creating new opportunities for councils to contribute to a healthy, sustainable, and equitable food system.

## II POWERS AND FUNCTIONS UNDER LOCAL GOVERNMENT LEGISLATION

### A The Service Function

The principal legislation governing the establishment and operation of councils is local government law in each state, along with various regulations made under those Acts. Local government legislation defines the purpose and functions of local government, and sets out the legal framework for its creation and administration.<sup>59</sup>

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56 Martin Caraher et al, 'Food Policy Development in the Australian State of Victoria: A Case Study of the Food Alliance' (2013) 18(1) *International Planning Studies* 78, 84 <<https://doi.org/10.1080/13563475.2013.750939>>. See also Christine Slade, Claudia Baldwin and Trevor Budge, 'Urban Planning Roles in Responding to Food Security Needs' (2016) 7(1) *Journal of Agriculture, Food Systems and Community Development* 33 <<http://dx.doi.org/10.5304/jafscd.2016.071.005>>.

57 'Local Government Partnership', *VicHealth* (Web Page, 17 February 2023) <<https://www.vichealth.vic.gov.au/programs-and-projects/local-government-partnership>>.

58 Clark (n 37) ix.

59 *Ibid.*

This legislation provides councils with two basic functions: the provision of goods and services to their communities, and the control and regulation of certain activities.<sup>60</sup> In relation to the former, local governments are granted a broad service provision power, with significant discretion to tailor service delivery to local needs and objectives, subject to legislative constraints,<sup>61</sup> and in practice, financial restrictions, political considerations, and community expectations.<sup>62</sup> In NSW, this power is contained in section 24 of the *Local Government Act 1993* (NSW) ('LGA'). Key services and facilities provided, operated, or managed by councils include those relating to community health, sports, recreation and entertainment, environment and conservation, waste removal, treatment and disposal, water, sewerage and drainage, housing, and tourism.<sup>63</sup> Councils must consider overarching principles set out in local government legislation when exercising their service delivery powers and functions,<sup>64</sup> including recognising diverse community needs, considering social justice and sustainable development principles, and ensuring transparent and accountable decision-making.

Councils' service function can be used to provide a wide range of food-related programs and activities that promote environmental and public health in local communities.<sup>65</sup> The Policy Mapping Study found that councils created initiatives such as shopping assistance for residents with disabilities or older residents, and events and education on healthy food purchasing, preparation, and consumption. In rural areas, councils supported food production through measures such as providing education and information on sustainable agricultural practices and creating training and employment pathways in the food and agricultural sectors.<sup>66</sup> One criticism of sustainable, local, or 'alternative' food initiatives is that they most often benefit wealthier (white) residents and are inaccessible to, or exclude, Indigenous Peoples, People of Colour, and those on lower incomes.<sup>67</sup> The Policy Mapping Study found some examples of councils introducing initiatives explicitly

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60 Ibid iv.

61 Ibid iv; Kelly (n 39).

62 Andrew H Kelly and Dominic J Crinnion, 'Local Government' in Peter Williams (ed), *The Environmental Law Handbook* (Thompson Reuters, 3<sup>rd</sup> ed, 2016) 329, 333.

63 Clark (n 37) 17–18 [4.10].

64 See *Local Government Act 1993* (NSW) ss 8, 8A(2) ('LGA').

65 In relation to services and programs aimed at improving the environment, see Kelly and Crinnion (n 62) 332; Liesel Spencer, 'Integrating Food Security into Local Government Law, Policy and Planning: Using Local Government Legal Structures to Build Community Resilience to Food Insecurity' (2013) 2(1) *Food Studies* 1, 4 ('Integrating Food Security'); 'Promoting Liveability through the Integrated Planning and Reporting Framework' (Guide, Active Living NSW, 2020) 7 ('Promoting Liveability'). Chapter 5 of the *LGA 1993* (NSW) describes councils' functions, and, in a table at the end of chapter 5, lists community health and environmental protection (both relevant to food systems) as examples of the types of initiatives that can be provided under their service function.

66 Carrad et al, *Policy Mapping Study* (n 51) 49.

67 See, eg, Julie Guthman, "'If They Only Knew": The Unbearable Whiteness of Alternative Food' in Alison Hope Alkon and Julian Agyeman (eds), *Cultivating Food Justice: Race, Class, and Sustainability* (MIT Press, 2011) 263; Margaret Marietta Ramirez, 'The Elusive Inclusive: Black Food Geographies and Racialized Food Spaces' (2015) 47(3) *Antipode* 748 <<https://doi.org/10.1111/anti.12131>>; Christopher Mayes, *Unsettling Food Politics: Agriculture, Dispossession and Sovereignty in Australia* (Rowman & Littlefield International, 2018).

aimed at ensuring equitable access to healthy food, as with council support for charitable meal services.<sup>68</sup> However, the data did not allow for a comprehensive evaluation of local government action on this issue.

Councils also integrated food into the various non-food specific services they provided. For example, the Policy Mapping Study identified many councils with programs that aimed to reduce food waste (and food packaging waste), as part of their waste management function,<sup>69</sup> as with Food Organics and Garden Organics ('FOGO') collection services.<sup>70</sup> Another example was the adoption of procurement policies that require healthy, sustainable, ethical, and/or locally sourced food to be sold or provided at venues such as council-run sports or recreation facilities, or childcare facilities.<sup>71</sup> When entering into contracts and lease agreements with external service providers, councils can insert clauses requiring the adoption of such policies.<sup>72</sup> These policies sometimes applied to meetings and events organised or approved by council, and to vending machines in council offices.<sup>73</sup> This also illustrates how, in their role as an employer, councils can promote the diet-related health of their employees, through measures such as staff health and wellbeing programs, and ensuring that council offices have appropriate breastfeeding facilities.<sup>74</sup>

## B The Regulatory Function

Councils have extensive regulatory functions, and give or refuse approval for specific activities set out in local government legislation,<sup>75</sup> including those relating to water supply, sewerage and stormwater drainage work, and waste management.<sup>76</sup> This function can be used to support local initiatives on growing or selling food, particularly the ability to grant approval to engage in a trade or business on community land (relevant to urban agriculture, discussed further below), and for the use of a standing vehicle to sell items in a public place.<sup>77</sup> The Policy Mapping

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68 Carrad et al, *Policy Mapping Study* (n 51) 52.

69 Ibid 30.

70 Ibid 61.

71 Ibid 53. See also Devorah Riesenberget al, 'Local Government Policies on Healthy Food Promotion and Obesity Prevention: Results from a National Australian Survey' (2022) 46(5) *Australian and New Zealand Journal of Public Health* 696 <<https://doi.org/10.1111/1753-6405.13257>>; Devorah Riesenberget al, 'Policies Influencing the Provision of Healthy Food and Drinks in Local Government-Owned Sport and Recreation Facilities in Victoria, Australia' (2020) 44(3) *Australian and New Zealand Journal of Public Health* 240 <<https://doi.org/10.1111/1753-6405.12988>>.

72 Carrad et al, *Policy Mapping Study* (n 51) 55; Meg Montague, *Local Government and Food Security, An Evidence Review: What We Know about What Works and What Might Work* (Report, September 2011) 28; Cancer Council NSW, 'Local Government: Supporting Healthy Eating and Active Living across the Community' (Guide, 2010) 7 <[https://www.cancercouncil.com.au/wp-content/uploads/2010/11/10292\\_CAN25259\\_LocalGov\\_Nutrition\\_WEB.pdf](https://www.cancercouncil.com.au/wp-content/uploads/2010/11/10292_CAN25259_LocalGov_Nutrition_WEB.pdf)> ('Supporting Healthy Eating and Active Living across the Community'). However, councils (and other government entities) may face difficulties in both inserting such clauses into leases or contracts in the first place, and then in monitoring and enforcing compliance, and maintaining healthier food environments in the long term.

73 Carrad et al, *Policy Mapping Study* (n 51) 53, 55.

74 Ibid 53–4.

75 Kelly and Crinnion (n 62) 333.

76 See *LGA* (n 64) s 68.

77 See *LGA* (n 64) s 68 table, pts D(1) and F(7).

Study identified council policies on food trucks and mobile food vending that permitted their operation on council land (with approval), as well as applying the requirements of food safety laws, and regulating matters such as pollution, noise, and waste management.<sup>78</sup> Under section 124 of the *LGA*, councils are also empowered to order a person to do, or refrain from doing, a range of specified activities (on both private and public land), where certain conditions are met, including requiring that premises, vehicles or articles used for food manufacture, preparation, storage, sale, transportation, or other handling be made clean and sanitary. Under section 125, councils may abate a public nuisance or order a person responsible for a public nuisance to remove or remedy it,<sup>79</sup> discussed further below in relation to councils' public health functions.

Local government legislation also provides a regulatory framework for the keeping of animals in suburban areas, with the exact regulatory mechanism and substantive requirements differing between states.<sup>80</sup> In NSW, the *Local Government (General) Regulation 2021* (NSW) ('*LGR*') prohibits the keeping of swine, poultry, horses, and cattle within a certain distance of houses, shops, offices, and other buildings, and regulates the cleanliness and design of poultry, cattle, and horse yards.<sup>81</sup> The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW) sets out additional requirements for the construction of fowl or poultry houses, including limiting the number of chickens to a maximum of 10 per coop and restricting the number of coops to one per property.<sup>82</sup> Councils can regulate the keeping of animals through the power to give orders under section 124 of the *LGA* (including on the keeping of birds or animals on premises), and via the power found in section 159 to prepare local order policies specifying criteria that will be considered when issuing an order, which some councils have used to impose additional requirements for the keeping of livestock on residential premises.<sup>83</sup> These regulations aim to minimise unhealthy conditions and nuisances that may impact neighbouring residents (smells, noise, etc), and to ensure the amenity of urban neighbourhoods (narrowly defined),<sup>84</sup> rather than encouraging animal husbandry as a food source.<sup>85</sup> As a result, the general

78 Carrad et al, *Policy Mapping Study* (n 51) 59. See, eg, Wollongong City Council, 'Draft Mobile Food Vending Council Policy' (Policy Document No Z21/152131) <<https://our.wollongong.nsw.gov.au/71330/widgets/347441/documents/211417>>.

79 Section 125 of the *LGA* (n 64) defines a 'nuisance' as an 'interference with the enjoyment of public or private rights in a variety of ways', which is public if it 'materially affects the reasonable comfort and convenience of a sufficient class of people to constitute the public or a section of the public'.

80 Victor Pires, 'Planning for Urban Agriculture, Planning in Australian Cities' (Conference Paper, State of Australian Cities Conference, 2 December 2011) 3.

81 See *Local Government (General) Regulation 2021* (NSW) regs 91–2, sch 2 pt 5 ('*LGR*').

82 See *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW) pt 2, sub-div 21.

83 Development approval or council consent may also be required for the construction of structures such as aviaries. See, eg, Federation Council, 'Keeping of Animals/Birds: LGA Section 124 Order No 18' (Local Orders Policy No 15/9126, Federation Council) 8 [6.3].

84 Andrea Gaynor, 'Regulation, Resistance, and the Residential Area: The Keeping of Productive Animals in Twentieth-Century Perth, Western Australia' (1999) 17(1) *Urban Policy and Research* 7, 10, 13 <<https://doi.org/10.1080/08111149908727786>>.

85 Pires (n 80) 4.

effect of the provisions is to restrict the keeping of animals to larger properties,<sup>86</sup> although poultry-keeping has experienced a renaissance in recent years.<sup>87</sup> One recommendation for encouraging food production by residents is for councils to review policies or by-laws and to remove unnecessary regulatory barriers to activities such as the keeping of chicken or bees in suburban areas.<sup>88</sup>

### C Land Management

As part of their service function, local governments own a variety of land, and take care of, control, and manage land owned by others.<sup>89</sup> Land owned or managed by councils (other than Crown land and land acquired for the purpose of roads) is classed as ‘public land’,<sup>90</sup> and is classified under section 26 of the *LGA* as either operational or community land.<sup>91</sup> Operational land is used for council works or functions, can be held as a temporary asset or investment, and is generally not open to the public.<sup>92</sup> There are no special restrictions on the development or disposal of operational land (subject to the requirements of any relevant environmental planning instruments (‘EPIS’) created under the *Environmental Planning and Assessment Act 1979* (NSW) (‘EPAA’)),<sup>93</sup> meaning it can be sold or developed for private use.<sup>94</sup> Community land is kept for general public use, such as reserves or parks, and is subject to significant restrictions on its use.<sup>95</sup> For example, it cannot

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86 Ibid. Beekeeping is generally permitted in NSW local government areas, although all beekeepers must be registered with the NSW Department of Primary Industries, and comply with the *Biosecurity Act 2015* (NSW) and the ‘Australian Honey Bee Industry Biosecurity Code of Practice’: Plant Health Australia, ‘Australian Honey Bee Industry Biosecurity Code of Practice’ (Industry Code of Practice, Version 1.1, April 2022). See Department of Industries (NSW), ‘Backyard Beekeeping’ (Primefact 894, 2<sup>nd</sup> ed, May 2019) <[https://www.dpi.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0017/117413/Backyard-beekeeping.pdf](https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0017/117413/Backyard-beekeeping.pdf)>. Requirements for beekeeping are also contained in the Beekeeping Code of Practice for NSW: Department of Industries (NSW), Beekeeping Code of Practice for NSW (Primefact 893, 2<sup>nd</sup> ed, December 2017) <[https://www.dpi.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/270679/Beekeeping-Code-of-Practice-for-NSW.pdf](https://www.dpi.nsw.gov.au/__data/assets/pdf_file/0004/270679/Beekeeping-Code-of-Practice-for-NSW.pdf)>. Local governments can additionally manage beekeeping through their power to make local orders. See, eg, Parramatta City Council, ‘Local Orders Policy: Keeping of Animals’ (Factsheet, Order 18) <[https://web.archive.org/web/20230310105653/https://www.cityofparramatta.nsw.gov.au/sites/council/files/\\_\\_data/assets/pdf\\_file/0014/132242/Keeping\\_of\\_Bees.pdf](https://web.archive.org/web/20230310105653/https://www.cityofparramatta.nsw.gov.au/sites/council/files/__data/assets/pdf_file/0014/132242/Keeping_of_Bees.pdf)>.

87 Gaynor (n 84) 13.

88 Jenny Donovan, Kirsten Larsen and Julie-Anne McWhinnie, *Food-Sensitive Planning and Urban Design: A Conceptual Framework for Achieving a Sustainable and Healthy Food System* (Report, March 2011) 21.

89 Kelly and Crinnion (n 62) 330.

90 *LGA* (n 64) ss 25, 31(1).

91 Kelly and Crinnion (n 62) 330. Section 27 of the *LGA* (n 64) also contains procedures by which land managed or owned by councils is classified or reclassified, either using local environment plans or by council resolution in certain circumstances.

92 Lithgow City Council and Department of Planning and Infrastructure (NSW), ‘Public Land Reclassification from “Community” to “Operational”’ (Fact Sheet) 1 <<http://www.lithgow.com/lep/factSheets/Fact%20Sheet%2016%20Public%20Land%20Reclassification.pdf>>.

93 Kelly and Crinnion (n 62) 340.

94 New South Wales Aboriginal Land Council, ‘Local Councils and Public Land’ (Fact Sheet No 5, Aboriginal Culture and Heritage March 2011) 1 <<https://alc.org.au/wp-content/uploads/2019/12/Planning-Fact-Sheet-5-Local-councils-and-public-land.pdf>>.

95 Ibid.

be sold.<sup>96</sup> Community land is also used and managed under plans of management,<sup>97</sup> with the *LGA* setting out requirements for their content.<sup>98</sup> Among other things, plans must categorise land as one or more of the following (each with its own core objectives):<sup>99</sup> a natural area, a sportsground, park, an area of cultural significance, or for general community use.<sup>100</sup> Councils can lease community land for purposes set out in section 46 of the *LGA*, including for the provision of goods, services, and facilities, and the carrying out of activities related to public recreation or the physical, cultural, social, and intellectual welfare or development of persons.<sup>101</sup> This can include restaurants or ‘refreshment kiosks’.<sup>102</sup> Councils can also grant licenses to use community land on a short-term casual basis for activities including ‘engaging in a trade or business’.<sup>103</sup>

Councils can use plans of management and the categorisation of community land to support the production and provision of healthy food to residents.<sup>104</sup> They can lease or license community land for the establishment of farmers’ markets or produce markets, providing for the direct sale of fresh food to residents.<sup>105</sup> Councils can also undertake food growing themselves on community land, or lease or licence land for food production by residents, as with commercial market gardens, or not-for-profit community gardens,<sup>106</sup> which include those with both shared areas and individual allotments, gardens run entirely collectively by community members, and verge gardens.<sup>107</sup> Councils are not always supportive

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96 *LGA* (n 64) s 45(1).

97 *Ibid* s 35.

98 *Ibid* s 36.

99 *Ibid* ss 36E–36N.

100 *Ibid* s 36(4). Community land is still subject to zoning controls, and plans of management operate as an additional control over the land: New South Wales Aboriginal Land Council (n 94) 1.

101 *LGA* (n 64) ss 46(1)(b), 46(4).

102 *Ibid* s 46(5). Under section 46(1)(b)(i), a lease can also be granted for purposes related to the core objectives set out in the *LGA* for each category of community land. Under section 36L, for land categorised as general community use, these are

to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and wider public— (a) in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and (b) in relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).

103 *LGR* (n 81) reg 116(1)(b).

104 Spencer, ‘Integrating Food Security’ (n 65) 6–7; NSW Healthy Planning Expert Working Group, ‘Healthy Food and the Built Environment’ (Resource No 3, November 2019) 8 <[https://irp.cdn-website.com/541aa469/files/uploaded/ALNSW\\_AR3Healthy-Food-and-the-Built-Environment-FINAL.pdf](https://irp.cdn-website.com/541aa469/files/uploaded/ALNSW_AR3Healthy-Food-and-the-Built-Environment-FINAL.pdf)>.

105 Liesel Spencer, ‘Farming the City: Urban Agriculture, Planning Law and Food Consumption Choices’ (2014) 39(2) *Alternative Law Journal* 120, 121–2 <<https://doi.org/10.1177/1037969X1403900211>> (‘Farming the City’).

106 Spencer, ‘Integrating Food Security’ (n 65) 6–7; *ibid*; ‘Promoting Liveability’ (n 65) 21; Pires (n 80) 6; Linda Corkery, Paul Osmond and Peter Williams, ‘Legal Frameworks for Urban Agriculture: Sydney Case Study’ (2021) 13(3) *Journal of Property, Planning, and Environmental Law* 218, 219 <<https://doi.org/10.1108/JPEL-06-2020-0030>>.

107 Gregory Mintz and Phil McManus, ‘Seeds for Change? Attaining the Benefits of Community Gardens Through Council Policies in Sydney, Australia’ (2014) 45(4) *Australian Geographer* 541, 543 <<https://doi.org/10.1080/00049182.2014.953721>>.

of community gardens,<sup>108</sup> and their creation faces a number of practical, financial, and regulatory challenges,<sup>109</sup> particularly as they engage environmental and planning, property, and workplace health and safety laws, as well as councils' land management functions.<sup>110</sup> The Policy Mapping Study found 34 community garden policies in NSW and Victoria,<sup>111</sup> providing for the establishment of gardens on community land with council approval (and on private land with landowner approval), documenting procedures for establishing and managing gardens, and setting out the roles and responsibilities of councils and residents.<sup>112</sup> It also found examples of innovative food growing initiatives led by councils and undertaken on council-owned or council-managed land, as with Sydney City Farm (operating in Sydney Park and managed by the City of Sydney),<sup>113</sup> and The Living Classroom, a unique regenerative agriculture project that uses 150 hectares of community land to showcase different forms of sustainable food production, managed and run by Gwydir Shire Council in regional NSW.<sup>114</sup> Also common was councils creating demonstration gardens or 'bush tucker' gardens on their land to educate residents on food growing and edible native plant species.<sup>115</sup>

#### D Plans and Strategies

Local government legislation requires councils to develop a series of strategic policy documents that: identify community needs and aspirations; set out councils' goals and objectives to address those needs and aspirations; develop activities and actions to work towards their goals; and establish review and evaluation processes.<sup>116</sup> In NSW, these documents form the Integrated Planning and Reporting Framework, operating as a hierarchy of instruments with the Community Strategic Plan at its apex.<sup>117</sup> The Plan's purpose is to identify key priorities and long-term strategic objectives for the future of local government.<sup>118</sup> Councils design their own community strategic plans, drawing on community consultation, but they must be consistent with the requirements of local government legislation, guidelines on Integrated Planning and Reporting created by the NSW Department of Premier

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108 Jason A Byrne et al, 'A Political Ecology of Community Gardens in Australia: From Local Issues to Global Lessons' in Antoinette Winkler-Pins (ed) *Global Urban Agriculture: Convergence of Theory and Practice Between North and South* (CABI, 2017) 118, 119; Liesel Spencer, 'Keeping Up Appearances: Conflicting Values in State Opposition to Growing Food in Public' in Alec Thornton (ed), *Urban Food Democracy and Governance in North and South* (Palgrave MacMillan, 2020) 159, 159–60; Committee on Environment and Planning, *Food Production and Supply in NSW* (Report No 3/57, November 2022) 52 ('*Food Production and Supply in NSW*').

109 Mintz and McManus (n 107) 544–5.

110 Corkery, Osmond and Williams (n 106) 220.

111 Carrad et al, *Policy Mapping Study* (n 51) 27.

112 Ibid. See, eg, City of Sydney, 'Community Gardens Policy' (Policy, 29 February 2016) <<https://www.cityofsydney.nsw.gov.au/policies/community-gardens-policy>>.

113 Corkery, Osmond and Williams (n 106) 230.

114 Carrad et al, *Report on Six Local Governments* (n 54) 28.

115 Carrad et al, *Policy Mapping Study* (n 51) 52, 56.

116 *LGA* (n 64) s 8C.

117 Ibid s 402; Kelly and Crinnion (n 62) 335–6.

118 Kelly and Crinnion (n 62) 336.

and Cabinet,<sup>119</sup> and relevant state and regional plans, policies, and priorities.<sup>120</sup> The Plan is supported by the: Community Engagement Strategy;<sup>121</sup> Resourcing Strategy (a long-term plan encompassing financial planning, workforce planning, and asset management planning);<sup>122</sup> Delivery Program (setting out specific projects, programs, and activities to implement the Plan over a four year period);<sup>123</sup> Operational Plan (a more detailed, annual sub-plan);<sup>124</sup> and an Annual Report (reporting on council's success in implementing delivery programs).<sup>125</sup> These documents are subject to monitoring, evaluation, and reporting, with progress and performance indicators integrated into each.<sup>126</sup> These are only a small selection of the strategic documents developed by councils: many create supporting policies that elaborate on the objectives set out in community strategic plans,<sup>127</sup> and other legislative regimes also require councils to create multiple planning and policy documents.

The Policy Mapping Study found that councils in NSW and Victoria had integrated diverse food-system related objectives and activities into the core documents created under the Integrated Planning and Reporting Framework (and its Victorian equivalent), as well as in supporting policies on topics such as health and wellbeing, tourism, and social or cultural services.<sup>128</sup> However, very few councils had dedicated food system policies: only two in NSW and 11 in Victoria.<sup>129</sup> One example was the City of Canada Bay's *Sustainable Food Strategy* (adopted in 2015), which aimed to improve environmental sustainability and community health via 'increased awareness, consumption and availability of sustainably sourced foods and enhanced local food systems'.<sup>130</sup> The Strategy addressed eight key areas including: community consumption and food production; local food production and availability; food waste and composting; embedding sustainable food outcomes in all council policies and assets; promotion and availability of 'healthy, safe, and nutritious food'; and multicultural food traditions and food diversity.<sup>131</sup> The Focus Group Study found that the creation of dedicated food system

119 See *LGA* (n 64) s 406(1); *LGR* (n 81) reg 196A; Division of Local Government, New South Wales Premier and Cabinet, 'Integrated Planning and Reporting Guidelines for Local Government in NSW' (Guidelines, March 2013) <<https://www.olg.nsw.gov.au/wp-content/uploads/Integrated-Planning-and-Reporting-Guidelines-March-2013.pdf>>.

120 'Promoting Liveability' (n 65) 12–13, 18.

121 *LGA* (n 64) s 402A.

122 *Ibid* s 403.

123 *Ibid* s 404; 'Promoting Liveability' (n 65) 23.

124 *LGA* (n 64) s 405; 'Promoting Liveability' (n 65) 23.

125 *Ibid* s 428. See also 'Promoting Liveability' (n 65) 12–13.

126 'Promoting Liveability' (n 65) 12, 27.

127 *Ibid* 24–5, 27.

128 Carrad et al, 'Australian Local Government Policies' (n 34); Carrad et al, *Policy Mapping Study* (n 51). See also Spencer, 'Integrating Food Security' (n 65) 4–6; Jan Fallding, *A Baseline of Healthy Eating and Active Living within NSW Local Government Community Strategic Plans and Selected Delivery Programs* (Report, December 2016).

129 Carrad et al, 'Australian Local Government Policies' (n 34) 3.

130 City of Canada Bay, 'Sustainable Food Strategy' (Policy No 6468177, 6 December 2018) 4 <<https://canadabay.t1cloud.com/T1Default/CiAnywhere/Web/CANADABAY/API/CMIS/PUB/content/?id=folder-6468177&streamId=streampdf-6468177>>.

131 *Ibid* 7.



policies offered the opportunity for community consultation on food system issues, and the inclusion of diverse stakeholders in processes of policy development.<sup>132</sup> These policies helped councils coordinate their work on food systems, with the dispersal of food-related issues between different council units identified as a common impediment to effective food system governance.<sup>133</sup> Policies were also accompanied by implementation and evaluation measures (meaning councils were held accountable for meeting food-related targets and objectives), as well as by dedicated staffing and funding arrangements, although these varied significantly between the councils participating in our research.<sup>134</sup>

### E Local Governments' Revenue Raising Powers

Local government income comes from a variety of sources: rates (ie, taxes charged on the value of property),<sup>135</sup> fees (for goods and services provided by councils, as well as developer or infrastructure charges),<sup>136</sup> fines, operating surpluses from public trading enterprises such as utilities, grants from state and federal governments, and interest received on council investments.<sup>137</sup> Although there is significant variation between the states (and between councils), approximately 46.5% of local governments' revenue comprises rates, fees, and fines, followed by the sale of goods and services (22.9%), and intergovernmental grants (17.4%).<sup>138</sup> NSW councils must make and levy an ordinary, annual rate on all rateable land within their respective local government areas,<sup>139</sup> with rates based on the unimproved value of property.<sup>140</sup> The *LGA* creates four categories of rateable land: farmland; residential; mining, and business.<sup>141</sup> These can be further divided into subcategories, allowing for differential ordinary rate treatment within each category.<sup>142</sup> The *LGA* grants councils a discretionary power to levy special rates aimed at financing specific works, services, facilities or activities undertaken for

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132 Carrad et al, *Report on Six Local Governments* (n 54) 59; Carrad et al, 'Local Innovation in Food System Policies' (n 54) 122.

133 Maureen Murphy et al, 'Local Food Environments: Australian Stakeholder Perspectives on Urban Planning and Governance to Advance Health and Equity within Cities' (2018) 2(1) *Cities & Health* 46, 52, 55 <<https://doi.org/10.1080/23748834.2018.1514802>>.

134 Carrad et al, *Report on Six Local Governments* (n 54); Carrad et al, 'Local Innovation in Food System Policies' (n 54) 124–7. See also Spencer, 'Integrating Food Security' (n 65) 8.

135 Ken Henry et al, *Australia's Future Tax System: Report to the Treasurer* (Report, December 2009) vol 2, 691.

136 *Ibid* 693.

137 Andrew Worthington and Brian Dollery, 'The Debate on Australian Federalism: Local Government Financial Interrelationships with State and Commonwealth Governments' (2000) 59(4) *Australian Journal of Public Administration* 25, 25. See also *LGA* (n 64) s 491, which sets out the permissible bases on which local governments can obtain income.

138 Worthington and Dollery (n 137) 26.

139 *LGA* (n 64) s 494.

140 Worthington and Dollery (n 137) 31. *LGA* also contains provisions on how rates should be calculated: see *LGA* (n 64) ss 497–500.

141 *LGA* (n 64) s 493.

142 *Ibid* ss 493(2), 529; Deloitte Access Economics, *Review of Local Government Rating Exemption Provisions: Local Government NSW* (Report, May 2013) 5 ('*Deloitte Report*').

the benefit of the local government area or part of it.<sup>143</sup> The *LGA* also grants rate exemptions to a broad range of land uses, typically on equity grounds, as well as making concessions for charitable activities and the provision of public goods or services.<sup>144</sup> Local governments' capacity to raise revenue via rates depends on a range of budgetary and legislative constraints, including the controversial use of rate capping or pegging in NSW (along with Victoria and the Northern Territory):<sup>145</sup> essentially, where state governments set a maximum allowable increase in the rates that local governments can charge residents each year.<sup>146</sup>

While rating policies were not included in the main research project, other researchers have recommended that councils use rates or fees to improve food system sustainability and healthiness.<sup>147</sup> Examples include councils lowering rates on peri-urban land used for food growing, reducing rates for fresh food retail outlets, flexibly applying fees for signage or advertising for roadside sales and farmers' markets, or waiving fees for the use of open space for farmers' markets.<sup>148</sup> However, the ability of local governments to apply differential rates in order to improve the food retail environment is unclear.<sup>149</sup> Under section 529(2)(d) of the *LGA*, councils can create a sub-category under the 'business' category of rateable land,<sup>150</sup> but this is determined 'according to a centre of activity', indicating an area of land such as a business centre.<sup>151</sup> The *LGA* does not envisage a business sub-category encompassing particular kinds of retail outlets, and also limits the factors that can be taken into account in creating sub-categories.<sup>152</sup>

Even if councils did possess the power to discount rates for healthy food outlets, for example, they would have to carefully evaluate whether this represented an efficient, equitable, and sustainable use of the taxation system.<sup>153</sup> Applying differential rate treatment to food outlets based on healthiness is likely to be

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143 Brian Dollery and Albert Wijeweera, 'An Assessment of Rate-Pegging in New South Wales Local Government' (2010) 6 *Commonwealth Journal of Local Governance* 56, 60 <<https://doi.org/10.5130/cjlg.v0i6.1619>>; *LGA* (n 64) s 495.

144 *Deloitte Report* (n 142) 29. See *LGA* (n 64) ss 554–9; *LGR* (n 81) reg 123.

145 Worthington and Dollery (n 137) 31; Dollery and Wijeweera (n 143) 60; Subba Reddy Yarram, Brian Dollery and Carolyn-Dung Thi Thanh Tran, 'The Impact of Rate Capping on Local Government Expenditure' (2021) 49(3) *Policy and Politics* 391. See also *LGA* (n 64) ch 15, pt 2.

146 Dollery and Wijeweera (n 143) 60.

147 Spencer, 'Integrating Food Security' (n 65) 8; Montague (n 72) 28; Donovan, Larsen and McWhinnie (n 88) 22.

148 Montague (n 72) 28; Cindy Needham et al, 'Food Retail Environments in Greater Melbourne 2008–16: Longitudinal Analysis of Intra-City Variation in Density and Healthiness of Food Outlets' (2020) 17 *International Journal of Environmental Research and Public Health* 1321:1–15, 111 <<https://doi.org/10.3390/ijerph17041321>>.

149 Montague (n 72) 27.

150 See also *LGA* (n 64) ss 528, 531.

151 Department of Local Government (NSW), 'Council Rating and Revenue Raising Manual' (Manual, January 2007) 26 <<https://www.olg.nsw.gov.au/wp-content/uploads/Council-Rating-And-Revenue-Raising-Manual-January-2007.pdf>> ('Council Manual').

152 Andrew H Kelly and Natalie P Stoainoff, 'Biodiversity Conservation, Local Government Finance and Differential Rates: The Good, the Bad and the Potentially Attractive' (2009) 26(1) *Environmental and Planning Law Journal* 5, 17.

153 Ken Henry et al, *Australia's Future Tax System: Report to the Treasurer* (Report, December 2009) 17; *Deloitte Report* (n 142) 10.

controversial, and to face significant opposition from unhealthy food retailers.<sup>154</sup> It may be unpopular with councils given their already constrained financial resources (unless accompanied by state or federal government assistance).<sup>155</sup> Further, health objectives do not fit neatly with the conventional principles informing rating systems, including that they are used to provide services that improve the value of landholders' properties.<sup>156</sup> Some NSW councils make and levy a special rate for environmental services, which could be used to fund projects relevant to food system sustainability.<sup>157</sup> However, the framing of the power to charge special rates in terms of *benefit to the land* appears to restrict the types of projects that could be funded through a special levy to those that are closely tied to the land that is subject to the rate.<sup>158</sup>

Local governments have the power to spend, as well as limited powers to tax,<sup>159</sup> and typically administer schemes that offer grants and funding to local community groups, for a wide range of purposes. Compared to rates, it is clearer that such schemes can be used to support community food-related projects or initiatives,<sup>160</sup> and although not captured in the Policy Mapping Study, there are examples of councils using grants schemes in this manner. For example, Fairfield City Council and the City of Sydney have used grants to support organisations providing food to residents, or involved in food advocacy, such as the Youth Food Movement.<sup>161</sup> In Victoria, the Moreland Food System Strategy describes a seeding grant given by the council to establish a community garden on a vacant block of council land.<sup>162</sup>

### III POWERS AND FUNCTIONS UNDER ENVIRONMENTAL PLANNING LEGISLATION

#### A Planning Documents Created by Councils and Their Planning Decision-Making Function

Each Australian state and territory has its own planning system, including statutory, policy and procedural frameworks administered by state and territory government agencies. However, local governments are responsible for most day-to-day planning decisions, including determining development applications.<sup>163</sup> Like

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154 Montague (n 72) 27.

155 Kelly and Stoainoff (n 152) 18.

156 Ibid 12.

157 'Council Manual' (n 151) 34.

158 Ibid 32.

159 For a categorisation of the public health powers of governments, see 'A Theory and Definition of Public Health Law' in Lawrence O Gostin and Lindsay F Wiley, *Public Health Law: Power, Duty, Restraint* (University of California Press, 3<sup>rd</sup> ed, 2016) 1, 1.

160 'Promoting Liveability' (n 65) 32.

161 Reeve et al, 'The Role of Australian Local Governments in Creating a Healthy Food Environment' (n 53) 140–1.

162 Moreland City Council, 'Moreland Food System Strategy 2017–20' (Strategy, Approval No 2017/Aug18/DSD752) 19.

163 Williams and Maginn (n 35) 46–7; Caroline Mills, 'Planning Law and Public Health at an Impasse in Australia: The Need for Targeted Law Reforms to Improve Local Food Environments to Reduce

other states, NSW planning legislation creates a hierarchy of planning instruments, with the *EPAA* (and its accompanying regulation) at its apex.<sup>164</sup> Underneath the *EPAA* sits two forms of legally binding environmental planning instruments ('EPIS'): State Environmental Planning Policies ('SEPPs'), which are developed by the Governor and cover matters of state concern,<sup>165</sup> and LEPs.<sup>166</sup> Part 3 of the *EPAA* provides for a series of other strategic planning instruments, including Regional Strategic Plans,<sup>167</sup> District Strategic Plans,<sup>168</sup> and LSPs.<sup>169</sup> Then there are a range of non-statutory planning instruments, including DCPs,<sup>170</sup> as well as various other (non-binding) policies, codes, and guidelines.<sup>171</sup> These include local documents such as subdivision standards and guidelines, retail planning policies, and structure plans and growth strategies.<sup>172</sup> Councils are generally responsible for developing LSPs, LEPs, DCPs and other local plans and policies. However, the planning hierarchy means that any instrument or policy developed by local government, as well as their planning decision-making, must accord with the instruments, principles, and policies created by the State Government, including the *EPAA* and any relevant SEPPs.<sup>173</sup>

Local Strategic Planning Statements are a relatively new innovation in NSW, introduced by amendments to the *EPAA* commencing in 2018.<sup>174</sup> Section 3.9 of the *EPAA* requires councils to develop LSPs and sets out the matters they should cover, including: the context for strategic planning in the area, having regard to economic, social, and environmental matters; planning priorities for the area (consistent with any applicable community strategic plan or other strategic plan); actions required to achieve those priorities; and how councils will monitor and report on implementation.<sup>175</sup> LSPs should also contain a map, indicating key areas and themes, and locations where the priorities and actions are to be implemented.<sup>176</sup> LSPs are intended to be a concise document setting out councils' 20-year vision for future land use in the area, the special character and values that are to be preserved and how change will be managed into the future.<sup>177</sup> They are also

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Overweight and Obesity' (2014) 22(1) *Journal of Law and Medicine* 179, 182.

164 See *Environmental Planning and Assessment Act 1979* (NSW) ('*EPAA*') s 3.28; Rosemary Lyster et al, *Environmental & Planning Law in New South Wales* (Federation Press, 5<sup>th</sup> ed, 2021) 100.

165 *EPAA* (n 164) s 3.13, div 3.3.

166 *Ibid* s 3.13, div 3.4.

167 *Ibid* div 3.1. See especially ss 3.2, 3.3, 3.5.

168 *Ibid* div 3.1. See especially ss 3.2, 3.4, 3.6.

169 *Ibid* s 3.9.

170 *Ibid* div 3.6.

171 Amelia Thorpe, 'Land Use Planning' in Peter Williams (ed), *The Environmental Law Handbook* (Redfern Legal Centre Publishing, 6<sup>th</sup> ed, 2016) 89, 93.

172 Donovan, Larsen and McWhinnie (n 88) 21–4.

173 Mills (n 163) 182.

174 Lyster et al (n 164) 73–4; Department of Planning and Environment (NSW), 'Local Strategic Planning Statements: Guidelines for Councils' (Guideline, 2018) 4 <<https://www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/local-strategic-planning-statements-guideline-for-councils-2018-06-12.pdf?la=en>> ('Guidelines for Councils').

175 See also 'Guidelines for Councils' (n 174) 6.

176 *Ibid* 14.

177 *Ibid* 6.

intended as a bridging document that gives effect to regional and district plans, while also informing local plans like LEPs and DCPs.<sup>178</sup> LSPSs have a duration of seven years, and councils must consult with state agencies in their development and review, with final approval given by the NSW Department of Planning and Environment or the Greater Sydney Commission.<sup>179</sup>

Local Environment Plans implement the strategic vision and planning priorities contained in LSPSs through the use of zoning and imposing development control standards.<sup>180</sup> In addition to a set of overarching objectives, LEPs include Land Use Tables that list a series of zones (eg, residential, mixed use, business, and public recreation), the objectives of each zone, and which forms of development are permitted without consent, permitted with consent, or prohibited in each zone.<sup>181</sup> LEPs also describe exempt development (low-impact development that does not require development approval), and complying development (larger development that is subject to a fast-track approval process).<sup>182</sup> The *EPAA* provides for other forms of categories of development that can be declared via different mechanisms,<sup>183</sup> including State Significant Development, State Significant Infrastructure, and Regionally Significant Development (all falling outside the planning powers of local governments).<sup>184</sup> LEPs also typically contain development standards on issues such as minimum lot subdivision sizes and floor space ratios, and may cover a range of other matters, such as the classification of public land, and heritage conservation.<sup>185</sup> LEPs are accompanied by maps that identify the zone that applies to each area within the geographical space covered by the LEP, and apply development standards to each area. Councils are typically the planning authority for LEPs,<sup>186</sup> but they must obtain Ministerial approval for draft LEPs via a gateway determination,<sup>187</sup> and LEPs must accord with the requirements of SEPPs, regional

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178 Ibid 4.

179 'Liveability and Local Government: Embedding Liveability Within Councils' Strategic Planning Processes: A Stakeholder Guide' (Guide, Active Living NSW, 2020) 7 <[https://irp.cdn-website.com/541aa469/files/uploaded/Liveability\\_and\\_Local\\_Government\\_Active\\_Living\\_NSW\\_2020.pdf](https://irp.cdn-website.com/541aa469/files/uploaded/Liveability_and_Local_Government_Active_Living_NSW_2020.pdf)> ('Liveability and Local Government').

180 Lyster et al (n 164) 100. See *EPAA* (n 164) div 3.4.

181 Thorpe (n 171) 95.

182 Exempt development is described in sections 1.5–1.6 of the *EPAA* (n 164). For complying development, see section 1.5 and division 4.5 of the *EPAA*. Exempt and complying developments are subject to a dedicated State Environmental Planning Policy ('SEPP'): *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (NSW). See also 'Complying Development', *NSW Government Planning* (Web Page, 1 March 2023) <<https://www.planning.nsw.gov.au/complyingdevelopment>>.

183 Thorpe (n 171) 99–100.

184 See *EPAA* (n 164) divs 4.7 (State Significant Development), 5.2 (State Significant Infrastructure); *State Environmental Planning Policy (Planning Systems) 2021* (NSW) ch 2.

185 Thorpe (n 171) 100–1, 103–5.

186 Lyster et al (n 164) 94. See *EPAA* (n 164) s 3.32.

187 *EPAA* (n 164) s 3.34.

and district strategic plans, and a standard LEP template,<sup>188</sup> which was introduced in 2006 to standardise zoning and land use definitions across councils.<sup>189</sup>

DCPs supplement controls established in LEPs by providing more detailed planning and design guidelines that must be considered when undertaking development.<sup>190</sup> While an LEP specifies the uses that are permitted in each area through zoning, the relevant DCP guides the way the permitted development is carried out and specifies what should be in place when the development occurs.<sup>191</sup> The provisions of DCPs are not legally binding on decision-makers determining development consent applications, but must be considered.<sup>192</sup> DCPs vary in their structure, but typically contain a set of general aims and objectives, as well as development standards for different kinds of zones or areas (eg, residential or rural). They also cover matters such as car parking, landscaping, and policy on the advertising and notification of new developments.<sup>193</sup> DCPs may be related to other plans (for example, place plans),<sup>194</sup> and can also link to planning agreements, under which developers voluntarily agree to dedicate land free of cost, pay a monetary contribution, or provide another material public benefit, to be used for, or applied towards, a public purpose. This could include the provision of public amenities or services, affordable housing, and transport or other infrastructure relating to land.<sup>195</sup>

Development assessment is covered by Part 4 of the *EPAA*. Sections 4.1–4.3 set out a threefold classification of development as: development that does not need consent (under an EPI), development that needs consent, and prohibited development.<sup>196</sup> Section 4.5 of the *EPAA* designates the consent authority for different forms of development, including State Significant Development and Regionally Significant Development, both of which are determined by bodies other than councils. However, most development applications involve standard forms of development, for which councils are usually the consent authority.<sup>197</sup> Part

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188 Thorpe (n 171) 96; Department of Planning, Industry and Environment (NSW), ‘Planning Circular: Standard Instrument (Local Environmental Plans) Order 2006’ (Circular, PS 21-012, 2 December 2021) 1 <<https://www.planning.nsw.gov.au/sites/default/files/2023-03/planning-circular-ps-21-012-standard-instrument-local-environmental-plans-order-2006.pdf>>.

189 Thorpe (n 171) 96; See *Standard Instrument (Local Environmental Plans) Order 2006* (NSW)

190 Patrick J Harris, Ben F Harris-Roxas and Elizabeth Harris, ‘An Overview of the Regulatory Planning System in New South Wales: Identifying Points of Intervention for Health Impact Assessment and Consideration of Health Impacts’ (2007) 18(9–10) *NSW Public Health Bulletin* 188, 189.

191 Ibid 190.

192 Thorpe (n 171) 126; Lyster et al (n 164) 128–9. See *EPAA* (n 164) s 4.15(1)(a)(iii).

193 Thorpe (n 171) 125.

194 Harris, Harris-Roxas and Harris (n 190) 190.

195 *EPAA* (n 164) s 7.4.

196 Lyster et al (n 164) 113. Consent for development can be obtained from a consent authority making a determination to grant consent: *EPAA* (n 164) s 4.2(2)(a). Alternatively, an EPI may provide that development that can be addressed by predetermined development standards is a form of ‘complying development’ (s 4.2(5)) where approval can be obtained via the issuing of a complying development certificate: *EPAA* (n 164) s 4.2(2)(b).

197 LexisNexis, *Local Govt Planning & Environment NSW: Vol C* (online at 3 August 2023) Land Use Planning, Development & Building Control, ‘The Role and Techniques of Planning Instruments’ [450,005]. Councils can also appoint a local planning panel (an independent panel of experts) to act

4 of the *EPAA* also describes the process for applying for and obtaining consent for different forms of development (including the imposition of conditions on development that needs consent),<sup>198</sup> while section 4.15 sets out the matters that must be considered by consent authorities when determining a development application. These include the provisions of any EPIs, DCPs, voluntary planning agreements, the regulations, the environmental, social, and economic impacts of the development, the suitability of the site for the development, submissions made in accordance with the *EPAA* (for example, from neighbours and other bodies such as advocacy agencies), and the public interest.

## B Food Sensitive Urban Design

As mentioned above, the Policy Mapping Study excluded key planning instruments developed by local governments (including LSPSs, LEPs, and DCPs in NSW), due to their size and complexity. For this reason, the research could not assess the extent to which local governments use these instruments to pursue food system-related objectives, and there was little other research that systematically evaluated the extent to which local governments use the planning system in this manner. However, there has long been international interest in how urban planning shapes food systems,<sup>199</sup> and there is now a growing body of Australian research and guidance on how to undertake ‘food-sensitive urban design’.<sup>200</sup> This literature is the focus of this section of the article.

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as the consent authority on their behalf, and to provide advice on other planning matters. See *EPAA* (n 164) ss 2.17–2.20. Certain councils are required to appoint a local planning panel, namely all those in the Greater Sydney region, Wollongong City Council, and Central Coast Council: *EPAA* (n 164) s 2.17(2). See also Department of Planning and Environment (NSW), ‘Local Planning Panels’, *NSW Government Planning* (Web Page, 1 March 2023) <<https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Local-Planning-Panels>>.

198 See *EPAA* (n 164) s 4.17.

199 David S Jones and Beau B Beza, ‘Food-Sensitive Urban Planning’ in Joshua Zeunert and Tim Waterman (eds), *Routledge Handbook of Landscape and Food* (Routledge, 1<sup>st</sup> ed, 2018) 393.

200 See, eg, Donovan, Larsen and McWhinnie (n 88).

The literature on food-sensitive urban design recognises that urban planning influences almost all aspects of the food system. Food production requires access to suitable land and resources, and there is increasing awareness of the need to protect productive agricultural land from development,<sup>201</sup> including in peri-urban areas.<sup>202</sup> Local and regional transport systems and other infrastructure influence where food processing occurs (as does the designation of areas for food processing and distribution centres), and are critical for transporting food from rural to urban areas.<sup>203</sup> The location and availability of different forms of food retail determines consumer access to healthy, affordable food, as does the ability to access retail outlets via public and active transport.<sup>204</sup> While the evidence is mixed, a growing number of studies demonstrate that physical access to healthy food retail is associated with improved dietary outcomes, while a lack of access to healthy food retail (geographical areas described as ‘food deserts’), and/or the saturation of urban environments with unhealthy food retail outlets (described as ‘food swamps’) is associated with poorer quality diets and diet-related health outcomes.<sup>205</sup>

Other aspects of the design of city centres and residential developments affect food access. For example, increasing density and creating compact, mixed-use city centres and neighbourhoods ensures that residential and commercial premises are located close to one another, enabling residents to walk to (or easily access) grocery stores and supermarkets.<sup>206</sup> People’s food consumption habits depend on buildings designed with sufficient space and facilities for food storage and preparation,<sup>207</sup> while food waste management requires facilities such as landfill and composting facilities.<sup>208</sup> Additional aspects of the built environment that are relevant to food consumption patterns include the extent of outdoor food advertising, the availability of facilities such as breastfeeding rooms and water fountains, and the

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201 ‘Healthy Food and the Built Environment’ (n 104) 3.

202 Donovan, Larsen and McWhinnie (n 88) 22; Michael Buxton and Rachel Carey, ‘The Use of Planning Provisions and Legislation to Protect Peri-Urban Agricultural Land’ (2014) 29(7) *Australian Environment Review* 191, 192.

203 ‘Promoting Liveability’ (n 65) 9; ‘Healthy Food and the Built Environment’ (n 104) 3.

204 Donovan, Larsen and McWhinnie (n 88) 13; ‘Healthy Food and the Built Environment’ (n 104) 3.

205 See, eg, Alexia Bivoltis et al, ‘Do Changes in the Local Food Environment within New Residential Developments Influence the Diets of Residents? Longitudinal Results from RESIDE’ (2020) 17(18) *International Journal of Environmental Research and Public Health* 6778:1–15 <<https://doi.org/10.3390/ijerph17186778>>; Pasquale E Rummo et al, ‘Understanding Bias in Relationships between the Food Environment and Diet Quality: The Coronary Artery Risk Development in Young Adults (CARDIA) Study’ (2017) 71(12) *Journal of Epidemiology and Community Health* 1185 <<https://doi.org/10.1136/jech-2017-209158>>.

206 ‘Promoting Liveability’ (n 65) 6; Jennifer L Kent and Susan Thompson, *Planning Australia’s Healthy Built Environments* (Routledge, 2019) 111–17; Johan Pretorius, ‘Creating Supportive Environments for Physical Activity and Healthy Eating Project’ (Paper, PIA Queensland Annual State Conference, 17–19 September 2008) 8.

207 Donovan, Larsen and McWhinnie (n 88) 13; Kent and Thompson (n 206) 118–19.

208 Donovan, Larsen and McWhinnie (n 88) 6.



provision of affordable housing.<sup>209</sup> At a more fundamental level, the food system relies on healthy soils, river systems, insects for pollination and pest management, in turn, supported by healthy native vegetation and biodiversity.<sup>210</sup> Thus, planning principles and requirements on issues like water-sensitive design play an important role in ensuring food system functioning and sustainability.<sup>211</sup>

There are a variety of pathways for incorporating food system objectives into the EPIs developed by NSW councils. Table 1 provides examples adapted from the Australian literature and some existing local government planning instruments. These examples generally focus on protecting food-producing land and encouraging urban agriculture, ensuring that residents can access healthy food retail (including via public and active transport), and providing facilities for food storage and preparation, but as noted above, there are other, more fundamental interactions between food systems and urban planning that should be addressed in the objectives and provisions of EPIs.

One more controversial suggestion is that councils use zoning to restrict the amenity, location, or density of fast-food outlets (particularly in areas where children gather), via either an LEP or DCP provision.<sup>212</sup> However, the *Standard Instrument (Local Environmental Plans) Order 2006* (NSW) ('*Standard Instrument*') does not enable fast-food restaurants to be a prohibited form of development in certain zones, and councils cannot add additional zones beyond those provided for in the *Standard Instrument*.<sup>213</sup> The *Standard Instrument* does contain several zones where the development of food and drink retail (including takeaway food outlets) is permitted with consent, and while consent authorities take into account the social impacts of development when determining applications,<sup>214</sup> these are generally not interpreted as including health.<sup>215</sup>

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209 Ministry of Health (NSW), 'Healthy Built Environment Checklist: A Guide for Considering Health in Development Policies, Plans and Proposals' (Guide, 2020) 33 <<https://www.health.nsw.gov.au/urbanhealth/Publications/healthy-built-enviro-check.pdf>> ('Healthy Built Environment Checklist').

210 Donovan, Larsen and McWhinnie (n 88) 7.

211 Ibid 23; 'Promoting Liveability' (n 65) 9.

212 'Healthy Food and the Built Environment' (n 104) 7; Kent and Thompson (n 206) 119; Allender et al, 'Policy Change to Create Supportive Environments' (n 43) 264.

213 See Department of Planning and Environment (NSW), 'Preparing LEPs Using the Standard Instrument: Standard Zones' (Practice Note PN 11-002, 10 March 2011) 1 <<https://www.planning.nsw.gov.au/sites/default/files/2023-04/practice-note-pn-11-002-preparing-leps-using-the-standard-instrument-standard-zones.pdf>>.

214 *EPA* (n 164) s 4.15(1)(b).

215 See, eg, *McDonalds Australia Pty Ltd v Yarra Ranges Shire Council* [2012] VCAT 1539 (involving an application for development consent for a new McDonald's restaurant in Tecoma, Victoria), where the Victorian Civil and Administrative Tribunal held that the health concerns raised by residents were irrelevant, as they did not relate to the social or economic impacts of the proposed development.

Table 1: Recommendations for How NSW Local Governments Can Use the Planning System to Create a Healthy and Sustainable Food System

Instrument	Local Strategic Planning Statement	Local Environment Plan	Development Control Plan	Structure Plans, Growth Strategies & Local Spatial Plans	Retail planning policy	Development approval process
Recommendation	<p>Include food-related objectives, eg, increase access to healthy, sustainable food.<sup>216</sup></p> <p>Identify prime agricultural land, commit to rural lands strategy that identifies and protects agricultural land.<sup>217</sup></p>	<p>Include food-related objectives in general aims.<sup>218</sup></p> <p>Define key terms and zoning objectives to support healthy food access.<sup>219</sup></p> <p>Use maps and zoning to identify and protect areas for food production.<sup>220</sup></p>	<p>Include food-related objectives in general statements of principle,<sup>221</sup> and those for specific land uses (eg, residential).<sup>222</sup></p> <p>Create minimum subdivision standards for rural zones, and limit dwellings on rural land.<sup>223</sup></p>	<p>Urban forms integrate a broad range of land mixes.<sup>224</sup></p> <p>Urban forms include opportunities for healthy food production, distribution, and sale, linked with accessible transport options.<sup>225</sup></p>	<p>Provide a variety of food retail options, accessible via active and public transport.<sup>226</sup></p> <p>Evaluate loss of agricultural land in retail planning.<sup>227</sup></p> <p>Ensure mixed land use, with retail as only one element of centre planning.<sup>228</sup></p>	<p>Require developers to undertake Health Impact Assessment (HIA) that includes food access before development plans are approved.<sup>229</sup></p> <p>Require developers to provide dedicated space for community gardens and associated facilities.<sup>230</sup></p>

216 Donovan, Larsen and McWhinnie (n 88) 21; ‘Healthy Food and the Built Environment’ (n 104) 8.

217 ‘Liveability and Local Government’ (n 179) 17; NSW Healthy Planning Expert Working Group (n 104) 6–7.

218 Elizabeth Good et al, ‘An Audit of Local Government Planning Tools for Their Potential Use in Addressing Community Food and Nutrition Issues’ (2010) 21(1) *Health Promotion Journal of Australia* 5, 8 <<https://doi.org/10.1071/HE10005>>.

219 ‘Liveability and Local Government’ (n 179) 18.

220 Good et al (n 218) 8.

221 For example, protecting rural lands from fragmentation: see Penrith City Council ‘Penrith Development Control Plan 2014’ (Plan, 2014) vol 1, s B, sub-s 1.2.

222 Ibid s D1–D5.

223 Department of Planning and Environment (NSW), ‘New England North West Regional Plan 2036’ (Plan, August 2017) 20–1 (‘New England North West Regional Plan 2036’).

224 Donovan, Larsen and McWhinnie (n 88) 21.

225 Ibid.

226 Ibid 22.

227 Ibid.

228 Ibid.

229 ‘Healthy Food and the Built Environment’ (n 104) 7; Victorian Health Promotion Foundation, ‘Land Use Planning: Influence Land Use, Business Mix and the Built Environment’ (Information Sheet, June 2010) 1 (‘VicHealth’).

230 Ibid.

Instrument	Local Strategic Planning Statement	Local Environment Plan	Development Control Plan	Structure Plans, Growth Strategies & Local Spatial Plans	Retail planning policy	Development approval process
Recommendation (continued)	<p>Identify preferred locations for retail uses, retail hierarchy, and provide siting guidance on food outlets.<sup>231</sup></p> <p>Identify the location of food production areas and existing/ possible distribution points, relative to transport hubs and connections.<sup>232</sup></p>	<p>Permit different forms of food growing in appropriate zones.<sup>233</sup></p> <p>Plan for mixed-use neighbourhoods to ensure even distribution of food retail, accessible by all residents.<sup>234</sup></p> <p>Use zoning to increase urban densities and protect peri-urban lands.<sup>235</sup></p>	<p>Require apartment buildings to have a minimum amount of communal space for food production.<sup>236</sup></p> <p>Require apartments to have adequate food storage space and preparation facilities.<sup>237</sup></p>	<p>New developments consider the impact of urban growth on agricultural land.<sup>238</sup></p> <p>New developments are designed to promote food production.<sup>239</sup></p> <p>New developments are proximate to activity centres, accessible via active or public transport.<sup>240</sup></p>	<p>Ensure a mix of large and small supermarket retailers.<sup>241</sup></p> <p>Ensure retail unit sizes enable small and medium-sized food retail outlets.<sup>242</sup></p> <p>Evaluate and manage land use conflicts for new development on agricultural land.<sup>243</sup></p>	<p>Evaluate the impact of proposed retail development on food availability and accessibility.<sup>244</sup></p> <p>Create resources that enable development applications for food-related land uses.<sup>245</sup></p>

231 'Liveability and Local Government' (n 179) 17.

232 Ibid 18.

233 Ministry of Health (NSW), 'Healthy Built Environment Checklist' (n 209) 90.

234 Donovan, Larsen and McWhinnie (n 88) 22; Kent and Thompson (n 206) 117–18.

235 Kent and Thompson (n 206) 121–2.

236 Spencer, 'Farming the City' (n 105) 122.

237 Kent and Thompson (n 206) 118–19.

238 Donovan, Larsen and McWhinnie (n 88) 21.

239 Ibid 22.

240 Ibid.

241 Ibid.

242 Ibid.

243 'Healthy Built Environment Checklist' (n 209) 89. See, eg, 'New England North West Regional Plan 2036' (n 223) 20.

244 Cancer Council NSW (n 72) 8.

245 'Healthy Food and the Built Environment' (n 104) 7.

Instrument	Local Strategic Planning Statement	Local Environment Plan	Development Control Plan	Structure Plans, Growth Strategies & Local Spatial Plans	Retail planning policy	Development approval process
Recommendation (continued)	Enhance local food production and exchange by creating relevant policies; identifying locations for community gardens and farmers' markets; and supporting initiatives such as food hubs, especially in low-income areas. <sup>246</sup>	<p>Use zoning to identify areas for food retail; ensure linkages to residential areas via active and public transport,<sup>247</sup> and protect small neighbourhood shopping centres.<sup>248</sup></p> <p>Use zoning to restrict new fast-food outlets.<sup>249</sup></p> <p>Ensure floor space ratios are sufficient for new supermarkets.<sup>250</sup></p> <p>Designate appropriate locations for food processing businesses.<sup>251</sup></p>	<p>Develop standards for suitable breastfeeding facilities in developments with public amenities, retail buildings, and healthcare facilities.<sup>252</sup></p> <p>Develop guidelines and standards for land use matters relating to food industries.<sup>253</sup></p> <p>Regulate location, size, and appearance of outdoor food advertising.<sup>254</sup></p>	<p>Consider/give appropriate weight to food production, distribution, and sale in distribution of land uses.<sup>255</sup></p> <p>Include food production options in building, street, and neighbourhood design.<sup>256</sup></p>		

246 'Liveability and Local Government' (n 179) 18.

247 Good et al (n 218) 8.

248 Kent and Thompson (n 206) 117.

249 'Healthy Food and the Built Environment' (n 104) 7; *ibid* 119; Allender et al, 'Policy Change to Create Supportive Environments' (n 43) 264.

250 J Kent, SM Thompson and B Jalaludin, *Healthy Built Environments: A Review of the Literature* (Report, 2011) 85.

251 'Promoting Liveability' (n 65) 9.

252 Good et al (n 218) 8.

253 *Ibid*.

254 Pretorius (n 206) 6.

255 *Ibid*.

256 Montague (n 72) 13.

Consent authorities can also take into account the provisions of EPIs when determining applications, and planning policies developed by councils (and other bodies) are relevant to a consideration of the public interest under section 4.15(1)(e) of the *EPAA*.<sup>257</sup> Directions and actions on liveability feature in all NSW regional and district plans, and can include objectives on diet-related health.<sup>258</sup> For example, the Greater Sydney Regional Plan's chapter on Liveability includes the strategy of delivering 'healthy, safe and inclusive places for people of all ages and abilities that support active, resilient and socially connected communities'.<sup>259</sup> One measure for achieving this strategy is 'promoting local access to healthy fresh food and supporting local fresh food production'.<sup>260</sup> However, the *EPAA*'s objectives primarily concern issues such as the management of natural resources, environmental sustainability, and promoting neighbourhood amenity and good building design.<sup>261</sup> Although many of these are relevant to food system functioning,<sup>262</sup> there is no explicit mention of issues like food security or public health. This creates a barrier to local governments giving weight to these issues in their own planning instruments and processes, given the operation of the planning hierarchy.<sup>263</sup> Further, as described above, the way that State planning legislation and policy shapes local planning instruments constrains councils' powers to improve the healthiness of the food retail environment.

An expert advisory group to the NSW Government has noted that using DCPs to restrict unhealthy food retail outlets would require government reconsideration of competition policies and the contents of DCPs.<sup>264</sup> Over the past 20 years, state planning systems have been subject to reforms under a broader agenda of deregulation and enhancing competition,<sup>265</sup> and competition policies designed to promote fair trading restrict the ability of planners to make planning decisions on the basis of the proliferation of business types already in an area.<sup>266</sup> Some NSW councils do use DCPs to control the density and location of retail outlets. For example, the City of Sydney has a specific DCP to ensure that convenience stores are not overly concentrated in a geographic area;<sup>267</sup> Bayside Council has similar

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257 Lyster et al (n 164) 130.

258 'Liveability and Local Government' (n 179) 14.

259 Greater Sydney Commission, 'Greater Sydney Regional Plan: A Metropolis of Three Cities' (Plan, March 2018) 55.

260 Ibid.

261 *EPAA* (n 164) s 1.3.

262 Harris, Harris-Roxas and Harris (n 190) 188.

263 Allender et al, 'Moving beyond "Rates, Roads and Rubbish"' (n 38) 5; Donovan, Larsen and McWhinnie (n 88) 9; Mills (n 163) 183.

264 'Healthy Food and the Built Environment' (n 104) 7.

265 Kristian Ruming and Robin Goodman, 'Planning System Reform and Economic Development: Unpacking Policy Rhetoric and Trajectories in Victoria and New South Wales' (2016) 42(1) *Built Environment* 72, 75 <<https://doi.org/10.2148/benv.42.1.72>>.

266 Kent and Thompson (n 206) 116.

267 City of Sydney, 'City of Sydney Convenience Store Development Control Plan 2004' (Development Control Plan, 24 September 2004) <<https://www.cityofsydney.nsw.gov.au/development-control-plans/convenience-store-dcp-2004>>.

provisions in its DCP on the location of neighbourhood shops.<sup>268</sup> However, both DCPs control the location of retail outlets on the basis of neighbourhood amenity, and it seems unlikely that a DCP controlling the location of fast-food restaurants (for example) could be made on the basis of health concerns, for the reasons set out above. The development of a model DCP by the NSW Department of Planning and Environment (at the time of writing) may offer the possibility of creating provisions that would enable local governments to use DCPs to improve the healthiness of the food retail environment.<sup>269</sup> However, it can also be seen as part of a broader trend in urban planning towards narrowing council decision-making power and centralising planning functions in state governments, through measures such as granting state planning ministers the power to intervene in planning and development proposals deemed to be of regional and state significance.<sup>270</sup> These types of reforms limit local governments' capacity to use urban planning in innovative ways tailored to the needs of local communities.

### C Health Impact Assessment and Development Approval Processes

Health Impact Assessment ('HIA') is another planning tool that offers the opportunity for analysing (and responding to) the impact of development on food systems. HIA is a method for evaluating (and minimising or maximising, respectively) the negative and positive impacts of a proposed policy, plan, or project on population health, in non-health sectors such as transport and urban planning.<sup>271</sup> HIA is not provided for in legislation in NSW, but is incorporated in the *Public Health and Wellbeing Act 2008* (Vic).<sup>272</sup> It can be included in environmental impact assessment ('EIA') processes, which are typically required by legislation in respect of new development in all Australian states,<sup>273</sup> but in practice, tends to

268 Bayside Council, 'Botany Bay Development Control Plan 2013' (Development Control Plan, 2013) pt 7H <<https://www.bayside.nsw.gov.au/sites/default/files/2021-08/Part%207H%20Neighbourhood%20Shops.pdf>>.

269 'Healthy Food and the Built Environment' (n 104) 7.

270 Williams and Maginn (n 35) 39; Ruming and Goodman (n 265) 76, 80.

271 Patrick Harris et al, 'Health Impact Assessment for Urban and Land-Use Planning and Policy Development: Lessons from Practice' (2010) 25(5) *Planning Practice & Research* 531, 532 <<https://doi.org/10.1080/02697459.2010.522851>>; Patrick Harris and Jeff Spickett, 'Health Impact Assessment in Australia: A Review and Directions for Progress' (2011) 31(4) *Environmental Impact Assessment Review* 425, 426 <<https://doi.org/10.1016/j.eiar.2010.03.002>>; Geoffrey R Browne and Melanie Lowe, 'Liveability as a Determinant of Health: Testing a New Approach for Health Impact Assessment of Major Infrastructure' (2021) 87 *Environmental Impact Assessment Review* 106546:1–9, 2 <<https://doi.org/10.1016/j.eiar.2020.106546>>.

272 See Harris and Spickett (n 271) 427–9. Under section 53(1) of the *Public Health and Wellbeing Act 2008* (Vic), the Minister for Health can require an assessment of the public health impact of a matter to be undertaken by the Secretary or the Chief Health Officer.

273 In NSW, all forms of development that require planning consent under Part 4 of the *EPAA* (n 164) undergo some form of environmental impact assessment, with the specific requirements differing depending on the form of development. Section 4.15(1)(b) of the *EPAA* also requires consent authorities to consider the environmental impacts of the development on the natural and built environments. Under Part 5 of the *EPAA*, all 'activities' that are undertaken or approved by a 'determining authority' must first be the subject of an environmental impact statement (see section 5.7(1)), with section 5.5 of the *EPAA* placing a duty on determining authorities to consider the environmental impacts of activities. See LexisNexis, *Halsbury's Laws of Australia* (online at 14 November 2019) 180 Environment '3 Environmental Impact Assessment' [180-8085]; Lyster et al (n 164) ch 5.

be excluded or is considered only narrowly.<sup>274</sup> Tools and frameworks that have been developed to support HIA often involve an evaluation of the impact of projects and policies on aspects of the food system.<sup>275</sup> For example, NSW Health's *Healthy Built Environment Checklist* includes healthy eating among its 11 themes and features questions for evaluating a policy, plan, or proposal on the extent to which it: (a) promotes access to fresh, nutritious, and affordable food and drink; (b) discourages overconsumption of unhealthy food and drink; (c) preserves food growing (agricultural) areas; and (d) supports local food production.<sup>276</sup> There are also third party certification schemes that developers can use to have projects independently assessed and verified as meeting social and environmental criteria, including access to fresh food and the promotion of diet-related health,<sup>277</sup> as with the WELL Building Standard, for example.<sup>278</sup>

Councils' role in approving development applications offers the opportunity to evaluate proposed projects against food system objectives.<sup>279</sup> At pre-application consultations, councils can make an early evaluation of the extent to which development design promotes such objectives.<sup>280</sup> They can consider these criteria again when formally assessing the development, including the extent to which it meets food system-related objectives and principles contained in LEPs and DCPs,<sup>281</sup> with the possibility of imposing conditions on development approval.<sup>282</sup> Councils can also offer supports and incentives to builders and developers that undertake HIA or certification that considers food system-related issues, for example, bonus floor space, height allowances, or financial incentives.<sup>283</sup> There are historical examples of NSW councils using HIA to evaluate local and regional developments (and strategic planning documents) against criteria that include access to healthy food.<sup>284</sup> In 2021, Wollondilly Shire Council also adopted a policy that requires social and health impact assessment for some types of development applications, planning policies and change proposals, including applications for new takeaway

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274 Harris and Spickett (n 271) 425–6.

275 See, eg, Browne and Lowe (n 271) 3; Melanie Lowe et al, 'Planning Healthy, Liveable and Sustainable Cities: How Can Indicators Inform Policy?' (2015) 33(2) *Urban Policy and Research* 131, 137 <<https://doi.org/10.1080/08111146.2014.1002606>>.

276 'Healthy Built Environment Checklist' (n 209) 31.

277 Active Living NSW, 'Four of Four Guide to Useful Resources: Liveability in Development Processes' (Guide); Green Building Council of Australia, 'Green Star Communities: Guide for Local Government' (Guide) 20 <[https://www.gbca.org.au/uploads/189/2749/Green\\_Star\\_Communities\\_Guide\\_for\\_Local\\_Government\\_For\\_Web.pdf](https://www.gbca.org.au/uploads/189/2749/Green_Star_Communities_Guide_for_Local_Government_For_Web.pdf)> ('Green Star Communities').

278 'Healthy Built Environment Checklist' (n 209) 26; 'Nourishment', *International Well Building Institute* (Web Page, 2022) vol 2 <<https://v2.wellcertified.com/en/wellv2/nourishment>>.

279 Good et al (n 218) 9.

280 'Healthy Built Environment Checklist' (n 209) 25.

281 Ibid.

282 Cancer Council NSW, 'Supporting Healthy Eating and Active Living' (n 72) 8. So long as these conditions relate to the matters that consent authorities must consider when determining applications. See *EPAA* (n 164) ss 4.16(1)(a), 4.17(1)(a).

283 'Green Star Communities' (n 277) 35.

284 Susan Furber et al, 'The Use of Health Impact Assessment to Determine the Potential Impact of an Australian Urban Development Proposal on Health and Well-Being' (2011) 29(2) *Urban Policy and Research* 125, 127–8 <<https://doi.org/10.1080/08111146.2010.546004>>.

food and drink outlets.<sup>285</sup> This policy explicitly identifies access to healthy food as one component of healthy built environments and liveable places.<sup>286</sup> However, HIA adds another step to an already complicated development approval process,<sup>287</sup> and as councils approve a very large number of development applications (and balance competing demands in doing so), incorporating an extra evaluation process spreads their limited resources even thinner.<sup>288</sup> Undertaking HIA also requires the appropriate expertise within council, and potentially, capacity building across multiple departments or units, further mitigating against its adoption.<sup>289</sup>

## IV POWERS AND FUNCTIONS UNDER PUBLIC HEALTH LEGISLATION

### A An Outline of Public Health Legislation

As with urban planning, each Australian state has its own public health legislation and institutional arrangements for its administration. Public health law has its foundation in 19<sup>th</sup> century public health acts developed in countries such as the United States, England, Australia, and New Zealand.<sup>290</sup> The early concerns of public health laws – which continue to form a key component of these laws today – were the removal of ‘nuisances’ (unsanitary or unhealthy environmental conditions), accompanied by a range of offences and penalties for breaches of removal orders, the regulation of procedures or premises presenting a risk to public health (for example, hairdressers and tattooists), and infectious disease surveillance, reporting, and control.<sup>291</sup> Some public health functions are also contained in local government legislation in NSW, as with provisions empowering councils to abate specifically defined nuisances,<sup>292</sup> or to make regulations on matters such

285 Wollondilly Shire Council, ‘Social and Health Impact Assessment Guidelines’ (Guidelines, May 2021) <<https://www.wollondilly.nsw.gov.au/assets/Documents-NEW/Planning-and-Development/Health-in-Planning/WSC-SocialandHealthImpactAssesment-GuidelinesProcess.pdf>>; Wollondilly Shire Council, ‘Social and Health Impact Assessment Policy’ (Policy, CM 2440#665, 18 May 2021) <<https://www.wollondilly.nsw.gov.au/assets/Documents-NEW/Planning-and-Development/Health-in-Planning/Social-and-Health-Impact-Assessment-Policy.pdf>> (‘Social and Health Impact Assessment Policy’).

286 ‘Social and Health Impact Assessment Policy’ (n 285) 4.

287 Harris and Spickett (n 271) 429.

288 Grace Blau and Mary Mahoney, *The Positioning of Health Impact Assessment in Local Government in Victoria* (Report, October 2005) 42–3.

289 Ibid 45–6. One option is for health assessment to be built into more routine environmental sustainability and energy efficiency assessment processes, which place the onus on the applicant to demonstrate that the assessment criteria are satisfied, typically using specialised software. This may reduce the resource burden on councils (although assessment is still required for approval), as would the system of applicants paying for private certification in the case of complying development. I am grateful to one of the reviewers of this article for suggesting this point.

290 Christopher Reynolds, *Public Health and Environmental Health Law* (Federation Press, 2011) 179–80; Roger Magnusson, ‘Mapping the Scope and Opportunities for Public Health Law in Liberal Democracies’ (2007) 35(4) *Global Health Law, Ethics, and Policy* 571, 571–2 <<https://doi.org/10.1111/j.1748-720X.2007.00181.x>>.

291 Reynolds (n 290) 183.

292 Ibid 193. See *LGA* (n 64) ch 7 pt 2 (Orders), especially s 1245.



as the keeping of animals, the regulation of hairdressers, shared accommodation, mortuaries, and waste management.<sup>293</sup>

Another long-standing feature of public health legislation is the division of administrative functions between councils, which continue to be the first point of contact for many day-to-day public health issues, and state health departments, which operate as the central public health body.<sup>294</sup> One of the objects of the *Public Health Act 2010* (NSW) ('*PHA*') is to recognise the role of local governments in protecting health,<sup>295</sup> while under section 4(1), councils must take appropriate measures to ensure compliance in their area with the *PHA*'s requirements on private water suppliers, water carters, public swimming pools and spa pools, and regulated systems and premises on which skin penetration procedures are carried out. Section 4(2) requires local governments to appoint an authorised officer to enable them to exercise these functions.<sup>296</sup> Day-to-day administration of the NSW public health legislation is shared between a Chief Health Officer, public health officers working within NSW Health,<sup>297</sup> and 'authorised officers', who may be employed by councils.<sup>298</sup> This includes environmental health officers, who often administer a range of health-related legislative functions on behalf of councils, including those under tobacco control, environmental protection, drinking water, and food laws.<sup>299</sup>

## B How Local Governments Can Use Public Health Laws to Address Food System Objectives

Local government functions are relatively narrowly construed under the NSW public health legislation. However, public health laws in other states have undergone radical reform to create more holistic, principles-based models,<sup>300</sup> which can involve the delegation of significant responsibilities to councils. Public health laws in Victoria, Western Australia, and South Australia require local governments

293 Reynolds (n 290) 184–5. See *LGA* (n 64) s 748, sch 6; *LGR* (n 81) pt 3 sch 2.

294 Reynolds (n 290) 181.

295 *Public Health Act 2010* (NSW) s 3(1)(e) ('*PHA*').

296 Section 4 of the *PHA* (n 295) also states that the Secretary of the Ministry of Health 'is responsible for providing guidance and support to local government authorities in the exercise of their functions under this Act but may also (in appropriate circumstances) exercise compliance functions relating to environmental health'. Section 9 empowers the Minister to order public authorities (including councils) to rectify public health risks created through their acts or omissions.

297 *PHA* (n 295) ss 121–5.

298 Under section 126(1) of the *PHA* (n 295), 'authorised officers' are defined as staff members of the Ministry of Health, a member of the NSW Health Service, or a staff member of a body prescribed by the regulations. Under section 126(2) of the *PHA* (n 295), councils can appoint can any member of their staff, or the staff of another government authority, to act as an authorised officer either generally or in relation to any particular function exercisable by authorised officers under the Act or the *LGA* (n 64) relating to public health.

299 H Whiley et al, 'Environmental Health in Australia: Overlooked and Underrated' 41(3) *Journal of Public Health* 470 <<https://doi.org/10.1093/pubmed/fdy156>>; Courtney Bartosak, 'Environmental Health Workforce Attraction and Retention' (Research Paper RP 001/2012, July 2012); Wendy Taylor et al, 'Local Government Environmental Health Professional Framework: Enhancing Professionalism in Environment Health' (Framework, August 2017).

300 Reynolds (n 290) 184.

to develop public health plans,<sup>301</sup> creating an avenue for initiatives on healthy, sustainable, and equitable food systems,<sup>302</sup> as well as the integration of council strategic planning functions under public health and other legislation. Under section 26 of the *Public Health and Wellbeing Act 2008* (Vic), councils are required to prepare a Municipal Public Health and Wellbeing Plan ('MPHWP') every four years. Plans must (among other things) identify evidence-based goals and strategies for maximising the health and wellbeing of local communities, provide for community input in the plan's development and implementation, be consistent with the relevant Council Plan (prepared under the *Local Government Act 2020* (Vic)), and have regard for the State Public Health and Wellbeing Plan 2019–23.<sup>303</sup> The State Plan includes 10 priority areas, with increasing healthy eating being one of four areas where additional support and guidance will be provided over the Plan's four-year lifespan.<sup>304</sup>

Public health legislative and policy frameworks in Victoria also articulate and address the connections between climate change and health, enabling Victorian councils to respond to the interacting health and sustainability concerns raised by food systems. The State Plan identifies the health impacts of climate change as a focus area (recognising that healthy eating and sustainable diets have environmental and health co-benefits),<sup>305</sup> while the *Climate Change Act 2017* (Vic) requires local governments to consider climate change when undertaking public health planning.<sup>306</sup> Guidance prepared by the Victorian Department of Health identifies healthy and sustainable food systems as one area where strategies can be undertaken by councils to tackle climate change and its impact on health, and provides case studies of strategies already implemented by Victorian councils.<sup>307</sup> Examples include supporting home and community gardening, expanding local spaces to grow food, and developing programs with local food providers to encourage sustainable business practices and improve community access to healthy and sustainable food.<sup>308</sup> One case study provided in the guidance document is the Cardinia Community Food Strategy 2018–26, which aims to create a healthy, delicious, sustainable and fair food system for all residents of Cardinia Shire,

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301 Sara Javanparast et al, 'Collaborative Population Health Planning between Australian Primary Health Care Organisations and Local Government: Lost Opportunity' (2019) 43(1) *Australian and New Zealand Journal of Public Health* 68 <<https://doi.org/10.1111/1753-6405.12834>>.

302 See, eg, Emily Beaudry, Fiona H McKay and Bronte C Haines, 'How Are Victorian Local Governments Responding to Climate Change and Food Insecurity?' (2021) 32(1) *Health Promotion Journal of Australia* 137 <<https://doi.org/10.1002/hpja.330>>.

303 *Public Health and Wellbeing Act 2008* (Vic) s 26; Victorian Government, 'Municipal Public Health and Wellbeing Planning 2019–23' (Plan, August 2019) ('Victorian Government Plan').

304 'Victorian Government Plan' (n 303) 18, 23, 31.

305 Ibid 20, 31–2.

306 *Climate Change Act 2017* (Vic) s 17, sch 1; Victorian Government, 'Tackling Climate Change and Its Impacts on Health through Municipal Public Health and Wellbeing Planning: Guidance for Local Government' (Guidance, September 2020) <<https://content.health.vic.gov.au/sites/default/files/2022-02/tackling-climate-change-and-its-impacts-on-health-through-MPHWP-guidance-for-local-government.pdf>> ('Tackling Climate Change'). See also Beaudry, McKay and Haines (n 302).

307 'Tackling Climate Change' (n 306) 2, 55, 57–8.

308 Ibid 56.

and links to the Cardinia Liveability Plan's objective of '[i]ncreasing access to affordable and nutritious food'.<sup>309</sup> The Strategy has four key areas that include: protecting and using fertile land as a source of fresh food for current and future generations; growing a vibrant local food economy that supports growers and enables people to access locally produced food; reducing and diverting food waste from landfill; and reusing water to grow food.<sup>310</sup>

In the Focus Group Study, the three participating Victorian councils all identified their respective MPHWP as key drivers for the development of dedicated food system policies.<sup>311</sup> Each council's plan identified food/healthy eating as a priority, and set targets on these topics, which in turn created a platform for council staff to advocate for the creation of a dedicated food system policy. Another evaluation of 78 (out of 79) Victorian councils' 2021–25 MPHWP found that 82% of plans had a goal related to healthy eating.<sup>312</sup> One example is the City of Melbourne's Health and Wellbeing Action Plan 2021–25, which includes the focus areas of healthy and sustainable lifestyles, and food security.<sup>313</sup> Both focus areas are linked to strategic priorities contained in the Council Plan 2021–25,<sup>314</sup> and the Health and Wellbeing Action Plan includes food relief initiatives and programs targeted to vulnerable members of the community, and improving local food production by supporting communities to grow their own food.<sup>315</sup> The Health and Wellbeing Action Plan also describes how climate change will impact food security and agricultural food production (with local food production offering mitigation benefits).<sup>316</sup> One initiative to address climate change is to reduce food waste going to landfill by rolling out a FOGO program in high-rise apartments.<sup>317</sup>

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309 Cardinia Shire Council, 'Cardinia Shire Community Food Strategy 2018–26' (Strategy, February 2019) 6 <[https://www.cardinia.vic.gov.au/downloads/download/1097/cardinia\\_community\\_food\\_strategy\\_and\\_action\\_plan\\_2018\\_%E2%80%9326](https://www.cardinia.vic.gov.au/downloads/download/1097/cardinia_community_food_strategy_and_action_plan_2018_%E2%80%9326)> ('Cardinia Shire Community Food Strategy 2018–26'); Cardinia Shire Council, 'Cardinia Shire's Liveability Plan 2017–29' (Municipal Public Health and Wellbeing Plan, October 2017) 35.

310 'Cardinia Shire Community Food Strategy 2018–26' (n 309) 6.

311 Carrad et al, *Report on Six Local Governments* (n 54); Carrad et al, 'Local Innovation in Food System Policies' (n 54) 8.

312 Kelly Cooper and Stacey Vas, 'Increasing Healthy Eating in Victoria' (Nutrition Australia, 8 April 2022) 16. A 2020 study found that only 13 Victorian councils addressed the climate impacts of food security in their MPHWP, but this research was conducted before the introduction of Victoria's climate change legislation: Beaudry, McKay and Haines (n 302) 139.

313 City of Melbourne, 'Health and Wellbeing Action Plan 2021–25' (Strategy, November 2021) 24 <<https://www.melbourne.vic.gov.au/SiteCollectionDocuments/health-and-wellbeing-action-plan-2021.pdf>> ('Health and Wellbeing Action Plan 2021–25').

314 City of Melbourne, *City of Melbourne, City of Possibility: Council Plan 2021–25* (Report, June 2021) 26–9.

315 'Health and Wellbeing Action Plan 2021–25' (n 313) 38.

316 *Ibid* 40.

317 *Ibid* 42.

## V POWERS AND FUNCTIONS UNDER FOOD LAW AND REGULATION

### A An Overview of the Food Regulatory System

Australia's food regulatory system comprises a complex mixture of law, regulation, and policy, with the system's development, administration, and enforcement shared between the three levels of government.<sup>318</sup> It also comprises a bi-national system between Australia and New Zealand, established under a treaty between the two countries.<sup>319</sup> Central to the system is the *Australia New Zealand Food Standards Code* (Cth) ('*FSANZ Code*'),<sup>320</sup> developed by Food Standards Australia New Zealand ('FSANZ'), an independent statutory authority established under the *Food Standards Australia New Zealand Act 1991* (Cth).<sup>321</sup> Food regulatory policy (informing the *FSANZ Code*) is developed by the Australia and New Zealand Ministerial Forum on Food Regulation (comprising national and state health ministers from Australia and New Zealand),<sup>322</sup> with assistance from the Food Regulation Standing Committee ('FRSC').<sup>323</sup> The Implementation Subcommittee for Food Regulation ('ISFR') is a sub-committee of the FRSC where Australian and New Zealand food regulatory enforcement agencies meet to determine uniform approaches to implementing and enforcing food standards.<sup>324</sup> The *FSANZ Code* comprises four chapters that cover: general food standards (including those on food labelling, and nutrition and health claims on labels); specific food product standards for foods such as meat and eggs; food safety programs (for food sold to the general public and for food intended for vulnerable populations such as in hospitals) and food hygiene requirements; and primary production standards.<sup>325</sup> Each Australian state and territory automatically adopts the Code in state food laws,<sup>326</sup> which regulate food businesses through requirements such as the registration and licensing of some types of businesses, and mandatory

318 Reynolds (n 290) 322–3.

319 *Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System*, signed 5 December 1995, [1996] ATS 12 (entered into force 5 July 1996).

320 Food Standards Australia New Zealand, *Australia New Zealand Food Standards Code* (13 July 2013) ('*FSANZ Code*').

321 See *Food Standards Australia New Zealand Act 1991* (Cth) pt 2.

322 Pratihba Naudiyal et al, *Food Policy in Australia: The Role of Different Federal Government Organisations* (Report, December 2021) 15 <<https://www.sydney.edu.au/charles-perkins-centre/our-research/current-research/politics-governance-and-ethics/food-governance.html>>; Mark Lawrence, 'The Food Regulatory System: Is It Protecting Public Health and Safety?' in Geoffrey Lawrence, Kristen Lyons and Tabatha Wallington (eds), *Food Security, Nutrition and Sustainability* (Earthscan, 2009) 162–3; Nous Group, 'Review of the Food Standards Australia New Zealand Act 1991' (Scoping Paper, 2 October 2020) 8.

323 Naudiyal et al (n 322) 15; Lawrence (n 322) 163.

324 Naudiyal et al (n 322) 15; 'Implementation Subcommittee for Food Regulation (ISFR)', *Food Regulation* (Web Page, 22 July 2020) <<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/ISFR>>.

325 *FSANZ Code* (n 320) chs 1–4.

326 This is an obligation under the Council of Australian Governments, 'Food Regulation Agreement' (Intergovernmental Agreement, 3 July 2008) cl 10.

compliance with the *FSANZ Code*, including the creation of food safety programs based on Hazard Analysis and Critical Control Point ('HACCP') principles.<sup>327</sup>

While state and territory authorities oversee the administration and enforcement of state food legislation, local governments do much of the day-to-day inspection and enforcement work, although the division of labour differs in each state.<sup>328</sup> NSW has a dedicated Food Authority located within the Department of Primary Industries,<sup>329</sup> but section 111 of the *Food Act 2003* (NSW) enables the Food Authority to appoint councils as enforcement agencies. Under the Food Regulation Partnership (between the NSW Food Authority and NSW local governments), councils are mainly responsible for the routine inspection and enforcement of retail food businesses, investigating complaints from the community (for example, about food contamination or poisoning) and supporting businesses with technical advice, food safety information, and food handler training.<sup>330</sup> The NSW Food Authority undertakes activities such as licensing, auditing and inspecting food businesses and conducting risk-based surveillance of all food industry sectors, as well as educating businesses and consumers.<sup>331</sup> 'Authorised officers' appointed by enforcement authorities (for example, Environmental Health Officers ('EHOs') in the case of councils) are given a broad range of enforcement powers under the *Food Act 2003* (NSW),<sup>332</sup> including powers to enter food premises, inspect food intended for sale, take samples of food,<sup>333</sup> seize food, vehicles, equipment, packaging, labelling, or advertising material,<sup>334</sup> and issue prohibition or improvement notices.<sup>335</sup>

## **B The Food Regulatory System, Local Governments, And Diet-Related Health**

The Policy Mapping Study found that 96.6% of local governments in NSW and Victoria (ie, 200 out of 207 councils in total) had policy documents containing actions and objectives related to providing education on, and administering and enforcing, food safety regulations.<sup>336</sup> This high figure reflects local governments' well-established role under state food legislation, as described above.<sup>337</sup> Some

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327 See *FSANZ Code* (n 320) ch 3; *Food Act 2003* (NSW) pt 8.

328 Reynolds (n 290) 323, 330.

329 The NSW Food Authority is established under section 107 of the *Food Act 2003* (NSW), with section 108 setting out its powers and functions. See also Reynolds (n 290) 323, 330.

330 NSW Food Authority, *Summary Report of NSW Enforcement Agency Activities in the Retail Food Service Sector for the Period 1 July 2020 to 30 June 2021* (Report) 1–2 <<https://www.foodauthority.nsw.gov.au/retail/inspections/food-regulation-partnership>>. See also Deanne Condon-Paoloni, Heather R Yeatman and Elizabeth Grigonis-Deane, 'Health-Related Claims on Food Labels in Australia: Understanding Environmental Health Officers' Roles and Implications for Policy' (2013) 18(1) *Public Health Nutrition* 81, 83 <<https://doi.org/10.1017/S1368980013003078>>.

331 'About the NSW Food Authority', *NSW Food Authority* (Web Page) <<https://www.foodauthority.nsw.gov.au/about-us/about-the-authority>>.

332 *Food Act 2003* (NSW) s 114 ('*Food Act* (NSW)').

333 *Ibid* s 37.

334 *Ibid* s 38.

335 *Ibid* pt 5.

336 Carrad et al, *Policy Mapping Study* (n 51) 19.

337 *Ibid*.

researchers have recommended that local governments draw on their functions under the food regulatory system to develop initiatives on diet-related health and food system functioning more broadly. One example is flexibly applying the requirements of food safety legislation to facilitate the production and sale of value-added products by small-scale producers (such as jams and juices by fruit farms).<sup>338</sup> The Policy Mapping Study also identified programs promoting the use of healthier cooking oils by food retailers (ie, those lower in saturated fat or trans-fat), drawing on councils' food regulatory functions.<sup>339</sup> In 2013, the Centre for Population Health, Western Sydney Local Health District, undertook a pilot program in conjunction with the Parramatta City Council and the Heart Foundation to determine the types of cooking oils used by independent local food outlets in Parramatta.<sup>340</sup> Council EHOs surveyed the oil being used by 100 outlets during routine food inspections and provided information on healthier alternatives.<sup>341</sup> However, one EHO reported feeling unqualified to give nutrition advice, and there were concerns that the program could distract from the primary (food safety) purpose of inspections.<sup>342</sup>

Apart from the practical challenges involved, there could be jurisdictional concerns about local governments integrating programs on dietary health into their food safety functions. Although playing a critical role in the food regulatory system, this role is focused on administering and enforcing a regime determined largely at a federal (and state) level. While there is some capacity for local government input into the design and content of food regulation via the ISFR (with a representative from the Australian Local Government Association being among its members),<sup>343</sup> the food regulatory system does not envisage local governments independently setting policy direction. Overall, the expansion of the role of the food regulatory system into promoting long-term dietary health (as opposed to addressing the acute health harms posed by food-borne illnesses) is controversial, being one of the subjects of a broad-ranging review of the regulatory system underway at the time of writing.<sup>344</sup>

The food regulatory system is already used to promote good nutrition, as demonstrated by amendments to food laws in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory requiring fast-food chains with 50 or more outlets nationwide to display the average kilojoule content of standard food

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338 Montague (n 72) 23.

339 Carrad et al, *Policy Mapping Study* (n 51) 54.

340 NSW Centre for Population Health, Western Sydney Local Health District and Parramatta City Council, *Parramatta Local Government Area: Cooking Oils Used by Small to Medium Independent Food Outlets* (Report, 2014) ('*Parramatta Local Government Area*'). See also 'Cessnock Healthier Oils Program', *Heart Foundation Healthy Active by Design* (Web Page) <<https://www.healthyactivebydesign.com.au/case-studies/cessnock-healthier-oils-program>>.

341 *Parramatta Local Government Area* (n 340) 6.

342 *Ibid* 12.

343 'Implementation Subcommittee for Food Regulation Membership', *Food Regulation* (Web Page, 15 May 2023) <<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/ISFR-members>>.

344 Nous Group (n 322); 'Modernisation of the Food Regulation System', *Food Regulation* (Web Page, 4 November 2022) <<https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/Modernisation-of-the-food-regulation-system>>.

items on menu boards and product tags or labels.<sup>345</sup> Another example is standard 1.2.7 in the *FSANZ Code*, regulating nutrition, health, and related claims on food labels. However, even here there are concerns that enforcement agencies are not resourced sufficiently and lack appropriate expertise in nutrition to enforce these labelling requirements, which are viewed as a lower priority compared to regulatory requirements on food safety.<sup>346</sup> Leveraging the food regulatory system to improve diet-related health is possible, but fundamental change requires federal and state government action, accompanied by the creation of appropriate resourcing and expertise in state and local government enforcement bodies.

## VI DISCUSSION

Focusing on local government, environment and planning, public health, and food laws, this article has demonstrated that state legislation grants local governments a wide range of powers and functions that can be used by councils to introduce policies and programs on a healthy, sustainable, and equitable food system. The Policy Mapping Study undertaken as part of a larger research project demonstrated that many councils in NSW (and Victoria) are in fact using their powers and functions in this manner, and that their involvement in the food system goes far beyond the food-related activities that traditionally fell within their remit, ie, enforcing food safety regulation and reducing or managing food waste. NSW councils undertake a broad range of initiatives concerned with food growing, distribution, marketing, sale, consumption, and disposal, linked to objectives such as enhancing food system sustainability, addressing food insecurity, and improving dietary health. The Policy Mapping Study also found that councils integrate food system-related objectives and activities into a range of non-food specific policies and plans, including those created under NSW's Integrated Planning and Reporting Framework. There is scope for a greater number of NSW councils to link their food system work together via dedicated, comprehensive food system policies. Overall, however, the extent of local government involvement in food systems suggests that their role in this area has previously been underestimated.

This article has also highlighted areas where there are significant legislative barriers to council involvement in food system governance. The structure of local government legislation in NSW does not appear to permit the use of the rating system to regulate food retail outlets, as has been recommended by some researchers. The Australian literature on food sensitive urban design demonstrates how urban planning can be used to pursue food system-related objectives, but the

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345 See, eg, *Food Act 2003* (NSW) (n 332) s 106N; *Food Regulation 2010* (NSW) pt 2B; Food Regulation Standing Committee, 'Consultation Paper: Review of Fast Food Menu Labelling Schemes' (Consultation Paper, 2018) <[https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/7907D41C6C0BC1E0CA2582280023E04D/\\$File/CPRFFMLS.pdf](https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/7907D41C6C0BC1E0CA2582280023E04D/$File/CPRFFMLS.pdf)>.

346 Condon-Paoloni, Yeatman and Grigonis-Deane (n 330) 85; Lyndall Wellard-Cole et al, 'How Effective is Food Industry Self-Substantiation of Food-Health Relationships Underpinning Health Claims on Food Labels in Australia?' (2019) 22(9) *Public Health Nutrition* 1686, 1688 <<https://doi.org/10.1017/S1368980018004081>>.

NSW *EPAA* and the State's planning system more broadly impede the creation of local planning instruments and planning decision-making that aims to promote diet-related health – particularly in relation to restricting unhealthy food retail outlets.<sup>347</sup> It is difficult for councils to integrate programs on long-term diet-related health into their food safety functions, absent legislative and regulatory reforms at the state and federal level. Further, the absence of a requirement in NSW public health legislation on local public health plans limits the ability of NSW councils to implement food-related public health initiatives.<sup>348</sup> The Focus Group Study also found that the absence of an explicit legislative mandate on food systems, or a comprehensive policy framework at the state and federal level, hampered the ability of councils to develop their own food system policies, and meant that councils had to decide for themselves what food system issues fell within their jurisdiction.<sup>349</sup> It was also perceived as leading to a lack of cooperation between state government departments and agencies with responsibilities in relation to food, with negative flow-on effects for councils' work in this area.<sup>350</sup>

Local governments in the Focus Group Study reported that the absence of dedicated, ongoing funding for food system work at the local level presented a critical challenge to the development and implementation of food system programs and activities.<sup>351</sup> It meant that local government initiatives on food systems were often short term, and limited to the issues on which state government funding was available (rather than funding food systems work more generally), impeding their ability to plan, implement, and evaluate their activities.<sup>352</sup> Local governments found it difficult to fund dedicated food systems positions within council, and to maintain comprehensive, ongoing programs of work.<sup>353</sup> The financial constraints faced by councils are arguably one of the most significant challenges for local governments in expanding their role in contributing to a healthy, sustainable, and equitable food system, given their limited revenue raising ability and the significant, competing demands on their funding base. This is particularly the case following events such as COVID-19, and significant flooding in NSW, which demand further council resources in response.<sup>354</sup> In these circumstances it is understandable that NSW councils – particularly smaller ones with limited budgets – may lack the technical and financial capacity or willingness to develop food system-related policies and programs.

As councils remain 'creatures of the state', despite the significant expansion of their powers and functions in recent decades, their role in food system transformation could be strengthened by legislative and policy change at the state level, accompanied by new state institutional infrastructure, and dedicated sources of funding for food system work. NSW would benefit from a comprehensive,

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347 See also 'Local Innovation in Food System Policies' (n 54) 123–4.

348 *Ibid*; *Food Production and Supply in NSW* (n 108) 11.

349 'Local Innovation in Food System Policies' (n 54) 123.

350 *Ibid*.

351 *Ibid* 128.

352 *Ibid*.

353 *Ibid*.

354 I am grateful to one of the reviewers for this point.



holistic *Food System and Food Security Plan*, that sets objectives and targets at the state level (and evaluates progress against these objectives and targets), and which empowers local governments and communities to set local objectives and targets on priority food system issues, and then work toward their achievement.<sup>355</sup> This could be accompanied by a Food System Council responsible for implementing, monitoring and reporting on the Plan, with membership drawn from relevant state government departments, non-government organisations, food producers, public health experts, Aboriginal and Torres Strait Islander communities and culturally and linguistically diverse groups, and local government representatives.<sup>356</sup> The plan should also be accompanied by dedicated funding that supports ‘core’, ongoing food system activities by local governments, and enables them to address locally relevant food system issues.<sup>357</sup>

Key legislative reforms include amending NSW’s public health legislation to require local governments to develop, implement, and report on local Public Health and Wellbeing Plans (consistent with state-level public health policies), which explicitly set targets and require action on key food system priorities.<sup>358</sup> The State Government should also legislate on climate change – as Victoria has done – thus making clear the links between climate change, food systems, and health. Further, the recommended Public Health and Wellbeing Plans should require councils to act on both climate change and health, with an explicit focus on food systems.<sup>359</sup> NSW should also amend the *EPAA* and key planning instruments (such as the Standard Instrument) to enable local governments to give or refuse approval to food retail outlets based on the healthiness of products sold, and to empower them to consider community health and wellbeing when determining development applications more generally.<sup>360</sup> This could include, for example, legislative amendments that make public health an explicit objective in section 1.3 of the *EPAA*.<sup>361</sup>

## VII CONCLUSION

Drawing on the findings of a four-year research project, this article has explored how NSW local governments use powers and functions granted under state legislation to implement policies and programs that aim to create a healthy, sustainable, and equitable food system. Focusing specifically on local government, environment and planning, public health, and food laws, it has described the legislative basis for the broad array of food system initiatives introduced by local governments, which move far beyond the traditional local government concerns of managing (food) waste and enforcing food safety regulation. However, as

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355 Carrad et al, *Policy Mapping Study* (n 51) 39; *Food Production and Supply in NSW* (n 108) 1.

356 *Food Production and Supply in NSW* (n 108) 1.

357 Carrad et al, *Policy Mapping Study* (n 51) 39.

358 *Ibid*; *Food Production and Supply in NSW* (n 108) 10.

359 Carrad et al, *Policy Mapping Study* (n 51) 39.

360 *Ibid*; *Food Production and Supply in NSW* (n 108) 12–14.

361 See Jennifer L Kent et al, ‘Influencing Urban Planning Policy: An Exploration from the Perspective of Public Health’ (2017) 36(1) *Urban Policy and Research* 20.

‘creatures of the state’, NSW local governments continue to face legislative barriers to action, particularly in relation to regulating unhealthy food retail outlets, with their limited financial resources providing another significant impediment to food systems policies and programs. This article, therefore, concluded with a proposal for reforms to key pieces of state legislation (including urban planning and public health laws), along with the creation of a dedicated state *Food System and Food Security Plan* and administrative body, as well as new sources of funding for ongoing, ‘core’ food systems work. Strengthening state government support in this manner would help to unlock the potential for NSW local governments to further contribute to a healthy, sustainable, and equitable food system.