



4 May 2018

State Council

Agenda

NOTICE OF MEETING

Meeting No.2 of 2018 of the Western Australian Local Government Association State Council to be held at City of Kalamunda, 2 Railway Road Kalamunda on Wednesday 4 May 2018, commencing at 11:00am.

1. ATTENDANCE, APOLOGIES & ANNOUNCEMENTS

1.1 Attendance

Chair	President of WALGA	Cr Lynne Craigie
Members	Deputy President of WALGA, North Metropolitan Zone	Mayor Tracey Roberts
	Avon-Midland Country Zone	Cr Jan Court JP
	Central Country Zone	President Cr Phillip Blight
	Central Metropolitan Zone	Cr Roslyn Harley (Deputy)
	Central Metropolitan Zone	Cr Paul Kelly
	East Metropolitan Zone	Cr Brooke O'Donnell
	East Metropolitan Zone	Cr Kate Driver
	Goldfields Esperance Country Zone	President Cr Malcolm Cullen
	Gascoyne Country Zone	President Cr Cheryl Cowell
	Great Eastern Country Zone	President Cr Stephen Strange
	Great Southern Country Zone	President Cr Keith House JP
	Kimberley Country Zone	Cr Chris Mitchell
	Murchison Country Zone	Cr Les Price
	North Metropolitan Zone	Cr Giovanni Italiano JP
	North Metropolitan Zone	Cr Russ Fishwick JP
	Northern Country Zone	President Cr Karen Chappel
	Peel Country Zone	President Cr Michelle Rich
	Pilbara Country Zone	President Cr Kerry White
	South East Metropolitan Zone	Cr Julie Brown
	South East Metropolitan Zone	Cr Brian Oliver
	South Metropolitan Zone	Cr Doug Thompson
	South Metropolitan Zone	Mayor Carol Adams
	South Metropolitan Zone	Mayor Logan Howlett JP
	South West Country Zone	Cr Murray Scott (Deputy)
Ex-Officio	Local Government Professionals (WA)	Mr Ian Cowie
Secretariat	Chief Executive Officer	Ms Ricky Burges
	Deputy Chief Executive Officer	Mr Wayne Scheggia
	EM Environment & Waste	Mr Mark Batty
	EM Governance & Organisational Services	Mr Tony Brown
	EM Finance & Marketing	Mr Zac Donovan
	EM People and Place	Ms Jo Burges
	EM Infrastructure	Mr Ian Duncan
	EM Business Solutions	Mr John Filippone
	Manager Strategy & Association Governance	Mr Tim Lane
	Executive Officer Governance	Ms Margaret Degebrodt

1.2 Apologies

South West Country Zone	President Cr Tony Dean
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1.3 Announcements

2. MINUTES

Recommendation

That the Minutes of the Western Australian Local Government Association (WALGA) State Council Meeting held on 7 March 2018 be confirmed as a true and correct record of proceedings.

3. DECLARATIONS OF INTEREST

Pursuant to our Code of Conduct, State Councillors must declare to the Chairman any potential conflict of interest they have in a matter before State Council as soon as they become aware of it.

4. EMERGING ISSUES

Notification of emerging issues must be provided to the President no later than 24 hours prior to the meeting.

5. MATTERS FOR DECISION

- As per matters listed
- Items Under Separate Cover to State Council only

6. MATTERS FOR NOTING / INFORMATION

- As per matters listed.

7. ORGANISATIONAL REPORTS

7.1 Key Activity Report

- 7.1.1 Environment and Waste
- 7.1.2 Governance and Organisational Services
- 7.1.3 Infrastructure
- 7.1.4 Planning and Community Development

7.2 Policy Forum Reports

- 7.2.1 Policy Forum Reports

7.3 President's Report

Recommendation

That the President's Report for May 2018 be received.

7.4 CEO's Report

Recommendation

That the CEO's Report for May 2018 be received.

7.5 Local Government Professional's Report

Mr Ian Cowie, President, Local Government Professionals will provide an update on the activities of Local Government Professionals.

8. ADDITIONAL ZONE RESOLUTIONS

To be advised following Zone meetings.

9. MEETING ASSESSMENT

Cr Kate Driver, East Metropolitan Zone, has been requested to provide feedback as to the effectiveness of the meeting.

10. DATE OF NEXT MEETING

Recommendation

That the next meeting of the Western Australia Local Government Association State Council be held on Wednesday 6 June – WALGA Budget Adoption.

11. CLOSURE

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5. MATTERS FOR DECISION

5.1 Submission to ERA – Inquiry into Business Licensing (05-100-04-0001 DM)

By Dana Mason, Policy Manager - Economics

Recommendation

That WALGA's submission to the Economic Regulation Authority Inquiry into Business Licensing be endorsed.

In Brief

- Late last year, the Treasurer tasked the Economic Regulation Authority to undertake an inquiry into reducing the regulatory burden and other economic costs of State Government business and occupational licences (which includes permits and approvals) – including those which are administered by Local Government.
- WALGA has prepared a submission to the ERA which covers both issues for the business operations of Local Government and also its role as a regulator. Members were provided the opportunity to contribute to the submission, though limited response was received.
- The interim submission was provided to the Executive Committee out of session, and has been submitted to the ERA.

Attachment

WALGA Interim Submission to the ERA Inquiry into Business Licensing.

Relevance to Strategic Plan

Key Strategies

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government;
- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;
- Ø Foster economic and regional development in Local Government.

Enhanced Reputation and Relationships

- Ø Communicate and market the profile and reputation of Local Government and WALGA;
- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated;

Policy Implications

The submission reflects related WALGA policy positions.

Budgetary Implications

Nil.

Background

- In late 2017, the Treasurer tasked the Economic Regulation Authority to undertake an Inquiry into reducing the regulatory burden and other economic costs of State Government business and occupational licences. The scope of the Inquiry is broad, and will extend to licences, permits and approvals.
- Although it is focussed on State Government licences, the Inquiry will also examine those which are required under state legislation, but responsibility for administering these has been delegated to Local Government.
- WALGA has prepared a submission which sets out the key issues for Local Government. In developing the submission, WALGA sought feedback from the broader membership but only limited response was received.
- The issues raised in the submission are broad and cover themes such as cost recovery for fees and charges; supporting the capacity of the sector to administer regulations; the appropriate use of risk based regulation; as well as specific regulatory issues related to planning, building, roads and waste.
- The ERA will consider all submissions and release a draft report in September 2018. The sector will have another opportunity to provide comment when the draft report is released.

Comment

In recent years, there has been a growing recognition by the sector of the need to reduce the regulatory burden on business as part of a broader strategy to facilitate economic development. Many Local Governments have economic development strategies, and a number have undertaken reforms to minimise the regulatory burden on business. Further, Local Governments have also signed up to the Small Business Development Corporation's Small Business Friendly Local Government initiative, which includes a commitment to take reasonable action to limit unnecessary administrative burdens on small businesses.

While the need to minimise the overall regulatory burden is recognised, it is important that this does not occur at all costs. Any efforts to reduce regulation should not be at the expense of the broader community. Any regulatory reform program should look to balance these objectives, and ensure that the regulations are proportionate and fit for purpose and that the community is protected. In this regard, it is critical that regulatory reforms (including to licenses) are undertaken on a case by case basis, with the aim to find the most appropriate solution based on the risk to the community.

The Inquiry provides an important opportunity for Local Governments to raise issues of concern both in terms of their own operating activities, as well as issues arising from the role as a regulator.

Overall, WALGA is supportive of the approach that is being taken by the ERA to ensure that regulation is proportionate and appropriate. However, there are a number of sector-specific issues that have been raised which form the basis of WALGA's submission.

WALGA's submission raises the following key issues.

- The need for consultation with Local Governments before transferring any additional regulatory responsibilities. In some cases additional support may need to be provided to the sector to undertake these roles, particularly for Local Governments with limited human or financial resources
- Local Governments are required to set fees and charges for licences that are established under State legislation, which may not be appropriate to recover costs. This creates inefficiencies as it provides inappropriate signals to consumers, and means that these

licensing services are cross-subsidised by all ratepayers. It is appropriate that Local Governments have the freedom to set the level of their fees and charges.

- A risk-based approach to regulation is appropriate to ensure that the community is protected without creating an excessive compliance burden. The transition to a risk-based approach for licensing Local Government Waste Water Treatment Plants is an example of a successful regulatory reform that has streamlined the regulatory process without compromising community safety.
- Issues related to specific areas of regulation. In particular:

Planning

- The lack of cost recovery in fees and charges despite past reviews
- Scope to streamlining application processes
- The use of confusing language related to 'Development Approvals' which implies approval to commence, without regard to other approval that are required in relation to health, building and engineering.
- Rebutting claims that Local Government planning approvals is adding to the costs for developers, and in turn consumers

Building

- The lack of cost recovery in fees and charges despite past reviews
- Scope to streamline application processes for approvals, certificates and notifications
- Duplication issues for building permits for temporary structures
- Concerns that efforts to streamlining processes through the introduction of private certification for building permits failing to adequately protect the interests of consumers

Roads

- Concerns that the WA Utility Providers Code of Practice is not operating as an effective regulatory instrument in relation to the requirement to seek a permit to undertake works within the road reserve or work that will impact on movement of vehicles and pedestrians in the road reserve

Waste

- Concerns related to landfill licenses issued under the *Environmental Protection Act Schedule 1 Prescribed Premises*, including the timeliness of approvals; inconsistencies or unclear information; and lack of focus on risk.

In accordance with State Council policy, the interim submission was referred to the Executive Committee for approval prior to submitting.

Attachment 5.1
WALGA Interim Submission to the ERA Inquiry into Business Licensing.



Inquiry into the reform of business licensing in Western Australia

Interim submission to the Economic Regulation Authority

March 2018

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1. Introduction

The Western Australian Local Government Association (WALGA or the Association) is the peak organisation for Local Government in Western Australia. The Association is an independent, membership-based group representing and supporting the work and interests of 136 mainland Local Governments in Western Australia, plus the Indian Ocean Territories of Christmas Island and Cocos (Keeling) Islands.

The Association provides an essential voice for more than 1,200 Elected Members, approximately 14,500 Local Government employees, and the 2.4 million constituents that they serve and represent. The Association also provides professional advice and offers services that provide financial benefits to the Local Governments.

WALGA is grateful for the opportunity to provide a submission to the Economic Regulation Authority (ERA) Inquiry into the reform of business licensing in Western Australia. While the primary focus of this Inquiry is State Government Licences, Local Governments also face significant costs from out-dated and poorly designed regulations. Further, Local Governments also face unique challenges from issues resulting from their requirement to administer a number of licenses on behalf of the State Government.

WALGA's submission highlights a number of considerations to reduce the regulatory burden on business, including specific examples where the licensing regime may not be delivering optimal outcomes.

Due to meeting schedules, this interim submission has not yet been endorsed by the Association's State Council. The ERA will be informed of any changes to the Association's submission following consideration by the Council.

Findings and Recommendations

- *In recent years, there has been a growing recognition by the Local Government sector of the need to reduce the regulatory burden on business as part of a broader strategy to facilitate economic development.*
- *While the need to minimise the overall regulatory burden is recognised, any efforts to reduce regulation should not be at the expense of the broader community. Regulatory reform should look to balance these objectives, and ensure that the regulations are proportionate and fit for purpose and that the community is protected.*
- *WALGA supports the principles identified by the ERA as to when regulation should be adopted.*
- *After determining that a regulation or licence should be introduced, a key consideration is the level of Government that is best placed to effectively and efficiently administer it. This should be determined based on the principle of subsidiarity.*
- *The State Government must consult with Local Governments before transferring additional regulatory/licensing responsibilities to identify the full costs of administering the regulation. For some Local Governments with limited human or financial resources, the State Government may need to provide additional support to undertake these regulatory responsibilities. This should be factored into any cost benefit assessment.*
- *WALGA supports an assessment of Local Government capacities as part of the regulatory impact analysis for any regulation that envisages a role for the sector.*
- *Local Governments are required to set fees and charges for certain licences at levels that have been established under State Government legislation. While the intention of the legislation is to ensure that fees and charges are specifically limited to recouping the cost of service provision, in practice many of these are now set below cost recovery levels. This creates inefficiencies as it provides inappropriate signals to consumers, and means that these licensing services are cross-subsidised by all ratepayers.*
- *The requirement for Local Governments to administer regulation (including licences) on behalf of the State Government can create an additional financial burden for the sector which is ultimately paid for by the community – including businesses – through higher rates or reductions in services.*
- *WALGA considers that these indirect costs resulting from State Government licenses should be factored into any cost benefit analysis to assess the net benefits of a regulation or licence, and should also be examined by the ERA in investigating options to reduce the regulatory burden and economic costs of State Government business and occupational licenses.*
- *It is appropriate that Local Governments have the freedom to set the level of their fees and charges. In the few cases where legislative restrictions are deemed necessary, they*

should be justified by a clear and logical rationale. Those fees and charges should be reviewed and indexed on an annual basis to ensure they are set at appropriate cost recovery levels.

- *A risk-based approach to regulation is appropriate to ensure that the community is protected without creating an excessive compliance burden.*
- *The transition to a risk-based approach for licensing Local Government Waste Water Treatment Plants is an example of a successful regulatory reform that has streamlined the regulatory process without compromising community safety.*
- *Despite past reviews, fees and charges for planning activities are insufficient to cover Local Government's costs. WALGA considers that a full review of the planning fees and charges is necessary, with a view to bringing fees and charges back to full cost recovery. Further, planning fees and charges should be indexed for future years.*
- *There may be benefits from the standardisation of application processes for all State agencies.*
- *The Service WA initiative recently undertaken by the WA Government Chief Information Officer should be monitored and reviewed to determine its effectiveness in streamlining application processes.*
- *The use of the term 'Development Approval' can be confusing to applicants as it implies approval to commence development, when other approvals in areas such as health, building and engineering are also required.*
- *Despite past reviews, fees and charges for building activities are insufficient to cover Local Government's costs. WALGA considers that the fee for structure applications made under the Building Act should be reviewed with the aim for cost recovery.*
- *The imposition of a penalty in the Building Act for not meeting the processing timeframes is also an unfair impost on the Local Government sector*
- *The requirement for a building permit for temporary buildings and structures could be duplication of the Health Act requirements (Public Building Certificate of Approval), to the extent that a Building Permit has to be issued, and a Health Permit granted for the same temporary structure.*
- *WALGA considers that this issue could be resolved by using a similar approach to other states and territories where building control legislation has clear definitions pertaining to temporary buildings/structures (large tents, marques used for public events etc.)*
- *The introduction of private certification is being pursued by the development industry as a way to reduce the regulatory burden. However, WALGA members have raised concerns that these reforms have the potential to deliver adverse outcomes and open the community up to significant risks.*

- *The WA Utility Providers Code of Practice is not operating as an effective regulatory instrument in relation to the requirement to seek a permit to undertake works within the road reserve or work that will impact on movement of vehicles and pedestrians in the road reserve.*
- *WALGA considers that there is opportunity to strengthen and streamline this process by amending the relevant Regulations and providing for a consistent “front end” process to simplify the task for users while retaining the benefits of a coordinated approach.*
- *WALGA considers that there is scope to reduce the regulatory burden associated with landfill licenses issued under the Environmental Protection Act Schedule 1 Prescribed Premises by using a risk based approach to regulation, and assisting Local Governments and others to understand their compliance requirements.*
- *There may be scope to reduce duplication in relation to the licensing of building safety regulations for licensed premises.*

2. The Role of Local Government

Local Governments play an important role in the economy. They employ more than 22,000 workers, spend more than \$3.9 billion providing services to the community, and manage an asset base worth more than \$45 billion.

In recent years, there has been a growing recognition by the sector of the need to reduce the regulatory burden on business as part of a broader strategy to facilitate economic development. Many Local Governments have economic development strategies, and a number have undertaken reforms to minimise the regulatory burden on business. Further, Local Governments have also signed up to the Small Business Development Corporation's Small Business Friendly Local Government initiative, which includes a commitment to take reasonable action to limit unnecessary administrative burdens on small businesses.

While the need to minimise the overall regulatory burden is recognised, it is important that this does not occur at all costs. Any efforts to reduce regulation should not be at the expense of the broader community. Any regulatory reform program should look to balance these objectives, and ensure that the regulations are proportionate and fit for purpose and that the community is protected. In this regard, it is critical that regulatory reforms (including to licences) are undertaken on a case by case basis, with the aim to find the most appropriate solution based on the risk to the community.

Local Governments are required to administer a significant number of business licences and other regulations on behalf of the State Government. In its consultation papers for the Inquiry, the ERA has identified a range of licences that are administered by Local Government on behalf of the State Government. WALGA has identified some inaccuracies with this list and provides the following feedback in relation to these licences.

- *Residential Codes Variation Approval* – This is no longer a valid certificate as the 2010 version of the Residential Design Codes (SPP 3.1) removed this process.
- *Building Approval Certificate* – These are issued predominantly by Local Governments, not the State Government, therefore the agency responsible should be Local Government as they are the 'Permit Authority' under the Act, not the Department of Mines, Industry Regulation and safety.
- *Building Approval Certificate Strata* – These are issued predominantly by Local Governments, not the State Government
- *Certificate of Building Compliance* - These are issued by Private Building Certifiers, or Local Governments, not the State Government. *Certificate of Construction Compliance* – These are issued by Private Building Certifiers, or Local Governments, not the State Government.
- *Certificate of Design Compliance* - These are issued by Private Building Certifiers, or Local Governments, not the State Government.
- *Building and Demolition Licences* – These are included in the ERA's list of licences, but are a pre-2012 process (legislation has been superseded), and are now called Building and Demolition Permits which are administered by Local Governments under the *Building Act 2011*.

Administering regulations on behalf of the State Government represents a significant proportion of Local Government's regulatory activities. The Productivity Commission's 2012 Research Report on the *Role of Local Government as a Regulator* found that implementing and enforcing state and territory laws, rather than local laws, dominates Local Governments' regulatory workload.ⁱ

While it is recognised that this approach can be the most efficient way to administer these regulations from an economy-wide perspective, in practise it can create a significant burden for the sector and in turn the broader community. When these licensing functions are not appropriately resourced, this can create additional economic costs or imposts on business and the community that are not necessarily taken into account when assessing the net impact of the regulation. This approach can also create confusion in the community about which level of Government is responsible for a particular licence.

As well as being a regulator, the Local Government sector itself is heavily regulated, and can face significant costs when regulations are out-dated and poorly designed. As well as the overarching legislation governing the sector (the *Local Government Act 1995*) the sector must also meet the compliance obligations of a raft of State Government regulations and licences. For example, some of the licences that Local Governments, as a business organisation, are required to comply with are as follows.

- Motor vehicle licence
- Child care service licence
- WA drivers licence
- Special facility liquor licence
- Bulk controlled waste drivers licence
- Bulk controlled waste vehicle/tank licence
- Licence to construct a retaining wall on a waterway
- Aquatic facility operator permit
- Permit to construct, alter, extend an aquatic facility or water body
- Fireworks event permit
- Clearing permit
- Conduct activities in a waterway management area
- Waste collection permit
- Electrical appliance approval
- Approval for activities in marine and harbour development area
- Approval of fittings, fixtures and pipes
- Occupational licensing and registration

WALGA considers that the compliance requirements of Local Governments can also be used to identify areas of concern with current arrangements and provide direction on priority reforms to reduce the burden on businesses.

3. Analytical framework for assessing and designing business licences

WALGA considers that the concepts proposed by the ERA to underpin an analytical framework to assess and design business licences are generally sound. However, the Association believes there are some further design and administration elements that should be taken into consideration by the ERA in developing the analytical framework.

These comments primarily relate to the need to capture the true costs of the regulation or licence as part of any regulatory assessment process.

When is licensing the most efficient way of addressing problems?

Capacity of Local Government as a regulator

WALGA supports the principles identified by the ERA as to when regulation should be adopted. When it has been determined that a regulatory approach is required, WALGA considers that a further important consideration relates to the level of Government that is best placed to administer the regulation.

Governments at all levels need to work together to determine which level is best placed to administer a regulation based on the principle of subsidiarity, and to remove areas of duplication or overlap. The Productivity Commission found that a collaborative approach towards policy development, implementation and funding is critical to identifying opportunities to make real improvements to business regulation.ⁱⁱ

Despite the benefits of this collaborative approach, to date, it does not always occur in practise. Regulatory responsibilities can be delegated from the State Government with no regard for the capacity of individual Local Governments to provide these services.

The State Government must consult with Local Governments before transferring additional regulatory/licensing responsibilities in order to identify the full costs of administering the regulation. Given the diversity of the sector, some individual Local Governments may have limited ability to take on these responsibilities – particularly smaller Local Governments and those in remote regional areas, which suffer from limited financial and human resources. In these circumstances, the State Government may need to provide Local Governments with additional support to undertake these regulatory responsibilities, as well as funding to any cost imposition on Local Government as a result of the additional regulatory responsibilities. These additional requirements should be reflected in any cost benefit analysis of the proposed regulation to understand the true net benefits of its introduction.

The Productivity Commission reinforced the importance of ensuring Local Governments have adequate finances, skills and guidance to undertake these regulatory roles, and that this type of support can reduce the potential for regulations to be administered inefficiently, inconsistently or haphazardly. The Productivity Commission recommended that an assessment of Local Government capacities should be undertaken as part of the regulatory impact analysis for any regulation that envisages a role for the sector. WALGA supports this recommendation.

The State Local Government Agreement which was signed in 2017 is an important step towards facilitating a more collaborative approach. The agreement specifically acknowledges that Local Government is a major stakeholder in many State Government decisions, and sets out a commitment and appropriate timeframes for consultation with the sector when developing, amending or reviewing State legislation and regulations.ⁱⁱⁱ

Key Findings

- *WALGA supports the principles identified by the ERA as to when regulation should be adopted.*
- *After determining that a regulation or licence should be introduced, a key consideration is the level of Government that is best placed to effectively and efficiently administer it. This should be determined based on the principle of subsidiarity.*
- *The State Government must consult with Local Governments before transferring additional regulatory/licensing responsibilities to identify the full costs of administering the regulation. Where appropriate the State should fund the cost of any imposition on Local Government from additional regulatory responsibilities, and for some Local Governments with limited human or financial resources, the State Government may need to provide additional support to undertake these regulatory responsibilities. This should be factored into any cost benefit assessment.*
- *WALGA supports the assessment of Local Government capacities as part of the regulatory impact analysis for any regulation that envisages a role for the sector.*

Interaction between levels of Government

Cumulative Burden of Regulation

The Consultation Paper notes that the ERA's analytical framework will assist to address the cumulative effects of both existing and new business licences. WALGA supports this focus, and agrees that an analytical framework must not just assess the costs and benefits of a new regulation in isolation, but examine the impacts on the broader regulatory context.

The cumulative burden of regulation often comes about because of the regulatory responsibilities of all three levels of Government. WALGA considers that a starting point to reduce the cumulative burden of both and new regulations and business licences is to determine which level of Government is the most appropriate to administer the licence, and to identify areas of duplication that must be eliminated before any new regulation is introduced.

Design Elements

Setting fees and charges

The requirement for Local Governments to administer regulation (including licences) on behalf of the State Government can create an additional financial burden for the sector if there is not an adequate revenue source to fund the associated costs. This additional cost is ultimately paid for by the community – including businesses – through higher rates or reduced services

in order to address this revenue leakage, because of restrictions on the sector's capacity to raise own sourced revenue.

This additional financial burden has been a key issue in recent years as Local Governments have taken on growing responsibility for functions that were previously provided by other levels of Government. The Productivity Commission found that the quantum of responsibilities devolved to Local Governments from the State Government has increased markedly over the previous thirty years, but that these additional roles have not been accompanied by appropriate increases in resourcing. The report found that 18% of Local Governments in WA don't have sufficient resources to undertake their regulatory roles.^{iv}

In relation to business licensing, the key issue relates to the inability to recover costs through fees and charges.

The ERA notes that business licences will be more likely to achieve their purpose, while minimising costs, if fees and charges are set to reflect the value of access to the resource; and if licences that grant permission to undertake a specific activity are set to recover the cost of administration.

The *Local Government Act 1995* (clause 6.16) provides the head of power for a Local Government to set fees and charges for any goods or services it provides. Clause 6.17 outlines the following factors that a Local Government is required to take into consideration in determining the amount of a fee or charge:

- the costs to the Local Government of providing the service or goods;
- the importance of the service or goods to the community; and
- the price at which the service or goods could be provided by an alternate provider.

Clause 6.17(3) also outlines that the fee or charge for receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate must be based on the cost of providing that service.

Clause 6.18 further restricts Local Governments from charging a fee that is different to a fee imposed under another written law. This means that Local Governments are required to set fees and charge at levels that have been established under State Government legislation. Further, Local Governments cannot impose a fee or charge if doing so is prohibited under another written law. Some examples of these licences/approvals/permits include:

- Camping Ground Licence (*Caravan Parks and Camping Grounds Regulations 1997*)
- Transit Park Licence (*Caravan Parks and Camping Grounds Regulations 1997*)
- Approval for camping on private or unapproved land (*Caravan Parks and Camping Grounds Regulations 1997*)
- Caravan Licence (*Caravan Parks and Camping Grounds Regulations 1997*)
- Licence to be an approved kennel establishment (*Dog Regulations 2013*)
- Planning Approvals issued under the Local Planning Scheme, as prepared under the *Planning and Development Act 2005* (the planning fees and charges are set under the *Planning and Development Regulations 2009*)

- Building Permits (*Building Act 2011*).
- Strata title clearances (*Strata Titles General Regulations 1996*)

While the intention of the legislation is to ensure that fees and charges specifically limited to recouping the cost of service provision, this is not the case in practice for some licences. A number of fees and charges are now set below cost recovery levels, as a result of:

- lack of indexation;
- lack of regular review (fees may remain at the same nominal levels for decades, e.g. Dog licensing fees); and
- lack of transparent methodology in setting the fees (fees do not appear to be set with regard to appropriate costs recovery levels).

Further detail on the specific licences where fees are not set to recover costs is provided later in the submission.

Concerns with fees and charges being set below cost recovery were identified by the Productivity Commission, which found that Local Governments are denied an efficient source of income, and that fuller cost recovery could lead to better overall outcomes, achieving a more rational balance between ratepayers (both commercial and residential) and service users. ¹⁷ The inability to recover costs through fees and charges sends inappropriate signals to users of these services, particularly when the consumption of those services is discretionary.

Further, this additional financial impost is ultimately paid for by the community – including businesses – through higher rates or reduced services in order to address this revenue leakage. This is because the only source of taxation revenue that is available to the sector at its own discretion is rates, which must be used to fund the myriad of services expected by the community.

The requirement to recover the cost of administering State Government regulations including licensing through the rate base adds to overall business costs and leads to inefficient outcomes to the extent that all ratepayers subsidise the provision of services that are only used by a few.

In addition, there are also a range of fees and charges that Local Governments collect on behalf of other agencies. Some examples include DAP application fees (under the *Planning and Development (Development Assessment Panels) Regulations 2009*), the Building Services Levy, and Construction Training Fund Levy. For some of these, Local Governments receive a fee for undertaking this role, while for others no fee is available to assist with the associated administration costs.

WALGA considers that the indirect costs resulting from State Government licences should form part of any cost benefit analysis to assess the net benefits of a regulation or licence, and should also be examined by the ERA in investigating options to reduce the regulatory burden and economic costs of State Government business and occupational licenses.

As a general principle, WALGA considers that Local Governments should have the freedom to set the level of their fees and charges, and to recover costs associated with administering licences. In the few cases where legislative restrictions on fees and charges are deemed necessary, they should be justified by a clear and logical rationale. In these circumstances, fees and charges should be reviewed on a regular basis to ensure they are set at appropriate cost recovery levels.

If fees cannot be reviewed on an annual basis, then indexation should be used in the intervening years to ensure the cost recovery levels of fees and charges are not eroded by inflation. This could be achieved by indexing fees and charges to an appropriate measure of price escalation, such as the Local Government Cost Index.

Findings

- *The current arrangements mean that Local Governments are required to set fees and charges for certain licences at levels that have been established under State Government legislation.*
- *While the intention of the legislation is to ensure that fees and charges are specifically limited to recouping the cost of service provision, in practice many of these are now set below cost recovery levels. This creates inefficiencies as it provides inappropriate signals to consumers, and means that these licensing services are cross-subsidised by all ratepayers.*
- *WALGA considers that these indirect costs resulting from State Government licenses should be factored into any cost benefit analysis to assess the net benefits of a regulation or licence, and should also be examined by the ERA in investigating options to reduce the regulatory burden and economic costs of State Government business and occupational licenses.*
- *It is appropriate that Local Governments have the freedom to set the level of their fees and charges. In the few cases where legislative restrictions are deemed necessary, they should be justified by a clear and logical rationale. Those fees and charges should be reviewed and indexed on an annual basis to ensure they are set at appropriate cost recovery levels.*
- *The requirement for Local Governments to administer regulation (including licences) on behalf of the State Government can create an additional financial burden for the sector which is ultimately paid for by the community –including businesses –through higher rates or reductions in services.*

Risk based regulation

WALGA considers that licensing –like other forms of regulation –should be proportionate, using a risk based approach that weighs up the likelihood of the risk with the consequences. In some circumstances where there is a high risk or potentially significant impact to the community, licensing or other regulatory approaches may be appropriate. In other

circumstances, alternative policy approaches such as education or voluntary codes of compliance may suffice.

In looking at reducing the burden of business licences, WALGA considers that it is important that the risks to the community are taken into consideration.

One example of successful reform that introduced a risk based approach to reduce the burden of licensing relates to Local Government managed wastewater treatment plants (WWTPs).

In 2010 WALGA commenced work with the (then) Department of Water in exploring a risk based approach to the licensing of Local Government managed WWTPs, with a view to reducing red tape and generating substantial audit and administrative cost savings to Local Government, without compromising the public interest.

There are currently 20 Local Governments providing wastewater treatment services for their communities. These providers are typically small shires, the majority of which have fewer than 500 connections, with the notable exception being the City of Kalgoorlie-Boulder, which has in excess of 14,000 connections.

Under a one-size fits-all regulatory approach, Local Governments were subject to both State Government licence fees, and audit costs, with the audits provided by the private sector, overseen by the ERA. In many instances, the cost of undertaking the licensing regime exceeded the revenue generated from the provision of the service. Audits were conducted more frequently where non-compliances were recorded, with the majority of non-compliances related to asset management and financial requirements, rather than the actual functioning of the WWTPs themselves. For example, in 2013, the Shire of Brookton (with only 213 connections) spent 50% of the operating cost of its water service in meeting its respective audit and compliance costs.

Following advocacy by the sector and WALGA in 2015, the Minister for Water requested the Department undertake a public interest assessment, as required under section 7 of the *Water Services Act (2012)*.

The outcome was that in April 2016, an exemption was granted to all but 5 Shires. Those Shires continue to be regulated by the ERA in accordance with the *Water Services Act*, and are working with the Department to resolve the asset management deficiencies that precluded their exemption. Due to the amount of connections, the City of Kalgoorlie Boulder was not considered for a class exemption.

The outcome is that those Shires with a class exemption are now meeting a streamlined reporting regime to the Department of Water and Environment Regulation, are not compromising the public interest, and have improved the financial viability of their schemes, as the audit and compliance cost savings are now underpinning their asset and financial management requirements in providing a sustainable scheme for their communities.

Key findings

- *A risk-based approach to regulation is appropriate to ensure that the community is protected without creating an excessive compliance burden.*
- *The transition to a risk-based approach for licensing Local Government Waste Water Treatment Plants is an example of a successful regulatory reform that has streamlined the regulatory process without compromising community safety.*

4. Identifying Priority Areas of Reform***Issues arising from business licensing schemes - Priority Areas of Reform******Planning***

The *Planning and Development Act 2005* is the primary legislation governing planning and development in Western Australia. Local Governments have responsibilities under this legislation for preparing and administering local planning schemes and strategies, and are also responsible for approval of a range of development proposals on behalf of the State Government as set out in the *Planning and Development Regulations 2009*.

Fees and charges

The primary issue in relation to planning approval activities relates to the associated fees and charges. Most fees and charges applied by Local Governments for planning and development approvals are set under Part 7 of the *Planning and Development Regulations 2009*. The Regulations can be amended by the Minister for Planning and up until 2013, fees were generally increased by movements in the Consumer Price Index (CPI).

However, the Parliamentary Joint Standing Committee on Delegated Legislation decided not to not approve a fee increase in 2012-13, on the basis that Consumer Price Index was no longer considered to be an appropriate inflator for planning fees. Instead, the Committee recommended to the then Minister for Planning that fee increases or changes must be based on the Western Australian Treasury 'Guidelines for Costing and Pricing Government Services'.

A review of planning fees was undertaken in 2013, and WALGA assisted in this process to quantify the cost of administering the regulations, given the complexity of cost structures across Local Governments. A working party of eight local governments was formed to assist with this process. WALGA's research found that:

- If the State wishes to continue to regulate fees for services provided by Local Governments for various planning assessments and approvals, the type, categories and amounts of fees and charges set under the *Planning and Development Regulations 2009* should be reexamined.
- The current levels and types of fee have some relationship to the work involved in dealing with the various types of applications, however, there are some inadequacies:

- The current system is the result of negotiation and compromise rather than being based on a notion of fee for service or cost recovery;
- In most cases the cost to undertake the work required is more than the regulated fee;
- In higher value or complex applications, applicants tend to seek out local government planning staff for advice and identify/resolve issues before application. On the surface this makes the cost to process higher value applications appear less as the time (and hence cost) spent in these discussions is not recorded or recovered.

The Review recommended that planning fees be increased by the Consumer Price Index for both the 2012-13 and 2013-14 financial [years](#).^{vi} In line with the Planning Bulletin 93/2013 the base fee in each category was increased from 1 July 2013 by the cumulative two year Consumer Price Index rate of 6.25%, however the percentage rates did not change.^{vii}

As a result, there remains a shortfall in cost recovery for planning fees. This was identified as a key area of cost shifting by Local Governments in a WALGA survey in 2017. The survey found that the shortfall for planning activities is costing individual Councils between \$5,000 per annum up to \$1.8 million. While it was not possible to quantify the proportion that related to planning approvals, anecdotally members nominated the freeze on planning fees and charges since 2013 as a key concern. One member indicated that the shortfall in cost recovery for planning approvals is approximately 42%.

WALGA considers that a full review of the planning fees and charges is necessary, with a view to bringing fees and charges back to full cost recovery. Further, planning fees and charges should be indexed for future years.

Key findings

- *The lack of contemporary and regular reviews has resulted in fees and charges for planning activities being insufficient to cover Local Government's real costs.*
- *WALGA considers that a full review of the planning fees and charges is necessary, with a view to bringing fees and charges back to full cost recovery. Further, planning fees and charges should deregulated, or at a minimum be indexed for future years.*

Application processes

Anecdotal feedback from WALGA members has suggested that there may be benefits from the standardisation of application processes for all State agencies. Local Governments have raised concerns about the number of differing application forms depending on the legislation process. For example, the Department of Water and Environmental Regulation have 25 applications forms,^{viii} Main Roads WA has 22 forms,^{ix} the Department of Biodiversity, Conservation and Attractions also has numerous formats and forms with the merger of the different Departments.^x

It is understood that the WA Government Chief Information Officer is examining options for public sector agencies to work towards aligning their business functions to improve service delivery to the community as part of the Service WA initiative. WALGA considers that this

should be monitored and reviewed to determine its effectiveness in streamlining application processes.

A further anecdotal issue that has been raised by WALGA members relates to the interactions with licensees during the application process. Local Governments have raised concerns that the use of the language ‘Development Approval’ under the *Planning and Development Act 2005* can be confusing to applicants. Although legally correct, this language can confuse people into thinking that they have approval to commence development just with the issuing of the Planning approval, when other approvals in areas such as health, building and engineering are also required before any works can commence on a site.

Key Findings

- *There may be benefits from the standardisation of application processes for all State agencies.*
- *The Service WA initiative recently undertaken by the WA Government Chief Information Officer should be monitored and reviewed to determine its effectiveness in streamlining application processes.*
- *The use of the term ‘Development Approval’ can be confusing to applicants as it implies approval to commence development, when other approvals in areas such as health, building and engineering are also required.*

Approval Timeframes

In recent years, concerns have been raised that the time taken for Local Government planning approvals is adding to the costs for developers, and in turn consumers. In particular, the Property Councils 2016 Benchmarking Greater Perth Local Governments report stated that the bulk of councils in Greater Perth fell well below the requirements for a best practice planning system.^{xi} These concerns have also been echoed in recent times by the Urban Development Institute of WA.^{xii}

WALGA research does not support these claims. In response to these concerns, the Association recently undertook a project to assess the performance of the planning and building functions of 11 metropolitan Local Governments in the 2016/2017 financial year, which shows that Local Governments are achieving their planning functions. These Local Governments represent 54% of the total population of greater Perth, and accounted for 70% of the region’s growth between 2011 and 2016. The results show that 98% of all applications were approved or responded to within the statutory timeframes.

It is recognised that this study captures only a proportion of the Local Government sector, and WALGA is in discussion with other Councils for more Local Governments to participate in this monitoring project. WALGA would welcome the opportunity to work with the State Government to progress a more transparent review of the entire planning and building process, which would allow our Members the opportunity to provide greater input and feedback into any findings and methods of assessment.

Key Findings

- *WALGA research does not support claims that the time take for Local Government planning approvals is adding to the costs for developers, and in turn consumers.*
- *WALGA would welcome the opportunity to work with the State Government to progress a more transparent review of the entire planning and building process.*

Building

In Western Australia, the building approvals process is legislated under the *Building Act 2011*. Under this legislation, Local Governments often have significant responsibilities for licensing activities. Local Governments are frequently delegated with authority over the construction, occupation and demolition of building and incidental structures and are responsible for granting permits enforcing compliance with these. The 'licences' that Local Governments may be responsible for administering are as follows. :

- Building Approval Certificate
- Building Approval Certificate Strata
- Certificate of Building Compliance
- Certificate of Construction Compliance
- Certificate of Design Compliance
- Building and Demolition Permits
- Temporary Occupancy Permit for Incomplete Building

Since the implementation of the *Building Act*, there have been a number of issues raised by Local Governments that are preventing the sector from implementing the Act with clarity and consistency, which may be creating adverse outcomes for businesses.

Fees and Charges

The fees charged for building applications are among State-determined fees and charges. Building permit and demolition fees are legislated through the *Building Act 2011* and can be found in Schedule 2 of the *Building Regulations 2012*.

The building fees that were adopted in 2012 under the new regulations were not on the basis of cost recovery, but merely transferred across an existing fee structure that existed before the Building Act was introduced. This resulted in most Local Government building Departments losing around 30-40% of their revenue as a result of no longer receiving applications fees to certify Class 2-9 applications. At the same time, the new Act also resulted in an increase in administrative requirements.

Local Government building fees are still below cost recovery, despite a review that was undertaken by the former Department of Commerce in 2015. One WALGA member indicated that the Building Approvals function recovers approximately 70% of its costs. The inability to charge on a cost recovery basis means that the applicant is not paying for the assessment, rather it is a combination of the applicant and the ratepayer, with the ratepayer picking up the shortfall.

Subsequent to this review, the fees relating to the Building Commissions functions were updated on 23 June 2017. ^{xiii}

WALGA has concerns that this review focussed primarily on building fees imposed by the State Government, rather than Local Government fees. To this end, the Review resulted in a 1% increase to Local Government fees which was insufficient to ensure cost recovery, whereas the Building Commission fees increased by more than 50%, as the Building Services Levy increased by 0.047%, from 0.09% to 0.137%.^{xiv} The Government advised the public that the 0.047 per cent increase in the building services levy represented an increase in the levy rate for a \$200,000 house from \$180 to \$275, while the Local Government fee only increased 1% to \$380, and the Construction Training Fund is now \$400. Local Government provides the processing of the application, and forwards the other fees to the other agencies, retaining only \$5 per application as an administrative fee.

The imposition of a penalty in the Building Act for not meeting the processing timeframes of 10 days (Certified Application) or 25 days (uncertified), is also an unfair impost on the Local Government sector that results in a refund of the fee to the applicant. Section 23 (4) of the Act states

- (4) If the permit authority has not made a decision within the time mentioned in subsection (1) or (2) —
- (a) the permit authority must refund to the applicant the fee mentioned in section 16(l) that accompanied the application; and
 - (b) the amount of the fee paid is recoverable in any court of competent jurisdiction as a debt due to the applicant.

If the timeframe is exceeded, the Local Government is still required to process the application, make a decision, and refund the money. This is a substantial burden placed on the building departments to meet the regulated timeframes. A local government may not meet the timeframe due to a variety of issues, lack of staff, staff on leave (annual/sick) or due to an increase in the volume of applications being lodged

WALGA considers that the fee for structure applications made under the Building Act should be reviewed with the aim for cost recovery.

Key Findings

- *Despite recent reviews, fees and charges for building activities are insufficient to cover Local Government's costs.*
- *The imposition of a penalty in the Building Act for not meeting the processing timeframes is also an unreasonable requirement given the demonstrated performance of the sector*
- *WALGA considers that the fee for structure applications made under the Building Act should be reviewed with the aim of achieving full cost recovery for Local Governments.*

Application process

Since the introduction of the *Building Act* in 2012, there are now more than 19 application forms for approval, certificates or notifications. There may be scope to streamline the process to apply for building licences.

For example, WALGA considers that all strata forms should be consolidated in to a single application and one certificate issued to avoid any confusion in the approvals process. The current approach creates confusion by referring to two forms as an 'Occupancy Permit – Strata' and 'Building Approval Certificate – Strata' under the *Building Act*, while there are several other similarly worded forms that also exist under the *Strata Titles Act*. There may be opportunity to progress this reform as part of the review of the *Strata Titles Act*.

Key Finding

- *There may be scope to streamline the process to apply for building licences, such as the consolidation of all strata forms in to a single application with one certificate issued.*

Temporary Buildings

Section 69 of the *Building Act 2011* requires a building permit for temporary buildings and structures. To clarify the application of this section, WALGA has viewed legal advice provided to a Member Local Government that states 'Marquees, tents and other similar structures which members of the public will use (or are using) are buildings and will require a building permit.'

This interpretation means that there could be duplication of the Health Act requirements (Public Building Certificate of Approval), so in effect, a Building Permit has to be issued, and a Health Permit granted for the same temporary structure.

WALGA members consider that this issue could be resolved by using a similar approach to other states and territories where building control legislation has clear definitions pertaining to temporary buildings/structures (large tents, marques used for public events etc.).

Members have pointed towards Victorian legislation, where an occupancy permit for such a structure is made to the Victorian Building Authority and is considered under the auspices of the Australian Building Codes Board (ABCB) Temporary Structures Standard 2015. This standard does "borrow" a number of Building Code of Australia (BCA) requirements to help ensure a "safe" temporary structure (structural adequacy, some fire safety provisions, emergency exits & emergency exit lighting).

In Queensland the use of the Queensland Development Code (QDC) contains provisions for "temporary tents" which is used for public events. The QDC also borrows some BCA time provisions. In fact the ABCB temporary structures standard in Appendix B contains a good summary of all state and territory legislative requirements for these types of structures and how they are addressed.

WALGA understand that the Building Commission are obtaining legal advice from State Solicitors Office on this matter, and that a Bulletin will subsequently be prepared based on the advice received.

Key Findings

- *The requirement for a building permit for temporary buildings and structures could be duplication of the Health Act requirements (Public Building Certificate of Approval), to the extent that a Building Permit has to be issued, and a Health Permit granted for the same temporary structure.*
- *WALGA considers that this issue could be resolved by using a similar approach to other states and territories where building control legislation has clear definitions pertaining to temporary buildings/structures (large tents, marques used for public events etc.)*

Private Certification processes – Planning and Building

The introduction of private certification is being pursued as a way to reduce the regulatory burden. However, WALGA members have raised concerns that these reforms have the potential to deliver adverse outcomes and open the community up to significant risks.

The introduction of the *Planning and Development (Local Planning Schemes) Regulations 2015* allowed for a low risk form of private certification for the assessment of development applications. This was done by providing for an exemption from a development approval in clause 61 through self-assessment of compliance with the Residential Design Codes (R-Codes) deemed-to-comply requirements and relevant local planning scheme requirements.

This partial private certification process aimed to allow for third party technical assessment by private building certifiers while still requiring all building permits to be issued by the relevant Local Government.

There have been issues with this reform, which have meant that it may not be delivering the best outcomes. Many WALGA members cite the example of private certifiers who issue Certificates of Design Compliance without ensuring compliance with the RCodes or the Local Planning Scheme requirements, and will simply lodge their application for a Building Permit. Local Governments are concerned that the community expect the sector to carry out this 'precheck' or 'compliance' work but with no ability to charge for this service. Local Governments find it difficult to recover costs. The Local Government has no choice but to return the application/or refuse it, until the Planning Issues have been addressed. The Form associated with this process (Form 6 under the *Local Planning Scheme Regulations*) is not used by applicants or supported by Local Governments, as it does not provide any confidence that the planning requirements have been met.

Further, in recent years there has been a push towards full private certification of building permits. Supporters of the private certification process claim that allowing private operators to both assess applications and issue permits will reduce costs and streamline the process, however there are fears it could lead significant conflicts of interest for private building certifiers and an increase in Professional Indemnity Insurance. The supporters of full private certification do not include the costings for the inclusion of mandatory inspections, as occurs in other States with full private certification systems, so it is not clear how they cost savings would occur if at least 4 or more inspections will be required. There is strong agreement among Local

Governments about the need to introduce a mandatory inspection framework, but only if it meets community expectations and protects the end consumer.

WALGA considers that Local Government should remain the permit authority to keep the separation between the technical assessment and the final permit issuing. This would reduce the conflict of interests for private building certifiers and maintains community expectations that an independent and impartial authority will be issuing the approval.

Key Finding

- *The introduction of private certification is being pursued as a way to reduce the regulatory burden. However, WALGA members have raised concerns that these reforms have the potential to deliver adverse outcomes and open the community up to significant risks.*

Roads

Local Governments are responsible for land vested in road reserves under the *Land Administration Act 1997* and the *Local Government Act 1995*. The Commissioner of Main Roads has authority to erect traffic control signals and road signs under Section 297 of the *Road Traffic Act 2000*. This authority may be delegated to an authorised body such as a Local Government in certain circumstances.

To effectively discharge their responsibilities to manage safety and congestion, Local Governments issue permits to third parties such as utility companies, builders and others seeking to undertake works within the road reserve or work that will impact on movement of vehicles and pedestrians in the road reserve. The Permit requirements include ensuring that the party undertaking the work has appropriate traffic management plans in place and the plans of one party do not impact on the concurrent plans of another.

The WA Utility Providers Code of Practice is published by the Utility Providers Services Committee to document industry best practice and provide essential information and guidance in managing and undertaking street works associated with the provision of underground utility services in public road reserves. The Code refers to the requirement to seek a Permit for traffic management and safety in order to work in the road reserve. However, feedback from WALGA members is that this Code is not operating as an effective regulatory instrument, given that some businesses are not adhering to the requirement to seek a Permit to work in the road reserve.

This is opening the community up to additional risk, and contributing to delays and disruptions. Without co-ordination, the risk of negative impact on residents and others moving through the area is significant.

WALGA considers that there is opportunity to strengthen and streamline this process by amending the relevant Regulations and providing for a consistent front end” process to simplify the task for users while retaining the benefits of a coordinated approach.

Key findings

- *The WA Utility Providers Code of Practice is not operating as an effective regulatory instrument in relation to the requirement to seek a permit to undertake works within the road reserve or work that will impact on movement of vehicles and pedestrians in the road reserve.*
- *WALGA considers that there is opportunity to strengthen and streamline this process by amending the relevant Regulations and providing for a consistent "front end" process to simplify the task for users while retaining the benefits of a coordinated approach.*

Waste

WALGA considers that there is scope to reduce the regulatory burden associated with landfill licenses issued under the *Environmental Protection Act Schedule 1 Prescribed Premises*. WALGA members have raised a number of concerns in relation to the regulatory burden associated with this licences.

- *Approval timeframes* - The current licence is quite lengthy, with one member reporting that they have been waiting for about 8 months already for a license renewal that has not been completed yet.
- *Regulation is not always proportionate to the risk* - In recent times the regulator applied stringent rules on the whole composting industry because of one bad operator instead of addressing the issues with the relevant operator.
- *Inconsistencies or unclear information* – Members have reported that there are inconsistencies among the licence conditions of the different landfills in WA, and that there is often not clear explanation or examples to assist Local Governments to understand regulations supporting licenses. An example of the lack of supporting information was when the landfill flare was included on the Certificate of Approval licence. A testing regime from the United States was adopted for pollution testing without sufficient explanation to assist Local Governments to understand what levels of pollution would be acceptable. The sector is required to provide the test results without this broader context about acceptable levels.

The key issue with licences issued under this schedule is that there is no guidance for the applicant on what approaches are needed and how risk will be considered by the Department of Water and Environmental Regulation (DWER).

Notwithstanding these issues, the DWER is considered to be approachable and willing to work with the sector.

WALGA worked with the DWER on the development of Environmental Standards for small rural landfills. A Draft was developed and WALGA sought permission to road test it with the Shire of Koorda on the development of their landfill. The site was taking a very small amount of waste (250T/annum) and in a low risk location. The licensing process took around a year to complete. The determination on the site was over 50 pages in length, and outlined every

possible risk, rather than simply noting that the site met the requirements of the Environmental Standards.

WALGA considers that a risk based approach would help to streamline this process and reduce approval timeframes.

Another issue related to waste raised by WALGA members relates to requirements under the *Contaminated Sites Act 2003*. Although the process under the legislation is clear, and officers at the Department Water, Environmental Regulation are available to assist, it is considered that more guidance for the Local Government sector in relation to its responsibilities under the Act, and opportunities to limit cost in investigation and remediation work would be of benefit to the sector. For example, a historical unlined landfill could have a specific investigations guideline (produced by the DWER), that Local Government can use when preparing and assessing tenders.

Key Findings

- *WALGA considers that there is scope to reduce the regulatory burden associated with landfill licenses issued under the Environmental Protection Act Schedule 1 Prescribed Premises by using a risk based approach to regulation, and assisting Local Governments and others to understand their compliance requirements*
- *Additional guidance materials would assist Local Government to meet their requirements under the Contaminated Sites Act.*

Health

Local Governments enforce the *Health (Public Buildings) Regulations 1992*, which involves building safety, emergency lighting, risk management plans, seating safety, exit doors not being obstructed, fire rating of curtains, cleanliness of premises for public buildings such as recreation centres, churches, events and licensed premises.

These activities duplicate those undertaken by the Office of Racing, Gaming and Liquor (ORGL) in relation to licensed premises. One option that could be explored is the ORGL to be the lead agency in relation to licensed premises, and remove the Local Government from regulating these premises (pubs, clubs and large licensed premises). This would reduce duplication of services and potentially be a cost saving to industry.

Key Findings

- *There may be scope to reduce duplication in relation to the licensing of building safety regulations for licensed premises.*

5. Conclusion

Regulatory reform is an important objective in order to reduce the cost on business, but it is not a straightforward task. Any efforts to reduce the burden of State Government licensing must be undertaken in a collaborative way, with appropriate consultation, as set out in the State Local Government Agreement.

Like any policy changes, regulatory reform must be considered in the context of the Federation, and the most appropriate level of Government to administer a regulation. As the closest level of Government to the community, there are often cases where there are broader economic efficiency benefits by delegating administration of a regulation to Local Government. However, the practical implications of this must also be considered given the constraints on the sector's ability to raise own sourced revenue.

In circumstances where it is deemed that it is appropriate for Local Government to administer State Government regulations, it is important that the autonomy of the sector is preserved, and that appropriate resources are provided. A failure to do so can impact on the financial viability of the sector, and create an additional financial burden for the broader community.

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5.2 Interim Submission – Development Control Policies 1.1, 1.2, 1.7, 2.5, and 5.1 (05-073-02-0001 CH)

Christopher Hossen, Senior Planner – People & Place

Recommendation

That the interim submission to the WA Planning Commission on Development Control Policies 1.1, 1.2, 1.7, 2.5, and 5.1 be endorsed.

In Brief

- On 3 January 2018, the Western Australian Planning Commission (WAPC) released revised versions of five Development Control Policies for public comment: -
 - 1.1 Subdivision of Land – General Principles (DCP1.1),
 - 1.2 Development Control – General Principles (DCP1.2),
 - 1.7 General Road Planning (DCP1.7),
 - 2.5 Special Residential Zones (DCP2.5), and
 - 5.1 Regional Roads (vehicular access) (DCP5.1).
- The revised Development Control Policies aims to provide guidance on planning decisions and applications.
- The public comment period closed on the 23 March 2018, therefore an interim submission was prepared.

Attachment

Interim Submission – Development Control Policies 1.1, 1.2, 1.7, 2.5, and 5.1

Relevance to Strategic Plan

Key Strategies

Sustainable Local Government

- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;

Enhanced Reputation and Relationships

- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated;

Policy Implications

Nil.

Budgetary Implications

Nil.

Background

The WAPC sought public comment on proposed changes to a variety of Development Control Policies (DCPs). DCPs form a lower 'non-statutory' place in the State Planning Framework, and seek to guide decision makers in relation to planning applications. The changes to the DCPs amount to an update redesign of the Policy in line with the current style guide of the Department of Planning, Lands and

Heritage (DPLH), further to this there is a general cleaning-up' of legislative references due to the length of time some policies have been in operation.

The DCPs subject to the consultation cover range of policy areas. A brief background on the role of each DCP is provided below

Development Control Policy 1.1 Subdivision of Land – General Principles

DCP 1.1 sets out the general principles, which will be used by the Western Australian Planning Commission (WAPC) in determining applications for the subdivision of land. It also indicates the basic requirements for the creation of new lots and the procedures the WAPC will follow in processing subdivision applications. Matters within DCP1.1 should be read alongside other policies which are concerned with the more detailed aspects of lot creation for particular land uses, particularly Liveable Neighbourhoods.

Development Control Policy 1.2 Development Control – General Principles

DCP1.2 deals with the general principles and policies used by the Western Australian Planning Commission (WAPC) in its determination of applications for approval to commence development. This policy states in plain terms the development approval requirements in respect of land the subject of metropolitan and other region schemes. This policy applies to areas covered by the Metropolitan Region Scheme (MRS), the Peel Region Scheme (PRS) and Greater Bunbury Region Scheme (GBRS). It reflects the principles for development established through the State Planning Policy No.1: State Planning Framework

Development Control Policy 1.7 General Road Planning

DCP1.7 brings together all other operational planning policies of the WAPC which apply generally to the planning of roads. DCP1.7 establishes the requirements for land contributions and the construction of various categories of roads and outlines principles that apply to aspects of the planning and provision of all types of roads. Further to this, it also clarifies the role of roads as service corridors for public utilities. The policy reflects the WAPC's responsibility for planning and protecting regional road reserves in accordance with the MRS, PRS and GBRS, and providing adequate road access to individual lots via the subdivision process.

Development Control Policy 2.5 Special Residential Zones

DCP2.5 sets out the overarching principles that are to be considered in the provision of residential dwellings in Special Residential Zones. In the past Special Residential Zones have been applied through Local Government Local Planning Scheme with the following objectives:

- to provide for lot sizes in the range of 2,000 square metres and 1 hectare;
- to ensure development is sited and designed to achieve an integrated and harmonious character.
- to set aside areas where the retention of vegetation and landform or other features which distinguish the land, warrant a larger residential lot size than that expected in a standard residential zone.

DCP2.5 now provides for a general presumption against planning for this type of residential land use and development because Special Residential zones are less efficient in both the use of land and utilisation of services when compared with conventional residential subdivisions. This has been position of the WAPC for a number of years, and is being formalised through the update to DCP 2.5.

Development Control Policy 5.1 Regional Roads (vehicular access)

DCP5.1 addresses matters relating to the control of development adjacent to regional roads, and provides information and guidance in planning for, and determining applications which include, vehicular access to regional roads. It sets out the principles to be applied when considering proposals for vehicle access to or from developments abutting regional roads. It is intended to inform government agencies, local government and prospective developers of these principles and to act as guidelines for the exercise of development control powers in this regard.

Comment

The release of the draft Policies is welcomed by the Association as the State Government is seeking to modernise and improve these lower order planning policies. The Association, through the interim submission, has raised some issues in relation to a number of aspects of the draft Policy. None of these go to any fatal flaws in the draft Policies, with the recommendations for improvements to the policies in the Interim Submission, being mainly technical in nature.

The public comment period closed on 23 March 2018, therefore an interim submission was prepared. Formal comments on this revised policy were received from the Cities of Cockburn and Kalamunda. Feedback from members was incorporated into the WALGA interim submission.

In accordance with State Council policy, the interim submission was referred to the People & Place Policy Team for input and to the Executive Committee for approval. The interim submission was submitted to the WAPC to meet the public comment period deadline of 23 March 2018.

Attachment 5.2
Interim Submission – Development Control Policies 1.1, 1.2, 1.7, 2.5, and 5.1



INTERIM SUBMISSION TO THE DEPARTMENT OF PLANNING, LANDS AND HERITAGE

Development Control Policies

- DCP 1.1 - Subdivision of Land-General Principles
- DCP 1.2 - Development Control-General Principles
- DCP 1.7 - General Road Planning
- DCP 5.1 - Regional Roads (Vehicular Access)
- DCP 2.5 - Special Residential Zones

INTRODUCTION

The Western Australian Local Government Association (WALGA) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based group representing and supporting the work and interests of 138 Local Governments in Western Australia.

The Association provides an essential voice for 1,222 elected members and approximately 15,000 Local Government employees as well as over 2 million constituents of Local Governments in Western Australia. The Association also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

GENERAL COMMENTS

The Association welcomes the release of the revised Development Control Policies (DCP) which cover a range of operational matters, specifically the general principles for subdivision of land and development control as well as general road planning regional road access and special residential zones.

The content of each of the Development Control Policies has been considered, and specific changes to each policy have been suggested within this submission.

Throughout several of the policies, the reference to 'town planning scheme' should be changed to 'local planning scheme' in accordance with the correct nomenclature under the Planning and Development Act 2005.

Recommendation:

1. That the State Government adopt the draft Development Control Policies subject to the consideration of the Association's recommendations on each of the policies, as outlined in this submission;
2. In the revised policies, all references to 'town planning scheme' should be changed to 'local planning scheme'.

3. Include appropriate references to the IPWEA Local Government Guidelines for Subdivisional Development.

SPECIFIC COMMENT AND RECOMMENDATIONS

DCP 1.1 Subdivision of Land-General Principles

Changes have been proposed to this policy, as follows: -

- updating legislative references
- inclusion of additional information regarding 'Site Responsive Design',
- more detail in the 'Suitability and capability for development',
- inclusion of clauses to cover 'Lease' arrangements and
- the formatting of the policy aligns to the Department's new style guide.

These changes are supported as it provides greater clarity for the issues to be considered and required as part of the subdivision process. Most of the additional clauses, are existing paragraphs have been exported from the following Planning Bulletins:-

- Planning Bulletin 71 Residential Leasehold Estates and Developments
- Planning Bulletin 52/2009 Process for Seeking Approval Under the Strata Titles Act 1985 (and Planning and Development Act 2005) for Strata Titles and Delegation to Local Government of Built Strata Applications
- Planning Bulletin 110/2013 - Guidance on the processing of Built Strata title applications

It is unclear whether the information contained within these Planning Bulletins are still of any relevance, and/or whether the bulletins will be rescinded or reviewed following the changes to this Development Control Policy. The Planning Bulletins were published in 2005 (PB 71), 2009 (PB 52/2009) and 2013 (110/2013), are still available on the Department's website and are not designated as a 'Superseded'. The information contained within these Planning Bulletins at least need to align with the proposed changes in the DCP, or removed if the information is no longer contemporary.

Section 3.3 of the policy outlines the provisions for 'Site responsive design' which are new policy requirements. The first paragraph states, *"The provision of an interconnected network of streets with development fronting the streets and open space areas helps create an environment with a sense of place and encourages housing diversity"*. Given that this section is meant to be about responding to the characteristics of a location, it is an unusual paragraph to start with. It is also not justified that interconnected streets will actually encourage 'housing diversity', as there are more factors to creating diversity of housing that just the physical street layout. Similarly the final paragraph of this section outlines a requirement for lots to have access to existing and proposed POS and community facilities, schools & retail, which is a subdivision design requirement, not a 'site responsive design'.

It is recommended that these two paragraphs be removed, given that it isn't providing any guidance for how the subdivision will achieve 'Site responsive design'. If the paragraphs are intended to provide guidance for subdivisions that are outside of the Liveable Neighbourhoods 20 lot threshold, then a separate section should be provided to cover the design requirements and design outcomes for smaller subdivisions.

Within the Site responsive design' section there needs to be a greater acknowledgement of the retention of existing trees on a site, recognizing that the retention of existing trees will support other State and Local Government strategies to support urban canopy.

Recommendation:

4. That the Department consider reviewing the information contained within Planning Bulletins 52/2009, 110/2013 and 71, in light of the review of Development Control Policy 1.1;
 5. Delete the first and last paragraphs of Section 3.3, as it does not provide any guidance in how to achieve 'Site responsive design';
 6. Inclusion of additional words in the section 'Site responsive design' as follows:
*Lot size and subdivision layouts need to respond to the physical characteristics of an area including topography, soils, drainage, **existing** vegetation, **retention of trees**, and natural features and views.*
-

DCP 1.2 Development Control-General Principles

Very minor changes have been proposed to this policy, by updating legislative references, including references to the Greater Bunbury Region Scheme (GBRS) and in the alignment of the formatting of the policy to the Department's new style guide.

The policy, however, doesn't provide any reference to the referral of applications to Development Assessment Panels (DAPs), only outlines that WAPC or Local Government are providing the decision making. To reflect the current legislation and all decisions makers, it is recommended that the policy provide some reference to when an application may be referred to DAPs.

The policy has been redrafted to provide guidance for the assessment of applications under the Metropolitan Region Scheme (MRS), Peel Region Scheme (PRS), and Greater Bunbury Region Scheme (GBRS). All of the sections now list all three Region schemes at the beginning of the paragraphs, it is suggested that in Section 5.1 Statutory Provisions, the first paragraph be reviewed to:

"The MRS, PRS and GBRS provides that the WAPC will..." and remove the final line of this paragraph *Equivalent provisions exist under the PRS and GBRS* to provide a consistent approach throughout the policy.

It is also unclear whether the information contained within *Planning Bulletin 40 - Development Control under the Metropolitan Region Scheme* is still of any relevance, and/or whether this bulletin will be rescinded or reviewed following the changes to this Development Control Policy. Planning Bulletin 40 was published in June 2000, is still available on the Department's website and is not designated as a 'Superseded'.

Appendix 2 – Application to Commence Development - Within this section there needs to be an acknowledgement of the retention of existing trees on a site and provision of deep soils zones, recognizing that the retention of existing trees and provision of space for new trees will support other State and Local Government strategies to support urban canopy.

In keeping with the increased awareness and consideration of pedestrians and cyclists in the policy, there is a need to strengthen the wording of clause (v) of Appendix 2 to make clearer the requirements in this regard.

Recommendations:

7. That the policy be amended to include reference to when an application might be referred to a Development Assessment Panel;
8. That the first paragraph of Section 5.1 be reworded to be consistent with the other;
9. That the Department consider reviewing the information contained within *Planning Bulletin 40 - Development Control under the Metropolitan Region Scheme* in light of the review of Development Control Policy 1.2.
10. Inclusion of additional words in the section 'Appendix 2 – Application to Commence Development' as follows:

*(ix) the nature and extent of any **existing vegetation, proposed retention of trees, open space and landscaping proposed for the site (including deep soil areas); and***

11. Modify point (v) in section 'Appendix 2 – Application to Commence Development' to read as follows:

*(v) the existing and proposed means of access and egress for pedestrians, **cyclists**, and vehicles to and from the site, **including pedestrian pathways and cycle parking infrastructure, and demonstrating universal access principles.***

DCP 1.7 General Road Planning

Only minor changes have been proposed to DCP 1.7, by updating legislative references, and in the alignment of the formatting of the policy to the Department's new style guide.

Importantly, there is a stronger focus the need to consider pedestrians and cyclists in the planning of roads. This is supported. As is additional commentary around how Traffic Impact Assessments should guide decision makers.

The Association has made a number of minor recommendations below that primarily improve the reading of the policy, as well as tidying up some legacy issues brought over from the previous version of the policy.

Importantly, the Association has made a recommendation around the need to strengthen the identification and protection of existing remnant vegetation within existing and proposed road reservations. This goes to the overall need to ensure the retention of urban tree canopy cover in urban areas and would bring the policy into greater compliance with other State and Local planning mechanisms.

Recommendation:

12. Modify references to 'district distributor roads' to read 'integrator arterial roads' throughout Section 3.3;
13. Modify the wording of the second paragraph of Section 3.3.4 to read:

*"In addition grade separated pedestrian crossings, **on-road or off-road cycling facilities**, and a dual-use path along one side of the road may be required where these facilities accord with proposals for the overall structure planning for the area."*

14. That the last 'bullet point' in Section 3.3.5 include the word 'contribution' between the words 'development schemes';

15. Reconsider the wording of Section 3.6.2, where it states that 'Residential subdivisions are often planned to incorporate sewers in private lots';
 16. Modify the wording of Section 3.6.4 to strengthen the importance of identification and protection of existing vegetation within existing and proposed road reserves;
 17. Remove the words 'and other areas' from the first sentence in Section 3.7.3 (b)
-

DCP 5.1 Regional Roads (Vehicular Access)

Only minor changes have been proposed to DC 5.1, by updating legislative references, and in the alignment of the formatting of the policy to the Department's new style guide.

The Association's comments of this policy are limited and reflect our overall satisfaction with the revised policy. There is a need to clarify the wording within Section 3.2.3 of the policy, particularly where the road categorisation outlined in this section is drawn from. The categorisation referred to in this section is unfamiliar to the Association.

Recommendation:

18. Provide abbreviations following the full titles for the three Region Schemes listed in Section 1.2, and subsequently modify Section 3.2.2 to utilise the Region Schemes' abbreviations in place of the full titles;
 19. Clarify the origin of the road categorisation as outlined in Section 3.2.3;
 20. Modify Section 3.10.3 to remove a grammatical error. The term 'Foreshore Access Road' is utilised in this section, in place of its abbreviation 'FARs', which has been previously defined.
-

DCP 2.5 Special Residential Zones

Only minor changes have been proposed to DC 2.5, by updating legislative references, and in the alignment of the formatting of the policy to the Department's new style guide.

A considerable difference between the existing and draft Policy is the stronger presumption against Special Residential development. Further to this there has been a tightening within the Policy on the range of locations (zonings) where special residential land uses are preferred (outlined in Section 1.4).

Whilst it is understood why the Special Residential zone is limited to land zoned 'Urban' under the MRS, it does appear to limit the opportunity for the development of higher density residential land use on land that is specifically identified as suitable for 'Urban' development.

Further to this, it would appear there are opportunities for Special Residential zoned land to be within 'Rural' areas subject to there being no conflict with raw materials, important agricultural land, protected nature areas, and water catchment areas *inter alia*.

Should Special Residential be only permitted within land zoned 'Urban' under the MRS and 'Residential' under the local scheme with a Residential Code (R-code), does this then mean 'Special Residential' is not its own zone? Lots of approximately 2000m² (the minimum under the policy) for Special Residential corresponds to the R5 residential coding.

If Special Residential areas are only to be within 'Residential' zoned land under the local planning scheme with an attached R-code, it would seem that a separate Policy dealing with

this land-use does not appear necessary. The appropriate design standards for the land would be assessed in the same way as it would for any other 'Residential' zoned land.

Further to this, and perhaps contradictory, Section 1.1 of the draft Policy states that the WAPC is committed to providing a wide range of lot sizes. However Section 3.1.1 then goes on to state that there is a presumption against Special Residential development because it's less efficient with the use of land and provision of services.

There appears to be a conflict between these two statements.

Lastly, the Association echoes the comments of the City of Cockburn in their commentary around the inappropriateness of Section 4.2, and the manner in which it duplicates the statutory provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Recommendation:

21. Clarify the contradiction between Sections 1.1 and 3.1;
22. Modify Section 3.2 to make clear that bushfire mitigation should be addressed as part of the design and servicing requirements rather than purely requiring access and egress for fire management;
23. Modify Section 4.2 as it is unnecessary and a duplication of what's already provided for within the Deemed Provisions.

5.3 Interim Submission – State Planning Policy 4.1 Industrial Interface (05-047-03-0008 CH)

Christopher Hossen, Senior Planner – People & Place

Recommendation

That the interim submission to the WA Planning Commission on State Planning Policy 4.1 Industrial Interface be endorsed.

In Brief

- On 21 November 2017, the Western Australian Planning Commission (WAPC) released a revised version of State Planning Policy 4.1 Industrial Interface (SPP4.1) for public comment.
- The revised State Planning Policy aims to provide guidance on planning decisions that will protect the long term future operation of Industry and Infrastructure facilities by avoiding encroachment from sensitive land uses and promoting compatible land uses.
- The public comment period closed on the 21 February 2018, therefore an interim submission was prepared.

Attachment

Interim Submission – State Planning Policy 4.1 Industrial Interface

Relevance to Strategic Plan

Key Strategies

Sustainable Local Government

- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;

Enhanced Reputation and Relationships

- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated;

Policy Implications

Nil.

Budgetary Implications

Nil.

Background

On 21 November 2017, the WAPC sought public comment on proposed changes to State Planning Policy 4.1(SPP4.1). The purpose of this Policy is to protect industry and infrastructure facilities from encroachment of incompatible land uses and ensure that planning decisions consider the locational constraints of these land uses, the significant investments they represent and their current and future benefits and costs to the community. Additionally, SPP4.1 seeks to prevent land use conflicts between industry and/or infrastructure facilities and sensitive land uses.

Comment

The release of the draft Policy is generally welcomed by the Association. The draft Policy is a culmination of considerable consultation with various members of a Technical Working Group that included the Association. The importance of the continued investment in industrial lands is vital to the continued growth of Western Australia, however there must be recognition that 'off-site' impacts from such land uses can have adverse effects on human health, and the overall amenity of a community. The role of draft Policy in allowing the careful consideration of land use planning in proximity to major industrial estates, is therefore vital, in ensuring that the liveability of our communities remains of a high standard.

The changes to SPP4.1 amount to a complete redesign of the Policy in line with the current style guide of the Department of Planning, Lands and Heritage (DPLH), restructuring the 'Implementation' section of the draft Policy to reflect the various stages of the planning system. This is strongly supported. Overall, the SPP4.1, in its new form offers less discussion, and a focus on the 'intent', 'exemptions', 'application', and 'objectives'. In doing this it allows those applying the draft Policy greater confidence on the intent of the draft Policy itself.

The draft Policy also recognises the significant role of the Department of Water and Environment Regulation, Department of Mines and Petroleum and the Office of the Environmental Protection Authority have in the regulation and management of off-site impacts from industrial lands. Reducing the duplication of these roles in the planning system and providing greater guidance on the relationships between the planning system and environmental regulators, which the draft Policy achieves, is also supported.

Lastly, the draft Policy provides for a number of significant shifts in the implementation of industrial buffers into the planning framework. Of greatest note is the use of statutory buffers in Planning Schemes. The Association supports this policy initiative utilised in the draft Policy; particularly the balanced approach of assessing off-site impacts and strategic considerations with a continued focus on scientifically supported evidence, and the focus on addressing buffers through regional planning instruments in the first instance. Such an approach will provide greater certainty to landowners and decision makers while still allowing for reasonable amendments to such instruments where deemed scientifically justifiable and acceptable to the community.

Whilst welcoming the State Government's attempt to refresh and improve the Policy, the Association through the Interim Submission raised concerns in relation to a number of aspects of the draft Policy. It should be noted that none of these are fatal flaws in the draft Policy, with the core recommendation of the Interim Submission noting that adoption of the Policy should occur following consideration, by the WAPC, of the Associations comments on specific policy matters.

The Interim Submission provided a number of technical recommendations, with the following being of particular note:

1. Repeated comments and recommendations around the role of the draft Policy in regulating aircraft noise at smaller airports, particularly in light of the lack of clarity around the breadth of matters that will be addressed in the future state-wide airports SPP;
2. Seeking clarity and further guidance for those areas where existing General Industry Zones directly adjoin areas of sensitive land uses, with a particular focus on giving Local Government additional direction on dealing with strategic planning around these areas; and
3. Clarification on a number of important definitions within the draft Policy, and how and where these are to be applied.

The public comment period closed on 21 February 2018, therefore an interim submission was prepared. Formal comments on this revised policy were received from the City of Bayswater, while informal officer level discussions on the Associations submission was undertaken with the City of Rockingham. Feedback from members was incorporated into the WALGA interim submission.

In accordance with State Council policy, the interim submission was referred to the People & Place Policy Team for input and the Executive Committee for approval. The interim submission was submitted to the WAPC to meet the public comment period deadline of 21 February 2018.

Attachment 5.3
Interim Submission – State Planning Policy 4.1 Industrial Interface



INTERIM SUBMISSION TO THE DEPARTMENT OF PLANNING, LANDS AND HERITAGE

State Planning Policy 4.1 Industrial Interface

INTRODUCTION

The Western Australian Local Government Association (WALGA) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based group representing and supporting the work and interests of 138 Local Governments in Western Australia.

The Association provides an essential voice for 1,222 elected members and approximately 15,000 Local Government employees as well as over 2 million constituents of Local Governments in Western Australia. The Association also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

GENERAL COMMENTS

The Association welcomes the release of the draft State Planning Policy 4.1 Industrial Interface (draft Policy), and acknowledges the contribution of, and collaboration between, the various members of the Technical Working Group involved in the review. The Association strongly supports similar collaborative approaches to Government Policy changes now and into the future.

The importance of industry and infrastructure facilities to Western Australia's economic and social wellbeing cannot be understated, however these activities can, and often do, generate off-site impacts such as air, noise, dust, odour, and other emissions that can have adverse effects on human health, and the overall amenity of a community. Thus, the role of the draft Policy in allowing the careful consideration of land use planning in proximity to industry and infrastructure facilities, is vital, to protect the sustainability of these areas, as well as ensuring that the liveability of our communities remains of a high standard.

As has been the approach to recently released State Planning Policies, the draft Policy in its new form offers less discussion, with the focus instead on the 'Intent', 'application', and 'objectives'. In doing this, it allows those applying the draft Policy greater confidence in their understanding of the intent of the draft Policy itself. Further to this, the reduction in length and complexity of the draft Policy also decreases the likelihood that its provisions may be inconsistently applied.

The restructuring of the 'Implementation' section of the draft Policy to reflect the various stages of the planning system is strongly supported. While highlighting the need to consider objectives and principles of the draft Policy at the earliest opportunity, the Implementation

section provides detailed information on the required documentation and technical work necessary at the various stages of the planning process. Providing such guidance greatly increases the useability and functionality of the draft Policy for Local Governments, and is highly commended.

Expanding on this, the draft Policy recognises the significant role of the Department of Water and Environment Regulation, Department of Mines and Petroleum and the Office of the Environmental Protection Authority have in the regulation and management of off-site impacts from industrial lands. Reducing the duplication of these roles in the planning system and providing greater guidance on the relationships between the planning system and environmental regulators, which the draft Policy achieves, is also supported.

Lastly, the draft Policy provides for a number of significant shifts in the implementation of industrial buffers into the planning framework. Of greatest note is the use of statutory buffers in Planning Schemes. The Association supports this policy initiative utilised in the draft Policy; particularly the balanced approach of assessing off-site impacts and strategic considerations with a continued focus on scientifically supported evidence, and the focus on addressing buffers through regional planning instruments in the first instance. Such an approach will provide greater certainty to landowners and decision makers while still allowing for reasonable amendments to such instruments where deemed scientifically justifiable and acceptable to the community.

Recommendation:

1. That the State Government adopt the draft Policy subject to consideration of the Association's recommendations outlined below.

SPECIFIC COMMENT AND RECOMMENDATIONS

State Planning Policy 4.1 Industrial Interface

1.0 Citation

This section outlines the appropriate way to describe and cite the draft Policy and the statutory head of power under which it was prepared. The Document states that the draft Policy is to be cited as State Planning Policy 4.1 – Industrial Interface. However throughout the draft Policy it self-refers to itself as this policy'. At no point in the document is this abbreviation explained, as is common practice in policy development.

It should also be noted that recently advertised State Planning Policies have utilised a number of different abbreviations for this purpose, such as this policy' and the policy'. Although not critical to the functioning of the planning system, grammatical consistency between policies and documents is beneficial and worth maintaining.

Recommendation:

2. The second sentence be reworded to the following:

This policy may be cited as State Planning Policy 4.1 –Industrial Interface (this policy); **3.1 Where this policy applies**

This section of the draft Policy outlines the four (4) broad categories for where the draft Policy applies. This is in keeping with the overall desire to improve readability of the draft Policy.

There has been a considerable redesign of how the draft Policy outlines those areas subject to it. The existing State Planning Policy 4.1 - State Industrial Buffers (existing Policy) provides a detailed list of land uses that are subject to its provisions. The simplification of the 'list' for policy application and reliance on the 'definitions' section of the draft Policy for further explanation of these broad categories, such as Infrastructure facilities' is supported. However, the Association retains concerns around the definition of 'infrastructure facilities' and how that will limit the application of the Policy when compared to the existing Policy.

With regard to item (c), the Association has concerns with the removal of the land-use 'airport' from application under the draft Policy. The extensive list from the existing Policy has largely been translated into the definition of 'Infrastructure facilities', however 'airport' is a noted exception.

Airports in the current development climate provide for a range of land-uses that expand beyond those generally related to flight operations. What is not clear is whether development that occurs on airport land that meets the definition of 'industrial land-use' or 'Industrial site' would be subject to the provisions of the draft Policy or not.

The Association is aware that the WAPC is undertaking a review of the planning framework for 'airport' developments. What remains unclear is the scope of this review and the range of matters that will be served by any updated airports State Planning Policy. Without clarification on the scope of the airport State Planning Policy the Association remains hesitant to support the removal of 'airports' from consideration under the draft Policy.

Recommendation:

3. Clarification is required on whether the draft Policy would apply to 'Industrial land uses' or 'Industrial sites' on land identified for use as an 'airport';
4. Ensure consistency between the draft Policy and the yet to be released state-wide airports State Planning Policy;

3.2 Policy exemptions

The draft Policy provides a range of exemptions to land use conflict associated with impacts generated by a range of land uses. These are land use types generally managed through other State Planning Policy. The existing Policy does not afford any exemptions. The Association is generally supportive of this revised approach, particularly the removal of provisions that act on land-uses that cross multiple State Planning Policies.

Although largely supportive of the proposed exemptions, the Association wishes to raise matters related to the exemption for 'aircraft noise' afforded under the draft Policy.

Currently the planning framework provides for two State Planning Policies that relate to aircraft noise, SPP 5.1 and SPP 5.3; these provide for land use planning controls over Perth Airport and Jandakot Airport, respectively. The current state planning framework affords no further control over any other airport in Western Australia for matters to do with off-site impacts.

As outlined in the Associations comments on clause 3.1, there remains doubt over the extent of the yet to be prepared state-wide airport State Planning Policy. It is unclear as to whether this Policy will extend to cover all or more airports in Western Australia, or as to what types of matters it will afford policy provisions over.

There is a reasonable case to make that should the proposed state-wide airports State Planning Policy not be expanded to cover more airports and their off-site impacts, that there should still be a requirement within the planning framework to allow the consideration of 'aircraft noise' at other airports.

The number and role of airports in Western Australia will continue to change and grow over time, to have no statutory controls over off-site impacts would place both State and Local Government in a poor position to respond to such matter should circumstances change.

The Association would argue that the draft Policy would be the appropriate place for such provisions should it be deemed unnecessary in the state-wide Airports State Planning Policy.

Recommendation:

5. Review the extent of the 'aircraft noise' exemption from the draft Policy in consideration of the current review of the airports State Planning Policies;

5.1 Protecting Strategic Industry and infrastructure facilities of State significant through statutory buffers

The title of this section refers to 'infrastructure facilities of State significance'; this term is not defined. Further to this the draft Policy simply refers to 'Infrastructure facilities' in Parts 1 through 4; this term is defined in the document. The draft Policy does however refer to 'Industrial site/facility of State significance'. It is unclear if the document is referring to 'infrastructure facilities', 'industrial site/facility of State significance', or a third definition.

Recommendation:

6. Provide clarification on the appropriate definition to use in section 5.1, and all subsequent sections of the draft Policy.

5.1.1 How the statutory buffers should be applied

As outlined in the Association's comments on section 5.1 of the draft Policy, there is continued confusion regarding the definitions used in this section.

With regard to 5.1.1 (d), the wording of this clause does not fit with the wording of the lead-in sentence. As currently written 5.1.1 (d) reads as follows:

A statutory buffer should be designated for existing and proposed as determined by the Minister for Planning on advice from the Western Australian Planning Commission."

The current wording creates confusion as to the form of development, or where, the Minister could consider using this authority. This matter requires clarification.

Recommendation:

7. With regards to point (b), clarify the meaning of 'infrastructure facility of State significance';
8. With regard to point (c), remove the word 'individual', it is unnecessary when read in conjunction with the definition of 'industrial site/facility of State significance';
9. With regard to point (d), clarify in what situations the Minister for Planning could designate a statutory buffer;

5.1.2 How the statutory buffers should be applied

This section provides instruction on how statutory buffers designated under clause 5.1.1 of the draft Policy should be applied. In particular these should be designated by way of a Special Control Area, with relevant Scheme provisions in Planning Schemes. As outlined above, this method for designating statutory buffers is supported by the Association.

Clause 5.1.2 then goes on to outline that buffers for Strategic Industrial Areas' and Infrastructure facilities of State significance' should be identified in any applicable Region Scheme, or other planning instrument. The inclusion of this additional information within clause 5.1.2 raises two points of concern for the Association.

Firstly, the additional text replicates the matters addressed in Part 6 Implementation of the draft Policy. These matters are addressed more thoroughly in that Part.

Secondly, Part 6 outlines the roles of different statutory documents in identifying buffers at the various stages of the planning system. On reading Part 6, it is clear that buffers can be utilised on a wider range of situations' than outlined in clause 5.1.2. For example, Local Planning Schemes should, amongst other things, establish statutory buffers, as Special Control Areas, for 'Industrial sites of State significance'. Therefore the inclusion of the additional text does not work to improve the reading and understanding of the draft Policy as a whole.

Recommendation:

10. Clause 5.1.2 be amended to read as follows:

Where designated under clause 5.1.1, statutory buffers should take the form of a Special Control Area, or similar, with related scheme provisions in planning schemes;

5.2.1 Industrial Zones

Section 5.2.1 of the draft Policy outlines the principles for which the prevention and management of land-use conflicts should occur, that being at the highest level of the planning framework as possible. Importantly this section talks to the need for statutory and strategic planning frameworks to adequately buffer sensitive land uses from General Industry zones by way of transitional zones, such as Light Industry, Service Commercial, and Public Open Space. This approach is supported by the Association.

Whilst this approach is an appropriate long-term strategy it fails to recognise the existing nature of many General Industrial Zones within the inner metropolitan region of Perth. It is not unusual for General Industry Zones to be directly adjacent to the Residential Zone and therefore sensitive land-uses.

Currently the draft Policy provides no guidance on dealing with these kinds of situations. Whilst section 5.2.2 (c) outlines that new industrial land-uses in General Industry Zones should contain off-site impacts within the Industrial zone, or surrounding compatible zones. There is no discussion within the draft Policy for managing sites where this is not feasible.

Many existing General Industry Zones are not found within those areas deemed appropriate for the application of a Statutory Buffer under the draft Policy. As such there is a lack of suitable mechanisms for Local Government to manage and make suitable decisions compared to the existing Policy. Further to this, there is a lack of guidance in the draft Policy on how to transition the interface between directly adjoining zones into compatible zones.

Recommendation:

11. An additional sub-clause be added to section 5.2.1, that states:

"Where there is a direct interface between an existing industrial zone and an existing sensitive zone in a local planning scheme. There is a presumption against industrial land use proposals that are unable to manage off-site impacts within the current extent of the industrial zone, or are unable to meet the required separation from sensitive land-uses as outlines in the EPA's Guidance Statement No.3."

12. An additional sub-clause be added to section 6.4 Local Planning Strategies, that states:

"Where there is a direct interface between an existing industrial zone and an existing sensitive zone, local planning strategies should identify opportunities to transition portions of the industrial zone to more compatible zones, such as Light Industry and Service Commercial, and provide a framework for managing the transition over time"

5.2.2 Industrial land uses and infrastructure facilities

Section 5.2.2 of the draft Policy outlines the principles that decision makers should apply when determining matters that generate off-site impacts.

The Association is generally satisfied with the list as advertised, however, there is a need to allow for the consideration of future strategic planning by decision makers. This is particularly necessary in areas where future expansion or contraction of industrial zones are proposed.

There should be a presumption against the approval of industrial land uses, with identified off-site impacts, that extend into an area in the process of transition. Further, there should also be a presumption against the approval of 'sensitive land uses' in areas transitioning to compatible land use zones. Such approvals would jeopardise the strategic planning of an area.

Recommendation:

13. An additional sub-clause be added to section 5.2.2 that allows for the consideration of future strategic planning of an area.

5.3 Precautionary Principle

Section 5.3 of the draft Policy outlines that where the decision maker is not satisfied that a proposed development satisfactorily considers potential land-use conflicts and will not expose existing or proposed sensitive land-uses and/or zones to adverse impacts, the decision maker should apply the 'precautionary principal'.

The Association supports the inclusion of the precautionary principal in the draft Policy as it will allow Local Government and other decision makers to apply a more cautious approach to assessing and determining applications for development with off-site impacts.

6.2 Region Schemes

With regard to point (b), the draft Policy outlines that it is the role of a Region Scheme to "identify sites for infrastructure facilities of State significance". The Association is uncertain as to how a Region Scheme would facilitate such an identification, particularly how such a site would be identified on a Region Scheme Map. Further to this, section 6.1 (b), which relates to regional and high-level strategic plans, provides the same requirement.

With regard to point (c) – both the Peel Region Scheme (PRS) and Greater Bunbury Region Scheme (GBRS) provides for Special Control Areas in their scheme texts. However, the Metropolitan Region Scheme (MRS) does not currently include such provisions. This hinders the ability to include buffers around necessary areas within the metropolitan region. It would be expected that any future amendments to the MRS would incorporate the inclusion of Special Control Area provisions.

Lastly, the Association wishes to raise a query with regard to the role of Region Schemes in identifying compatible land-uses within Special Control Areas enacted under the draft Policy. The draft Policy identifies the role of Region Schemes to establish Special Control Areas with appropriate scheme provisions. This is in contrast to the role of Local Planning Schemes that includes, amongst other things, the identification of compatible and incompatible land-uses within buffers.

By including compatible and incompatible land-uses within buffers to Local Planning Schemes, while remaining silent on the same for Region Schemes, it could be assumed that the draft Policy is implying through omission that Local Planning Schemes are the preferred document to undertake this task. This requires clarification.

Currently the GBRS includes two (2) Special Control Areas which regulate land-use compatibility through their planning requirements clause. These being Special Control Area No.2 and No.3, which relate to the Kemerton Industrial Zone and Glen Iris Service Corridor, respectively. The current wording of the draft Policy makes it unclear if this remains the preferred approach for managing compatible land uses within region schemes.

Recommendation:

14. Provide clearer guidance on the difference between 'industrial sites of state significance' and 'industrial facility of state significance';
15. That the Metropolitan Region Scheme be amended to include 'Special Control Areas' to ensure consistent implementation of the draft Policy across all three (3) Region Schemes;
16. Modify the draft Policy to clarify if Region Schemes are the appropriate documents to identify compatible and incompatible land-uses within buffers.

6.3 Improvement Schemes

Part 8 of the Planning and Development Act 2005 (Act) outlines the establishment of Improvement Schemes that allow the State Government to become the planning authority for a particular area with the intention of advancing the area's planning and development.

Improvement Schemes are similar in form to Local Planning Schemes and contain development provisions and a scheme map. Importantly Improvement Schemes, unlike Local Planning Schemes, are not required to be consistent with the Model or Deemed Scheme Provisions.

Section 6.3 of the draft Policy provides direction on how Improvement Schemes should implement the draft Policy. It notes that Improvement Schemes should establish statutory buffers as Special Control Areas or similar, with appropriate scheme provisions."

Beyond the establishment of Improvement Schemes, Part 8 of the Act also allows the establishment of an Improvement Plan. These are strategic instruments to facilitate development of land in areas identified by the WAPC as requiring additional or special planning. Importantly, Improvement Plans can authorise the establishment of an Improvement Scheme, and when it does this it must set out the objectives of that scheme. The draft Policy is silent on Improvement Plans and their role in implementing its objectives.

There are currently two (2) Improvement Schemes and four (4) Improvement Plans that relate to Strategic Industrial Areas.

The Associations concerns in this area relate to two points:

- Improvement Schemes can deal with a wide range of matters, and considering this, the lack of guidance on these important instruments in the draft Policy is concerning.
- The lack of commentary in the draft Policy, especially in the Implementation section, on the role of Improvement Plans in ensuring that land-use conflict between industry/infrastructure facilities and sensitive land-uses are kept to a minimum.

With regard to the first point, Section 6.3 currently only provides limited guidance on the manner in which industrial interface should be managed as part of an Improvement Scheme. This is inconsistent with the otherwise thorough guidance given for all other statutory process in the Implementation section of the draft Policy.

With regard to the second point, the draft Policy is silent on the role of Implementation Plans in managing industrial interface in the planning system. As there are multiple examples of Implementation Plans that discuss matters of industrial interface currently in force, it is

reasonable to assume that these are mechanisms that could be utilised into the future. As such guidance on this form of strategic document is required to ensure consistent decision making.

Recommendation:

17. That section 6.3 of the draft Policy be expanded to provide additional guidance on the use of Improvement Schemes that reflects the role of these documents in the Planning system. This additional guidance should take the form of the information outlines in section 6.5 of the draft Policy;
18. That the draft Policy be amended to include reference to Improvement Plans in recognition of the role they play in planning Strategic Industrial Areas. Importantly this section should outline that Improvement Plans, that facilitate development of Industrial Zones and/or Strategic Industrial areas, comprise the land shown on the Improvement Plan including all land necessary for infrastructure and industry activity and the additional area of land in order to provide a buffer associated with the expected type of industry.

6.5 Local planning schemes

With regard to point (c), there is a reference to 'strategic infrastructure facilities'; this term is not referenced in the definitions section, nor is it utilised in any other part of the draft Policy.

With regard to point (c), there is an ability for statutory buffers to be established around 'industrial site of State significance'. There is however no reference within the Implementation section for 'industrial facility of State significance'. The Association fails to understand the purpose of this joint definition if one is not utilised in the implementation of the draft Policy.

Recommendation:

19. Clarify or remove the term 'strategic infrastructure facilities' from point (c);
20. With regards to point (c), provide clarification on where 'industrial facilities of State significance' sit within the Implementation framework;

7.0 Definitions

The Association has made a number of comments above in relation to the definitions section of the draft Policy. Recommendations related to points of clarification. These are reiterated more broadly in the recommendations below.

Secondly, the Association wishes to support the concerns raised by the City of Bayswater in relation to the exclusion of certain types of 'Public Open Space' from the definition of 'Sensitive land use', and the explicit suitability in the draft Policy for 'Public Open Space' to form part of the compatible transition zones.

As outlined in the City of Bayswater's submission it is considered that some forms of 'Public Open Space', notably sport and recreation spaces, could be considered as locations people regularly spend extended period of time.

Recommendation:

21. Clarify the role and difference between the definition 'Industrial site of State significance' and 'Industrial facility of State significance';

22. Clarify the term 'Infrastructure facilities of state significance', and provide a definition within this section ;
23. Clarify the omission of 'airports' from the definition of Infrastructure facilities in light of the current review of airport policy by the WAPC and the current uncertainty around the scope of the future state-wide airport State Planning Policy;
24. Justify the need for the use of the 'double-barrelled' definition 'industrial site/facility of State significance, particularly in the knowledge that the term 'industrial facility of State significance' it not referenced within the Implementation portion of the draft Policy;
25. Modify the definition, 'Compatible land use zone/reserve', to make clear the types of Public Open Space, namely 'nature spaces', compatible with odour, dust, noise and other emissions from industrial land-uses;
26. Modify the definition, 'Sensitive land use', to include reference to 'sports spaces' and 'recreational spaces', as defined in the draft Liveable Neighbourhoods 2015.

Additional Comments

Clause 5.1.2 of the draft Policy is explicit in its wording that Special Control Areas are the preferred mechanism from which to enact a statutory buffer in a Planning Scheme. As noted above the Association supports this approach. Interestingly, the draft Policy provides no guidance on the preferred form of such mechanisms.

In recent times the WAPC has provided within draft State Planning Policies and other implementation guides model or template Special Control Area Provisions to provide guidance to decision makers and planning authorities.

Considering the breadth and number of Special Control Areas likely under the draft Policy, and the general desire to add uniformity to the planning system, the omission of such guidance in this instance is surprising.

Recommendation:

27. Provide model Special Control Area Scheme provisions as an Appendix to the draft Policy.

5.4 Third Party Appeal Rights – Consultation with members (05-073-01-0002 VJ)

Vanessa Jackson, Policy Manager Planning and Improvement

Recommendation

That WALGA:

1. **Note the results of the additional consultation with members on the possible introduction of Third Party Appeal Rights into the Planning System;**
2. **Based on the feedback received, amend its current policy position to support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels;**
3. **Provide the State Government with the outcomes of this consultation and advocate for the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels as part of the upcoming Independent Planning Reform process; and**
4. **Further consult with members to provide more clarity on the exact details of the criteria that would need to be established, before any system of Third Party Appeals for decisions made by Development Assessment Panels is implemented by the State Government.**

In Brief

- Following the September 2017 State Council meeting, workshops were held with members on the various suggestions raised in WALGA's Third Party Appeal Rights in Planning Discussion Paper.
- In December 2017, the Association formally requested members to consider whether there would be any support for the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels.
- The outcomes of the consultation are provided within this report and result in a change to the current policy position of the Association.

Attachment

Appendix 1 – Summary of Members' Submissions

Relevance to Strategic Plan

Key Strategies

Sustainable Local Government

- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;

Enhanced Reputation and Relationships

- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated;

Policy Implications

WALGA's current position on Third Party Appeal rights was made in February 2008 and states that "Local Government does not support the introduction of Third Party Appeal rights" (Resolution February 2008 – 326.1/2008). It was considered that the strategic and statutory planning process in

WA, and consideration of applications by Local Governments, already took into account the views of affected parties and the community generally. As there was no justification for Third Party Appeals legislation and there are significant negative implications for Local Government, industry and the community, Local Government resolved to oppose the introduction of third party appeal rights in Western Australia.

Budgetary Implications

Nil.

Background

In December 2016, WALGA State Council resolved to undertake research on third party appeals around Australia and further consult with members regarding its current policy position. The Association prepared a discussion paper which provided background on the development of WALGA's position and a review of the arguments both for and against third party appeals which was then circulated to the Local Government sector for comment and feedback.

Member's feedback was presented to State Council at its 8 September 2017 meeting, where it was resolved that (92.9/2017) -

1. *State Council notes that there is increased support for the introduction of some form of Third Party Appeal rights.*
2. *WALGA undertakes further consultation with members on Third Party Appeal Rights, including Elected Member workshops, discuss the various concerns and suggestions raised in response to the discussion paper, the form and scope of any such appeal right should include the appropriate jurisdiction including JDAPS, SAT and WAPC to determine a preferred model.*
3. *The findings to be distributed for comment and the Item then be reconsidered by State Council.*
4. *WALGA continue to advocate that an independent review of decision making within the WA planning system is required, including the roles and responsibilities of State and Local Government and other decision making agencies, Development Assessment Panels and the State Administrative Tribunal appeal process.*

The submissions received on the discussion paper were collated into four options which broadly capture the range of responses in support of Third Party Appeals. These are:

1. **Support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels:** Under this system, third party appeals would be broadly similar to the New South Wales system whereby appeal rights are limited to uses such as major developments where the development is high impact and possibly of state significance. This would include the ability to appeal amendments to an existing approval.
2. **Support the introduction of Third Party Appeal Rights for decisions where *discretion* has been exercised under the R-Codes, Local Planning Policies and Local Planning Schemes:** Under this system, third party appeals would be broadly similar to the Tasmanian system whereby third party appeals are limited to development applications where discretion has been exercised. This would include the ability to appeal an amendment to an existing approval.
3. **Support the introduction of Third Party Appeal Right against development approvals:** Including all development application approvals made by Local Governments, JDAPs and the Perth DAP, MRA or WAPC. This would include appeal rights for affected neighbours and community groups for applications and the ability to appeal amendments to an existing approvals.
4. **Support the introduction of Third Party Appeal Rights against development approvals and/or the conditions or absence of conditions of an approval:** Under this system, third party appeals would be broadly similar to the Victorian system whereby the provision of third party appeal rights cover most development applications and the use of, or lack of, any

conditions being imposed. This would include the ability to appeal an amendment to an existing approval.

5. **Other** – as a range of options were provided by members, any alternate versions to the above, or combination of the above were proposed, including maintaining WALGA's current policy position of not supporting Third Party Appeal Rights.

It should be noted that any form of Third Party Appeals which could be introduced into the Western Australian planning system would need to include criteria that:

- Ensures that appeals are only made on valid planning grounds and are not made for commercial or vexatious reasons;
- Limits Third Party Appeals Rights to those parties which previously made a submission on that development application during the advertising period; and
- Require a short window in which to appeal (for example 14 days).

Two workshops were held on 1 November 2017, and a webinar held on 9 November 2017 to review these options with members and determine a preferred model for any proposed rights. The workshops had 40 attendees (35 officers and 5 Elected members), representing 25 local governments. The purpose of the consultation was to determine members' preferred model for any proposed appeal right and attendees voted for their preferred option out of the five options presented.

Based on the outcomes of these workshops, the Association formally requested that members consider the following as the preferred model for Third Party Appeal Rights in Planning in WA:

Support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels

In December 2017, members were formally requested to advise their support or otherwise of this model of Third Party Appeal Rights by Council Resolution, providing feedback to the Association no later than 15 March 2018.

Comment

Over the last two years, the Association has been advocating to the Minister for Planning to undertake an independent review of the Planning System, in accordance with several State Council resolutions, including the September 2017 resolution: -

4. *WALGA continue to advocate that an independent review of decision making within the WA planning system is required, including the roles and responsibilities of State and Local Government and other decision making agencies, Development Assessment Panels and the State Administrative Tribunal appeal process. (92.9/2017)*

In November 2017 the Minister for Planning, the Hon Rita Saffioti MLA announced a review of the Western Australian planning system, to be led by the Independent Reviewer, Evan Jones and supported by a small Reform Team.

The review proposes to examine the following key areas:

- making strategic planning the cornerstone of all land use planning decisions;
- opening up the planning system so that it is understandable to all;
- clarifying State and Local planning roles by setting clear responsibilities and functions of the WAPC and the department in conjunction with other State departments and agencies, and Local Government;
- responding to community concerns about the transparency and accountability of Development Assessment Panels;
- formally recognising the need for community participation;

- creating more certainty for industry by cutting red tape and by clearly defining development assessment pathways;
- refinement of the development contribution scheme;
- how best to link planning and infrastructure delivery for growth and move to a sustainable settlement pattern; and
- how the planning system should adapt to new technology.

A Green Paper with suggested reform proposals will be prepared for community and stakeholder consideration and discussion and it was indicated that it would be released in March 2018 (*at the time of writing this report, the Green Paper has not yet been released). The State has advised that comments and submissions would then inform a White Paper which will include the Government's proposals for planning reform.

The Association has provided the Reform Team with all of the WALGA reports on suggested improvements to the existing Planning System on:

- Development Assessment Panels,
- Local Planning Scheme Regulations 2015 (including structure planning and scheme amendment processes and connection to the RCodes)
- Local Planning Strategy & Scheme review processes,
- Improvement Plans and Improvement Schemes,
- State Planning Policy 3.7 and Bushfire Planning mechanisms;
- State Planning Policy 3.6 - Development Contributions;
- Use of the Section 76 'call in' powers by the Minister; and
- Perth & Peel @ 3.5million report card

The Reform Team have informally advised the Association that Third Party Appeal Rights would not be considered within this review, due to the State Government's position that it does not support the introduction of any type of Third Party Appeal Rights into the WA Planning System.

Following the request for formal consideration of whether members support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels, Local Governments have provided the Association with detailed reports and their Council resolution on the issue. The submissions received and the additional comments are provided in Appendix 1 to this report, as many of the recommendations were accompanied by additional suggestions and/or conditions to the resolution.

In summary, **43** Local Governments provided a formal response to the request; as follows: -

- 23** **Support** the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels
- 1** **Supports in principle** the introduction of third party appeal rights in relation to development application decisions by JDAP, SAT and the WAPC as part of a suite of reforms that are required to be undertaken to the State Planning regime, subject to review of any proposed legislation.
- 2** **Do not support** the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels but proposed an alternative Third Party Appeal Model.
- 16** **Do not support** the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels
- 1** **Does not Support** and
- Reiterates its previous advice, that it is prepared to support further consideration of third party appeals in WA for development applications, structure plans and planning scheme amendments upon a discussion paper being released by the Department of Planning/WA Planning Commission, citing options and examples of third party appeals; and encourages WALGA to pursue its involvement in the planning review process, to address members

concerns with the current planning framework, in recognition of the State Governments current position on third party appeals.

Based on the above, 23 Local Governments (53%) indicate a level of support for the introduction of Third Party Appeal Rights into the WA planning system for Development Assessment Panels, or the introduction of wider third party appeal rights through one of the different models presented in through the consultation process (7%). 16 Local Governments (37%) do not support the introduction of Third Party Appeal Rights for decision made by Development Assessment Panel, and one Local Government (2%) requests that the State Government prepare a discussion paper before any further consideration occurs.

Further consultation with members will be required to provide more clarity on the exact details of the criteria that would be need to established before any system of Third Party Appeals for decisions made by Development Assessment Panels is implemented by the State Government.

It is therefore recommended that WALGA amend its current policy position (from February 2008), and advocate to the State Government for the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels.

Appendix 1 – Summary of Members Submissions

Support the introduction of Third Party Appeal Rights for decision made by Development Assessment Panels

#	Local Government	Additional Comments
1	City of Joondalup	Nil
2	Shire of Nannup	Nil
3	Shire of Cunderdin	Nil
4	Shire of Tammin	Nil
5	Shire of Kellerberrin	Nil
6	Shire of Donnybrook	Nil
7	City of Kalamunda	It is noted that proceeding with Option 1, still requires a lot more work in respect to details as to how this would be implemented through DAP process. However, as a starting point, Option 1 represents a pragmatic approach where the interests of all key stakeholder can be considered and implications arising evaluated before any decision is made to expand the scope of Third Party Appeals further.
8	Shire of Wongan-Ballidu	Additional advice recommending WALGA to review alternatives to Third Party Appeals, as the introduction of appeals is unlikely to significantly improve the DAP process.
9	Shire of Wyalkatchem	Nil
10	Town of Cottesloe	...as part of a wider implementation of Third Party Appeal Rights on any development approval and/or the conditions or absence of condition of an approval.
11	Shire of Narrogin	Nil
12	Shire of Dandaragan	Nil
13	Town of Mosman Park	...as the first step into further consultation and research into other options.
14	Shire of Peppermint Grove	Third Party Appeal Rights should be limited to those planning decisions where discretion is exercised under the R-Codes, Local Planning Schemes and/or Local Planning Policies. Council also supports the application of Third Party Appeal Rights to the decisions of any planning authority.
15	City of Subiaco	Recommends that, if third party appeal rights are adopted into the Western Australian planning system, that WALGA seek to review third party appeal rights on a regular basis so that further refinement and review of the appeals process can be undertaken.
16	Shire of Toodyay	...if and when this is considered by the State Government of Western Australia.

17	Shire of Chittering	Recommends WALGA review alternative mechanisms for greater transparency in the planning process, such as seeking a review of the Development Assessment Panels legislation and mandates.
18	Shire of Broome	Supports the introduction of limited third party appeal rights...(for DAPS) ... on the basis that: <ol style="list-style-type: none"> 1. The DAP system as it currently exists provides for Panels that are comprised predominately of non-elected members who cannot be expected to have the knowledge or awareness of local issues; 2. As there are more non-elected members than elected members on DAPs, the local government representatives do not have the ability to ensure a DAP decision is made that is consistent with the community's and local governments interests; 3. Public confidence in the accountability of the DAP system would be enhanced through the introduction of third party appeal rights; and 4. If introduced, third party appeal rights should only extend to consideration of valid planning grounds.
19	City of Belmont	While supporting this option, the City's position as a potential appellant is that its right to appeal as a third party will only be exercised if the City considers it appropriate to do so, i.e. in an instance where a RAR report recommendation is overturned by the DAP. In any case, the City will not act as an advocate for other third parties wishing to pursue an appeal.
20	Shire of Esperance	Nil.
21	Town of Port Hedland	...support for further investigation into introducing a model of Third Party Appeal Rights for decision made by DAPs in WA that includes the ability for Local Government to lodge an appeal. Consideration could also be given to limiting eligible parties to those who have made a submission on valid planning grounds during public consultation of a development that have not been adequately considered or addressed in the Responsibly Authority report. The introduction of Third Party Appeal Rights has the ability to further complicate and counteract streamlining of the development process, therefore, any new system to this effect must be well considered and tested before being implemented in legislation.
22	City of Wanneroo	<ol style="list-style-type: none"> 1. Does not support a comprehensive introduction of Third Party Appeals into the WA planning framework, however, considers that there would be some merit in the introduction of Third Party Appeal Rights in limited circumstances where determinations have been issued by DAPs; and 2. Notes that public confidence in the DAPs decision making process is likely to be enhanced by introducing Third Party Appeal Rights in limited circumstances particularly when transparency and accountability is clearly demonstrated in the determination process.
23	City of South Perth	Nil.

Does not support the Introduction of Third Party Appeal Rights for decision made by Development Assessment Panel BUT an alternative Third Party Appeal Model is proposed.

#	Local Government	Additional Comments
1	Town of Cambridge	<p>Council's preferred model is that third party appeal rights should be available for all development approvals, including the conditions or absence of conditions of an approval, based on the following reasons:</p> <ol style="list-style-type: none"> a) The rights of a third party to appeal a decision provides for a more equitable planning system than what presently exists in that all persons affected by a planning decision have a right to review the decision on planning grounds, rather than just the proponent; b) Third party appeal rights can lead to better and more proactive community engagement in the planning process, ideally before a decision is made, however also during an appeal process should that situation occur

		<p>c) Third party appeal rights can improve transparency in decision making by allowing third parties the ability to scrutinise and challenge decision making. Greater levels of transparency can then lead to greater levels of accountability.</p> <p>A third party appeal rights system should address the following considerations:</p> <p>(a) Appeal rights should be limited to parties who are demonstrably affected by, or interested in, a decision. For example, a party that provided a submission on an application prior to its determination.</p> <p>(b) Appeal rights should be limited to where there has been an exercise of discretion by the decision maker under the planning framework and/or where the development proposal involves matters of substantial public interest to the local community.</p> <p>(c) Criteria should be included to address vexatious or frivolous appeals that are not based on accepted planning grounds.</p> <p>(d) The opportunity to appeal a decision should be limited to a specified timeframe, similar to the current 28 day appeal period adopted by the State Administrative Tribunal.</p>
2	City of Busselton	<p>1. Recommends further investigation into the opportunities for Third Party Appeal Rights in Planning;</p> <p>2. That it reaffirms the City's submission (7 July 17) to support the provision for third party appeal rights in planning where a development is not consistent with the conveyed expectation of a democratically derived policy; either it is an unforeseen development or it is a significant variation on an expressed standard.</p>

Does not support the Introduction of Third Party Appeal Rights for decision made by Development Assessment Panels

#	Local Government	Additional Comments
1	Shire of Mundaring	<p>(a) Views of third parties are sufficiently represented in the planning process under existing legislation and policies;</p> <p>(b) It will not necessarily improve the Development Assessment Panel decision making to reflect 'local views' as the State Administrative Tribunal (SAT), a State agency, would likely be responsible for overseeing third party appeals and -in practice – SAT gives less weight to local views that cannot be legally or technically sustained from a planning perspective;</p> <p>(c) The concept has the potential to increase administrative and legal costs for local governments;</p> <p>Further resolved to advise WALGA that it recommends WALGA investigate increasing local government membership in Development Assessment Panels, rather than advocate for the introduction of Third Party Appeal Rights.</p>
2	Shire of Murray	<p>Shire of Murray</p> <p>1. it does not support the principle of Third Party Appeal Rights in Western Australia, regardless of the model used, as this will have the effect of further complicating an already overly complex administrative process, which will result in uncertainty, delays and additional costs to the planning approval process; and</p> <p>2. it considers that it would be more appropriate for the Association to strongly advocate for improvements to the existing planning process, which would result in a greater level of certainty of outcomes and streamline existing processes, as a means of addressing the concerns that have resulted in Third Party Appeal Rights being investigated.</p>
3	Shire of Dardanup	due to the increased burden the process will have on local governments limited human and financial resources.

4	Shire of Mingenew	...as it is considered that this will create a precedent for the state government to introduce Third Party Appeal Rights for all development decisions.
5	Shire of Capel	<p>The Shire of Capel does not support the limited introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels for the following specific reasons:</p> <ul style="list-style-type: none"> (a) The potential for required increased staff resources; (b) The potential to further introduce delays to the decision making process; (c) Reduced certainty in the decision making process; and (d) The proposal would only apply to DAP determinations and would not apply to applications for \$2-\$10 million that can be determined by Local Government. If an applicant does not opt for a DAP determination they would avoid TPAP. <p>That the Shire of Capel does not support the introduction of Third Party Appeal Rights (TPAR) into the Western Australian planning framework for the following reasons:</p> <ul style="list-style-type: none"> a) Increased costs in terms of both staff resources and financial requirements; a) The additional time required for a development to receive planning approval in order to allow third party appeals; b) Introduction of Third Party Appeal Rights would be contrary to current efforts to streamline the planning process and its introduction would likely impose unwarranted delays and costs with an associated decrease in efficiency; b) The potential removal of decision making powers from Local Government; c) The potential to raise community expectations that may not be realised in practice; d) Introducing TPAPs would likely not provide additional improvements to equity or community engagement from that currently provided for within the current planning framework; e) The potential to create an adversarial and litigious environment around planning decisions; and f) Further work is warranted on staff resourcing, fees, awarding of costs and appropriate criteria and measures to ensure vexatious or spurious appeals are adequately dealt with prior to the Shire giving consideration to supporting the introduction of TPAPs.
6	Shire of Irwin	Nil
7	Shire of Coorow	...as it is considered that this will create a precedent for the state government to introduce Third Party Appeal rights for all development decisions.
8	Shire of Wickiepin	Nil
9	Shire of Lavertonas it is considered that this will create a precedent for the state government to introduce Third Party Appeal rights for all development decisions, whilst at the same time increasing costs for local government in defending appeals.
10	Shire of Leonora	<p>.....as it is considered that this will create a precedent for the state government to introduce Third Party Appeal rights for all development decisions.</p> <p>Third Party Appeal rights if introduced will encourage vexatious or competitive parties to lodge appeals that will add further levels of bureaucracy, uncertainty and delay to the planning system, raise an unrealistic level of expectation for communities in the ability to prevent development, while increasing costs for local government in defending appeals.</p>
11	Shire of Chapman Valley	<p>...any form of Third Party Appeal rights should not be supported as it is will create a precedent for their introduction at all levels of the planning system.</p> <p>Third Party Appeal rights if introduced will encourage vexatious or competitive parties to lodge appeals that will add further levels of bureaucracy, uncertainty and delay to the planning system, raise an unrealistic level of expectation for communities in the ability to prevent</p>

		development (or subdivision), while increasing costs for local government in defending appeals. Local Government remain the most representative, accountable and transparent tier of government and it is considered that Councillors make decisions that take into account the communities they represent and there is little benefit and substantial risk in pursuing any form of third party appeal rights.
12	Shire of Northampton	...as it is considered that this will create a precedent for the state government to introduce Third Party Appeal rights for all development decisions.
13	Shire of Plantagenet	...any form of Third Party Appeal rights should not be supported.
14	Shire of Williams	...any form of Third Party Appeal rights should not be supported and there should be no change to current legislation in regards to this matter.
15	City of Armadale	...and that WALGA maintain its current policy position on Third Party Appeal Rights in general.
16	Shire of Exmouth	As a result, the Shire's preferred option...is Option 5, no Third Party Appeals but improve the existing decision making process with the measure outlined. If it has to be implemented, the Shire's preference would be for Third Party Appeals on DAP decision, but only decision that involved the use of discretion to vary the applicable planning framework.

Other submissions

Support - City of Bayswater

Supports in principle the introduction of third party appeal rights in relation to development application decisions by JDAP, SAT and the WAPC as part of a suite of reforms that are required to be undertaken to the State Planning regime, subject to review of any proposed legislation.

Does not Support - City of Mandurah

1. Reiterates its previous advice, that it is prepared to support further consideration of third party appeals in WA for development applications, structure plans and planning scheme amendments upon a discussion paper being released by the Department of Planning/WA Planning Commission, citing options and examples of third party appeals
2. Encourages WALGA to pursue its involvement in the planning review process, to address members concerns with the current planning framework, in recognition of the State Governments current position on third party appeals.

5.5 Community Resource Centre Funding Cuts (05-018-03-0004 KD)

Kirstie Davis, Policy Manager Community

Recommendation

That:

1. WALGA:

- a. **Acknowledges the difficulties being faced by proposed funding cuts to Community Resource Centres and the flow on effects this may have to Local Governments; and**
 - b. **Considers previous reviews into the location and functionality of Community Resources Centres.**
- 2. WALGA coordinate a representative paper with affected Local Governments to highlight the long term implications for the Local Government Sector; and**
 - 3. WALGA write to the relevant Ministers and Agencies to highlight the concerns of affected Local Governments and the need for appropriate resources and long term planning support to assist rural, regional and remote communities.**

In Brief

- There is an ongoing acknowledgement of the important role of Community Resources Centres (CRCs) in rural, remote and regional Western Australia
- Several reviews have been undertaken, outlining the value of continued support of CRCs
- A 40% reduction of funding to CRCs has been included in forward estimates of the 2017 State budget for contracts commencing March 2019.

Attachment

Nil

Relevance to Strategic Plan

Key Strategies

Engagement with Members

- Ø Improve communication and build relationships at all levels of member Local Governments

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government
- Ø Provide support to all members, according to need
- Ø Foster economic and regional development in Local Government

Enhanced Reputation and Relationships

- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government

Policy Implications

3.25 Investing in Communities

The Association supports Local Government initiatives and infrastructure that contribute to health and wellbeing of the community.

3.25.1 Community Infrastructure

Position Statement

The Association continues to advocate for better planning and support for community infrastructure and investment by the State, Commonwealth and private partners.

Background

Equitable long term funding arrangements for maintenance and renewal of regional facilities are required to ensure that this infrastructure is sustainable. This community infrastructure includes Community Resource Centres.

Budgetary Implications

Nil.

Background

Telecentres were established in 1991 as an investment by MoUs between State Government and local communities to ensure sustainability of services and to address needs of local communities.

The Western Australian Telecentre Network (WATC) was established with the purpose of fostering social and economic development within their local communities through the provision of local access to technology, information, and services.

Telecentres provided a range of services including access to computers, high speed internet services, two-way video-conferencing, and education and training facilities, as well as Government, business and community information and referral services.

A majority of the Telecentres were incorporated associations under the *Associations Incorporations Act 1987* (WA), were independently operated by its own management committee, comprised volunteers from the local community, who had ultimate responsibility of its operations.

WA Community Resource Network (WACRN)

In 2008 the Department of Local Government and Regional Development made the recommendation to State that Telecentres were the established platform for delivery of Royalties for Regions. By the end of 2008, the WATC had grown to include 103 not for profit, community owned and operated centres spread across rural and remote communities in WA, providing diverse range of services appropriate to their communities needs.

The Department of Regional Development and Lands advised:

The role and functions for Telecentres were expanded to include, for example: a greater emphasis on improved technology; an increased role in event coordination; delivery of training; coordination of local activities and a stronger focus on providing Government information. Significantly, CRCs were freed up to engage in more income generating activities and to promote social development through providing access to services not otherwise available to the community¹

Today, the [Western Australia Community Resources Network](#) (WACRN) is comprised of over 100 rural, remote and regional CRCs. CRCs are now described as not for profit organisations that are independently owned and operated by their local communities, with a contributing volunteer workforce. Partnerships with service providers include Indigenous Business Australia, community legal centres, employment service agencies and Universities and TAFEs that continue to be promoted and implemented by skilled workers in CRCs.

CRCs are contracted by the Department of Primary Industries and Regional Development (the Department) to provide access to government and community services and information, and undertake community, business and economic development activities. The Department has also

¹Media Statement regarding WACRN launch available here:
<https://www.mediastatements.wa.gov.au/Pages/Barnett/2010/04/Connecting-communities.aspx>

provided funding to Linkwest, the peak body representing CRCs, for the delivery of governance and management support services to the WACRN.

The WACRN is supported by the Department through funding from the State Government's Royalties for Regions program for delivery of services such as Medicare, Centrelink, Licensing and Training, Banks, Post Offices, Visitor Information Centres, Administration and Technology, Advertising, Business and Professional Development, Career Development and Health and Family Services.

Community Resource Centres

CRC Fast Facts

- Ø There are 105 CRCs in regional Western Australia
- Ø \$11.2 million a year (approximately \$100,000 per CRC) from State Government
- Ø \$1.8 million a year for traineeships. 497 regional/remote people have had the opportunity to be upskilled by the CRC network
- Ø CRCs employ 395 people in regional and remote Western Australia
- Ø 74% of households in regional WA had access the CRC in the last two years
- Ø Over 1,000 volunteers support the CRC Network
- Ø 87% of CRCs are located in towns with populations of 3,000 or less
- Ø Each centre with at least seven significant partnerships and established connections with business, local government, service providers and community leaders.

Table 6: Contracted Commonwealth/State Government Services provided by CRCs

(Source: RDL)

Service	Percentage of CRCs offering the service
Centrelink*	68.8
Medicare*	53.1
Department Training and Workforce Development**	33.3
Australian Tax Office*	30.2
Department of Veterans Affairs*	18.8
Office of Rural Health*	15.6
Department of Communities**	3.1
Department of Housing**	3.1
Department of Family, Housing, Community Service and Indigenous Affairs – Broadband for Seniors program*	3.1
Department of Indigenous Affairs**	2.1
Other	4.2
None	10.4

Figure 1: 94% of services delivered by the WACRN are Commonwealth and State services (WA Regional Development of Trust Review, 2013) * Commonwealth Service ** State Service

Table 7: Contracted Local Government Services provided by CRCs

(Source: RDL)

Service	Percentage of CRCs offering the service
Library	31.3
Tourist Information	31.3
Toy Library	10.4
Rates Payment	6.3
Dog Licensing	4.2
Firearm Licencing	3.1
Other	11.5
None	43.8

Figure 2: 1.7% of overall WACRN services are Local Government services (WA Regional Development of Trust Review, 2013)

Table 8: As at March 2013 115 Network CRCs (109 of them operating)

(Source: RDL)

Number of CRC's run by Incorporated Associations, administered under the <i>Associations Incorporation Act 1987 (WA)</i>	89
Number of CRC's run by Aboriginal Corporations	16
Number of CRC's run by Country Local Government	9
Number of CRC's run by Corporations with Charitable status via ATO (not for profit companies)	1
Currently not operating i.e. have not been funded for 2 or more funding rounds (from the list above)	6

Of the 109 CRCs funded by RforR across regional WA, RDL advises that 28 of them are sited "in remote regions".

Figure 3: Governance structures of WACRN (WA Regional Development of Trust Review, 2013)

CRCs are ideally positioned to support State and Commonwealth Government transactional service delivery and improve the access of socio-economic benefits to regional, rural and remote communities in Western Australia. Local leadership and capacity through place based, community led training, volunteering and videoconferencing platforms is enhanced through the functioning of CRCs.

CRCs provide vital access to government and community services in the regions, many of whom have either no computer, limited Internet access or limited digital literacy. With an increase in State Government service being made available through electronic formats, the support for CRCs is becoming increasingly vital.

CRCs have been under constant review since 2008 as is outlined in the eight key milestones below.

In October 2009, the Economic Audit Committee Final Report, *Putting the Public First – Partnering with the Community and Business to Deliver Outcomes*, was released. The report advised State Government to negotiate with the community sector a set of principles to facilitate the government/community sector partnership in delivering human services in order to build trust, foster collaboration, drive social innovation and ensure sustainable service delivery.

Ultimately the Economic Audit Committee wanted contractual arrangements with community service providers reviewed and improved, considering the WACRN is the biggest non-government regional network available for the purposes outlined in the Economic Audit Report.

By 8 April 2010 Hon Brendon Grylls, Minister Regional Development and Lands (RDL), officially launched the new branding of the CRC network and by 1 July 2010, the Financial Assistance Agreement (FAA) between each CRC and the RDL came into effect, implementing increased funding from approximately \$20,000 per CRC to \$100,000 per CRC per year.

In 2011 the Delivering Community Services in Partnership Policy (DCSP Policy) was endorsed as aligned to the *Royalties for Regions Act 2009*. Previously titled Funding and Purchasing Community Services Policy (FPCS Policy) (2002), the DCSP Policy was introduced to provide government agencies with more flexible and less formal processes for engaging not for profit organisations in government service delivery. A key recommendation of the Economic Audit Report was redevelopment of this policy to form the DCSP Policy, a key government-community sector partnership agreement and guides the governance and outputs of CRCs.

In May 2013, the Western Australian Regional Development Trust produced a Review of the Western Australian Community Resource Network, as instructed by the RDL, pursuant to section 12(b) of the *Royalties for Regions Act 2009*. This comprehensive review was to assess the objectives, performance and potential of the WACRN in enhancing State Government and Agencies services to regional, rural and remote communities.

The Review concluded that CRCs could not function without State funding, stating:

*the evidence at this time was that some CRCs have made consistent and sustained difference to the communities in which they are situated. The cost of accessing services is prohibitive for many people within more rural and remote communities so the CRC does become a vital link between individuals and government*²

It was concluded at this time that the WACRN had an important role in community development and service delivery in regional WA and this could be enhanced as CRCs identified as community champions for their communities and are critical in building thriving communities in regional, rural and remote WA.

On 8 June 2016, the Committee for Economic Development Australia (CEDA) [Regional Development in Western Australia Report](#) was released. It highlighted one of the key barriers to growth in the regions was a lack of a vision and clear economic development strategy hampering growth. The report further stated that:

*small, widely-dispersed populations in many areas mean that there are few economics of scale. This creates other barriers to growth, including high business costs, inadequate provision and inefficient infrastructure provision and inefficient value chains ... In addition, social challenges arise from unequal opportunities and outcomes for Indigenous people, a lack of community engagement and partnership in some areas, and a need for stronger leadership*³

The CEDA report continues to highlight a "strong sentiment that policymakers, businesses and communities outside the Regions do not always understand the opportunities and growth potential of the Regions." CEDA identified "innovation hubs in each region to connect local communities and businesses with government, industry, innovators and financiers" as a way to overcome barriers to growth in the regions.

In continued support for the functioning of CRCs, on 1 September 2016 Hon Terry Redman MLA former Minister for Regional Development; Lands; Minister Assisting the Minister for State Development announced \$56 million investment to continue to all 106 Community Resource Centres for the provision of services and information to regional communities as made possible by the Liberal National Government's Royalties for Regions program.

State Government then commissioned another independent review of CRCs in 2016 to provide further advice and recommendations about the likely future need for these community hubs. The Diversity in Place, Unity in Service Review, published in 2017, provided key findings highlighting ongoing support for CRCs, the importance of key partnerships and the cost efficient benefits being provided to meet community needs. Also noted were recommendations for strategic improvements and contractual arrangements.

The WALGA 2018-19 State Budget Submission supported the ongoing financial support of the State for CRCs and is also consistent with the Association's endorsed policy messages.

Despite more than 25 years of ongoing State funding and support and strong evidenced based results on the functioning of CRCs, on 10 July 2017, State Government announced the CRC contracts were to be shortened to 18 months, with current contracts due to expire in March 2019 (the DCSP Policy requires three months' notice). It is highly anticipated that the costs of these services will shift to Local Government responsibility, or the services to communities in these location will cease to operate.

Comment

² Western Australian State Government (Regional Development Lands, Western Australian Regional Development Trust) (May, 2013). Review of the Western Australian Community Resources Network. Available online: http://www.drd.wa.gov.au/Publications/Documents/WARDT_Review_of_WACRN_report.pdf

³ CESA (2016) Regional Development in Western Australia Report. Available here: <https://www.ceda.com.au/Publications/Regional-Development-in-Western-Australia>

Royalties for Regions

Since 1991, State Government has funded Telecentres. The Royalties for Regions program became the States' funding vehicle for CRCs, from 2008 to present day. The Regional Development Strategy 2016-25, launched in June 2016, sets clear structure for future investment, with a commitment to invest through major strategic programs that will deliver outcomes of jobs growth, economic growth and capable people.

Given the fiscal challenges facing the Government a comprehensive review of the Royalties for Regions program has been undertaken in order to prioritise the delivery of regional election commitments. Over the forward estimates, there is a strengthened emphasis on health, including mental health, education, transport, tourism and essential community infrastructures.

National Broadband Network Commitment

Opportunities for CRCs to partner with government in the roll out of the NBN were highlighted through review processes from 2013. The NBN rollout currently underway across the state provides the opportunity for CRCs to adopt a greater role in educating and positioning communities to respond in locations where NBN has failed to, or is still to deliver.

In the locations where NBN has been successful, CRCs can build on the strengths of the current resourcing of ISP based videoconferencing facilities, in with the growing reach of the NBN.

Local Government Context

Local Governments are a major stakeholder in regional development through the economic and social progress of the communities they serve and represent. A strong relationship between Local Governments and CRCs is necessary for regional development to be implemented successfully. Local Governments face significant financial constraints, and are reliant on funding from other levels of Government to deliver important infrastructure and services to the community. It is crucial that essential funding for the sector is maintained in spite of the State's challenging budget position.

In order to promote equitable delivery of services within the region, the input of Local Government into the States proposed funding cuts to CRCs is critical. The expectation placed on Local Governments and community will vary across the state. In some regions, such as the Wheatbelt and other more remote communities, CRCs will be the only avenue for State and Commonwealth service delivery.

The diversity across and within Western Australia regions entails that Local Governments and their communities will place different expectations on the role of CRCs. Regardless, the Association and the Local Government sector do not support the proposed funding cuts to CRCs in any way.

The Association's State Budget 2018-19 submission outlined that funding should continue for programs that have been identified as community priorities, and deliver value for money. The Association members identified CRCs as delivering benefits in their local communities, which should be retained at existing levels, or additional funding provided to ensure the service continues going forward.

The Association supports the Department of Primary Industries and Regional Development continuing to play a key role in economic development on a regional level. Access of State services to regional stakeholders and communities is strengthened through CRCs as they are the primary conduit in remote, rural and regional locations into State Government Departments and Agencies thereby holding them accountable to policy and service delivery outcomes into the regions.

CRCs are well placed to drive vibrant and resilient communities through the delivery of key State Government and Agency service delivery initiatives together with other social and economic activity. They are often governed by passionate people with a drive and determination to implement necessary action to overcome the disadvantage of living in low access areas of the State. Harnessing the strengths of CRCs to drive prosperity across the State requires a collaborative effort from all levels of government and through a whole of government approach.

CRCs looking for opportunities to create socioeconomic diversity and are well positioned to play to regional strengths. Whilst the issue has been raised through Machinery of Government initiatives, proposed funding cuts to CRCs is not the most effective way to balance the overall State's budget.

Funding the WACRN to operate over 100 CRCs is an example of where the State Government is helping to provide equitable access to socioeconomic services that benefit community. Community development and community service activities in Western Australia are funded and delivered by an increasingly complex array of government and non-government organisations. Too many funded programs do not translate to a common understanding or have applicability for the organisations that need it most.

The Association will work with Local Governments affected to determine how it can better support and manage current and future challenges facing their local communities in the face of proposed funding cuts and, at the direction of State Council, continue to build a strong relationship with responsible State Departments and investigate the potential for formalising an agreement for continued CRC support and commitment.

5.6 Interim Submission on Infrastructure WA (05-001-03-0018 MM)

By Marissa MacDonald, Policy Officer-Transport and Roads

Recommendation

That the interim submission to the Department of Premier and Cabinet on the proposal for establishing Infrastructure WA as a statutory body under legislation be endorsed.

In Brief

- In February the Department of Premier and Cabinet released a proposal to establish Infrastructure WA, an independent body to provide expert advice to the Premier and Government on infrastructure needs and priorities in Western Australia.
- Infrastructure WA's proposed roles are to develop a 20 year State Infrastructure Strategy, evaluate major project proposals over a threshold value of \$100 million and provide advice to the State Government on infrastructure priorities.
- An interim submission was provided to the Department of Premier and Cabinet highlighting strong support for the establishment of Infrastructure WA as a statutory body enabled under legislation.
- The Local Government sector seeks representation on the Infrastructure WA Board, an effective, transparent and genuinely open consultative and engagement process and consideration of the on-going costs of asset maintenance and renewal of any assets transferred to Local Government care and control.

Attachments

- Infrastructure WA: Proposal for Public Consultation - <https://www.dpc.wa.gov.au/ProjectsandSpecialEvents/infrastructurewa/Documents/InfrastructureWA-Public-comment-FINAL-web.pdf>
- Interim Submission: Infrastructure WA

Relevance to Strategic Plan

Key Strategies

Engagement with Members

- Ø Build a strong sense of WALGA ownership and alignment.

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government;
- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;
- Ø Foster economic and regional development in Local Government.

Enhanced Reputation and Relationships

- Ø Communicate and market the profile and reputation of Local Government and WALGA;
- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;

Policy Implications

That:

1. the representative submission on behalf of Local Government in response to the development of a State Infrastructure Strategy be endorsed.
2. a further submission be made following the release of the Green Paper for the State Infrastructure Strategy later in 2006.

RESOLUTION EN BLOC 049.TRN.2/2006

That WALGA:

1. Maintain observer status with the Infrastructure WA Advisory Group provided that there is no direct financial cost.
2. Urge the State Government to lead a consultative, transparent process to develop a coherent and comprehensive infrastructure plan for Western Australia that includes participation of appropriate community groups with a State Wide focus and Local Government.

RESOLUTION 122.7/2015

Budgetary Implications

Nil.

Background

WALGA has advocated for and supported development of a long term State Infrastructure Strategy since at least April 2006. At the time, the Association provided a submission to the State Government's development of a State Infrastructure Strategy focused on the key issues of planning, development, renewal, preservation and funding of the infrastructure that is vital to the economic and social development of Western Australia. The Association provided comment on the Green Paper considering a State Infrastructure Strategy towards the end of 2006.

In 2015 the WALGA State Council again endorsed a recommendation to advocate to the State Government for the development of a long term State Infrastructure Strategy. Local Governments sought engagement with the State and Federal Government in transparent processes leading to efficient long term infrastructure planning.

In February 2018 the Department of Premier and Cabinet released a proposal for the establishment of Infrastructure WA, an independent body to provide expert advice to the Premier and Government on infrastructure needs and priorities in Western Australia. The rationale for Infrastructure WA is to address issues associated with planning, decision-making and delivery including:

- the absence of a long-term strategy or plan;
- the need for more robust advice to inform investment decisions;
- inconsistent sectoral strategies;
- inconsistent project evaluation, governance and monitoring systems; and
- limited interaction and engagement with the private and not-for profit sectors.

Infrastructure WA's proposed key roles and functions include:

- Developing a 20-year State Infrastructure Strategy as advice to Government;
- Evaluating major Infrastructure proposals and advising government on infrastructure priorities;
- Providing expert advice on infrastructure matters;
- Supporting the work of agencies in developing their infrastructure plans;
- Providing high-level advice on funding and financing models for infrastructure; and
- Coordinating Western Australia's dealings with Infrastructure Australia.

It is proposed that Infrastructure WA will be established under new legislation and modelled from the existing independent infrastructure bodies Infrastructure Australia, Infrastructure Victoria, Infrastructure New South Wales and Building Queensland. The body will assess infrastructure proposals above a certain threshold (suggested as \$100 million) and high risk projects below the threshold.

The Department of Premier and Cabinet held stakeholder briefings in mid-February and also met with WALGA representatives on 12 March to discuss the proposal. The comment period closed on 20 March.

Comment

Local Governments were asked for feedback on the Infrastructure WA proposal to guide the development of a representative sector submission. Comments and submissions were received from the City of Armadale, City of Cockburn, City of Kwinana and City of Kalamunda.

Due to the timing of the consultation period, which was a period of six weeks, an interim submission was provided to the Department of Premier and Cabinet. This interim submission highlights the main Local Government issues and proposes a number of recommendations on behalf of the Local Government sector for the State Government to consider in developing legislation and arrangements in support of establishing Infrastructure WA.

Feedback from Local Governments indicates strong support for the establishment of Infrastructure WA as a statutory body enabled under legislation. Strengthening the relationship with Infrastructure Australia and the depth and quality of proposals is seen as an opportunity for the State to progress initiatives that will have a positive economic, social and environmental benefit even at a time of constrained public finance.

The Local Government sector seeks representation on the Infrastructure WA Board on the basis that Local Governments are a key strategic partner in the delivery, care, control and management of community infrastructure and contribute to planned, integrated and sustainable outcomes. A well respected leader with strong understanding of the Local Government sector would make a valuable contribution to the Infrastructure WA Board, particularly during the establishment phase as systems and processes are developed and implemented.

From a Local Government perspective effective, transparent and genuinely open consultative and engagement processes with all stakeholders, including and particularly with Local Governments is critical to ensuring that the value of Infrastructure WA is realised. This should underpin the development of legislation and policy relating to Infrastructure WA. In alignment with the 'State and Local Government Partnership Agreement', Local Government should be engaged directly throughout the whole process to ensure a 'whole of government approach'.

Infrastructure WA needs to have a sufficiently broad mandate and sufficient resourcing to identify infrastructure gaps that may not have yet been adequately defined and developed by Government agencies. Lack of information or developed project proposals should not limit the impact of IWA in regional Western Australia. Given the proposed \$100 million threshold for projects, which aligns with Infrastructure Australia, there may be advantages in defining projects broadly, either across functions or spatially.

Early engagement of Local Governments in design development and material selection means that from project inception, significant infrastructure which is proposed for transfer to Local Government care, control and management is developed and delivered within the context of Local Governments capacity and capability. Recent examples where improved processes have been undertaken include Elizabeth Quay, Yagan Square and Scarborough foreshore. Whilst these projects benefited from structured collaboration with Local Governments, there remains opportunity for review and improvement of the processes. Failure to fully consider the on-going costs of asset maintenance and renewal of assets transferred to Local Government care and control amounts to cost shifting between spheres of Government.

Local Governments support the need for the State Government to finalise and/or review State Government departmental/agency strategic plans before work commences on the State Infrastructure Strategy to be prepared by Infrastructure WA. The recent announcement of the finalised Perth and Peel at 3.5 million is central to the development of the State Infrastructure Strategy. The objectives of existing State Government strategies including Regional Blueprints, Regional Freight Transport Network Plan and the State Aviation Strategy should be considered or if necessary explicitly reviewed

to ensure that Infrastructure WA's recommendations are not in conflict with Government Agency plans.

In accordance with State Council policy, the interim submission was referred to the Infrastructure Policy Team and the Executive Committee for approval and support for its submission was obtained. The interim submission was provided to the Department of Premier and Cabinet on 20 March 2018.

Item 5.6 Attachment
Interim Submission: Infrastructure WA



Interim Submission: **Infrastructure WA**

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Background

The Western Australian Local Government Association (WALGA) is the peak industry body for Local Government in Western Australia. The Association is an independent, membership-based organisation representing and supporting the work and interests of 138 Local Governments in Western Australia.

The Association provides an essential voice for over 1,200 elected members and approximately 22,000 Local Government employees as well as over 2.5 million constituents of Local Governments in Western Australia. WALGA also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

Western Australian Local Governments spent \$3.9 billion in 2015-16 on important services for the community, with the majority directed towards transport and communications (\$1 billion), recreation and culture (\$885 million) and housing and community amenities (\$662 million). Local Governments manage assets worth more than \$45 Billion (excluding land). This includes the management of 127,500 kilometres of road, 88% of the public network.

WALGA has advocated for and supported development of a long term State Infrastructure Strategy since at least April 2006. At the time, the Association provided a submission to the State Government development of a State Infrastructure Strategy focused on the key issues of planning, development, renewal, preservation and funding of the infrastructure that is vital to the economic and social development of the people of Western Australia. The Association provided comment on the Green Paper considering a State Infrastructure Strategy towards the end of 2006.

In 2015 the WALGA State Council again endorsed a recommendation to advocate to the State Government to develop a long term State Infrastructure Strategy. Local Governments sought engagement with the State and Federal Government in transparent processes leading to efficient long term infrastructure planning.

This submission highlights the main Local Government issues and proposes a number of recommendations on behalf of the Local Government sector for the State Government to consider in developing legislation and arrangements in support of establishing Infrastructure WA. Individual Local Governments have been encouraged to provide submissions highlighting issues in the context of each jurisdiction.

Due to the timing of the consultation period, this submission has not yet been endorsed by the WALGA State Council. Therefore, this interim submission will be considered at the next State Council meeting on 4 May. As such, please be advised that this is an interim submission and that the Association reserves the right to modify or withdraw the comments as directed by State Council.

Establishing Infrastructure WA

Recommendation: The Infrastructure WA board should include representation from the Local Government sector.

The Local Government sector seeks representation on the Infrastructure WA (“IWA”) Board on the basis that Local Governments are a key strategic partner in the delivery, care, control and management of community infrastructure and contribute to planned, integrated and sustainable outcomes.

The IWA Board’s consideration of strategic investment recommendations and project proposals, which ultimately impact the communities in which they are placed, will be enhanced by Local Government’s expertise and insight into the opportunities and risks that arise from major infrastructure projects. Almost every proposal intersects with Local Government’s role in land-use planning, infrastructure provision, transport planning, economic and community development. Every physical infrastructure investment has impacts and implications for surrounding land uses and communities. Typically larger investments have a greater impact footprint.

Local Governments are often a key stakeholder, called upon to undertake local works to enable the delivery and success of major infrastructure projects. Local Governments also have a frontline role in servicing the communities impacted by infrastructure projects. In accordance with Local Government Act requirements, Local Governments undertake comprehensive integrated strategic planning, which includes preparing and bringing together; Community Strategic Plans, Asset Management Plans, Long Term Financial Plans as well as a range of other enabling strategic plans specific to the needs of that Local Government’s community. Local Government strategic planning will influence and be influenced by major projects planning.

Major projects often create assets which are ultimately transferred to the care, control and management of Local Governments and yet, historically State Government project planning often engages Local Governments long after design development has commenced.

Local Government representation on the Board will contribute to greater understanding of the benefits that can be achieved by ensuring Local Governments are ‘on the journey’ from the earliest point in project initiation. Early engagement of Local Governments, means that Local Governments can influence design outcomes to ensure that the assets are designed and developed to specifications that meet community needs and expectations as well as ensure that assets are capable of being maintained and sustained by Local Governments, providing long term financial and resource efficiencies and ultimately community benefit.

Infrastructure WA Board representation that includes a sound understanding of Local Government integrated planning frameworks, Local Government capacity, decision making and operational capability will support greater collaboration, engagement and effective consultative practices with Local Governments and their communities.

A well respected leader with strong understanding of the Local Government sector would make a valuable contribution to the Infrastructure WA Board, particularly during the establishment phase as systems and processes are developed and implemented.

The processes adopted by Infrastructure WA should ensure that there is a specific and tailored engagement process regarding strategies and investments that are being considered. This would include consulting with Local Governments and relevant Regional Organisations of Councils within which the project is being considered.

The ability to work effectively across all sectors including private, not-for-profit, State, Federal and Local Governments is critical to the success of Infrastructure WA. Local Government representation with significant experience will ensure the governance, systems and processes are established in a way that will deliver the above benefits.

In line with the Association's 2006 submission to the West Australian Infrastructure Strategy we request the inclusion of Local Government representation on the Infrastructure WA board.

Recommendation: The State Government should finalise and/or review State Government departmental/agency strategic plans before work commences on the State Infrastructure Strategy to be prepared by Infrastructure WA.

Local Governments support the need for the State Government to finalise Perth & Peel 3.5 million plan and associated sub-regional frameworks to provide an agreed basis from which infrastructure strategies can be developed. Other existing State Government strategies, including Transport @ 3.5 million are also a high priority for finalisation or review. The objectives of existing State Government strategies including Regional Blueprints, Regional Freight Transport Network Plan and the State Aviation Strategy should be considered or if necessary explicitly reviewed to ensure that Infrastructure WA's recommendations are not in conflict with Government Agency plans, which may be implemented at the sub-\$100 million level. The existing State Government strategies have already been through rigorous community consultation processes which should provide a sound basis for most of Infrastructure WA's considerations at least in the short term.

Improving long-term planning

Recommendation: Infrastructure WA and the State Government need to directly engage Local Governments to ensure a whole of government approach.

In alignment with the 'State and Local Government Partnership Agreement', Local Government should be engaged directly throughout the whole process to ensure a 'whole of government approach'. As stated in the Partnership Agreement *"Local Government is a major stakeholder in many State Government decisions relating to legislation, policy and programs. As a party to the Agreement, the State Government, in good faith, will endeavour to consult with Local Government where it is appropriate to do so."*

Accordingly, the establishment of Infrastructure WA under new legislation, together with the development of the State's long term infrastructure strategy will require a Local Government consultation period of 12 weeks.

WALGA also supports the inclusion of a requirement within the proposed legislation that implements requirements for engagement and consultation with Local Governments.

There are recent examples where the decision to implement projects, based on the recommendation from Infrastructure Australia, with little or no public consultation has led to serious division in communities. It's essential that the State Government engage with Local Governments and their communities on large scale projects.

Recommendation: The State Infrastructure Strategy should require alignment of project implementation between agencies and the private sector.

Large scale projects typically require extensive work outside the project boundaries to enable connection with transport, power, water, telecommunications, waste and other systems. There are examples of spatial planning systems and models that should be utilised to ensure logical development of the State Infrastructure Strategy, alignment and streamlining between different agencies and to avoid duplication of works.

For example, the City of Perth launched the Smarter Planning Perth System in 2017 on a six month trial. The Smarter Planning Perth system identifies public works projects in close proximity and notifies their project managers of the opportunity to align works schedules and share resources, providing efficiencies and saving time and money. The City of Perth identified that works were done twice near Elizabeth Quay and in Wellington St that could have been completed only once. The system currently involves five organisations including the City of Perth, Western Power, ATCO Gas Australia, the Water Corporation and Main Roads WA. A similar model was implemented in New South Wales called the Smarter Scheduling NSW technology.

Visibility of when infrastructure capacity upgrades will be delivered will enable development to the capacity envisioned in Local Planning Schemes, to be coordinated and delivered with greater efficiency, reduced costs and improved community outcomes.

Any system or model, and the associated data, being considered in the development of the State Government Strategy should be accessible to all Local Governments, with consideration of the merits for providing access to developers also.

Recommendation: The State Government should develop a long term Financial Plan to support the State Infrastructure Strategy.

Section 5.56(1) of the *Local Government Act 1995*, requires Local Governments to have in place a long term Strategic Community Plan and a Corporate Business Plan. The Strategic Community Plan includes long and medium term priorities and resourcing implications with a horizon of 10 or more years. The Corporate Business Plan covers a four-year delivery program, aligned to the Strategic Community Plan, and accompanied by four-year financial projections. A long term (10 year) financial plan and asset management plan are required to support the Strategic Community Plan.

Similarly the State Government should also be required under legislation to develop long term strategic financial plans which would provide details on the resourcing requirements for the State's Infrastructure Strategy. This would encompass building new infrastructure, maintaining existing infrastructure and the renewal of ageing infrastructure as well as the expected funding arrangements.

Visibility of the State Government's medium to long term infrastructure delivery planning provides Local Governments, developers and the community with a greater level of surety in which they can plan for their own investment and developments.

Informing decision-making over the short to medium-term

Recommendation: In the short term to medium term, the State Government should directly engage Local Governments early in the project development process.

Any projects being developed in the short to medium term and that will affect Local Governments, need direct engagement earlier in the process. This is particularly important if the project will require changes to assets under the control of Local Governments or will create assets to be transferred to Local Government care, control and management.

Early engagement will ensure Local Governments have sufficient time to schedule necessary works in their Capital Works Program budgets and long term financial plans and will assist in identifying any capacity or capability shortfalls.

Recommendation: The assessment process for projects in the short to medium term needs to be rigorous and balanced taking into account economic, social and environmental considerations.

In the short to medium term, Local Governments would support a balanced and rigorous assessment process by State Treasury for projects, based on economic, social and environmental considerations. There also needs to be some way of recognising or rewarding infrastructure that:

- Involves collaboration across all levels of government;
- Is multi-purpose; and
- Considers whole of life costs and benefits and resilience.

There needs to be statutory provisions to ensure that Treasury assesses projects from a sustainability/triple bottom line perspective.

Better quality infrastructure proposals

Recommendation: With regards to land use planning, Infrastructure WA should also be focusing on a bottom-up approach taking into consideration the existing work undertaken by the Local Government sector.

In the Infrastructure WA proposal, it is very much focussed on a top down approach from the State Government to Local Governments. In particular, the proposal states that the *“preparation of a long term infrastructure strategy will also assist Local Governments to improve strategic alignment of land use plans and infrastructure proposals”* (page 31).

Local Governments already have existing and extensive land use plans and would be useful to inform the State Infrastructure Strategy through a bottom-up approach. As already mentioned in alignment with the 'State and Local Government Partnership Agreement', Local Governments should be engaged directly throughout the whole process.

One possible model to effectively integrate Local Government land use planning into a broader planning framework is shown in Figure 1. WALGA would support a similar framework which is adapted from the Municipal Association of Victoria's Submission to Infrastructure Victoria.

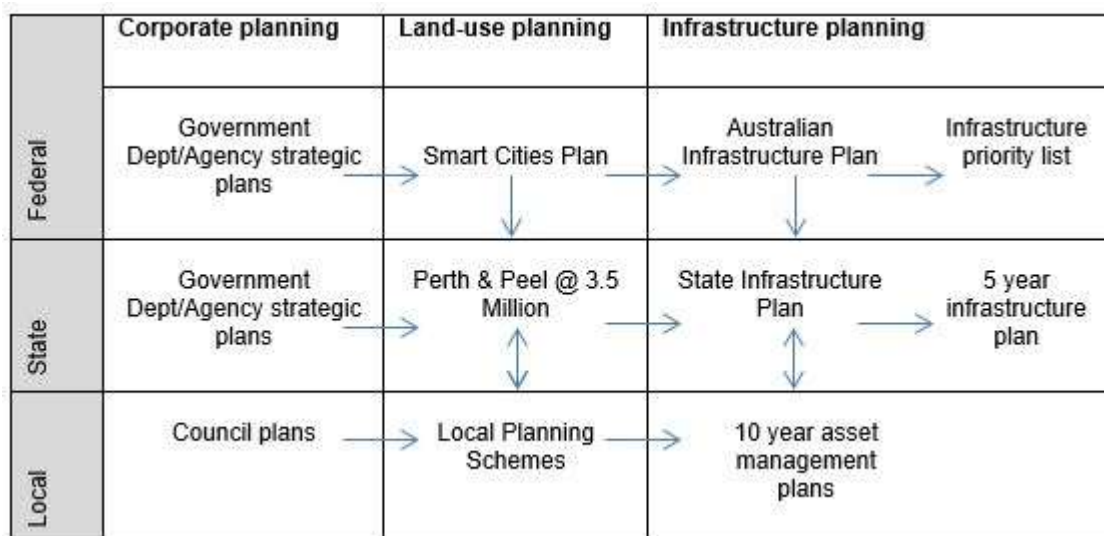


Figure 1: An integrated planning framework across three spheres of government.

Source: Adapted from the Municipal Association of Victoria's Submission on the 2016 All Things Considered Options Paper (<http://www.mav.asn.au/policy-services/transport-infrastructure/Pages/default.aspx>)

Recommendation: Infrastructure WA's assessment framework should be in line with or similar to the framework used by Infrastructure Australia.

Local Governments require clarity on the chosen assessment framework that will be used by Infrastructure WA and the subsequent processes involved with establishing the priority list. The assessment framework for Infrastructure WA should be similar or in line with the framework used by Infrastructure Australia.

The establishment of a project priority list for Western Australia should also align with the processes undertaken by Infrastructure Australia. As new projects are evaluated or existing projects reconsidered, it may be necessary to adjust the priority list accordingly. Given its importance, IWA should be required to consult with Local Governments and other stakeholders concerning the design of the assessment framework.

Other complementary roles

Recommendation: The State Government should design and develop in collaboration with Local Governments to ensure the capacity and capability of Local Governments to maintain infrastructure and assets for whole of life.

Local Government Asset Management planning is increasing in maturity and Local Governments have become acutely aware of the cost of infrastructure maintenance and renewal. Importantly, Local Governments are now ensuring that specifications for asset creation account for whole of life management including maintenance capability.

Early engagement of Local Governments in design development and material selection means that from project inception, significant infrastructure which is proposed for transfer to Local Government care, control and management is developed and delivered within the context of Local Governments capacity and capability. Recent examples where improved processes have been undertaken include Elizabeth Quay, Yagan Square and Scarborough foreshore. Whilst these projects benefited from structured collaboration with Local Governments, there remains opportunity for review and improvement of the processes and for these requirements to be embedded in legislation.

Failure to fully consider the on-going costs of asset maintenance and renewal of assets transferred to Local Government care and control amounts to cost shifting between spheres of Government.

Recommendation: Consider the potential role of Infrastructure WA in assessing potential unsolicited bids.

Western Australia currently does not have a well developed and implemented framework for attracting and assessing unsolicited infrastructure development proposals. The private and not-for-profit sectors have resources and expertise to deliver significant infrastructure and may bring innovative funding and financing solutions. While this could continue to be pursued by other agencies, there may be value in including this within the scope of Infrastructure WA enabling the State to consider a wider range of options.

Other General Comments

Infrastructure WA needs to have a sufficiently broad mandate and sufficient resourcing to identify infrastructure gaps that may not have yet been adequately defined and developed by Government agencies. There remains concern that 57% of the projects in the 2016 Infrastructure Australia national priority list were located in the four largest capital cities.¹ Lack of information or developed project proposals should not limit the impact of Infrastructure WA in regional Western Australia. Given the proposed \$100 million threshold for projects, which aligns with Infrastructure Australia, there may be advantages in defining projects broadly, either across functions or spatially.

¹ Regional Australia Institute. The 2016 Australian Infrastructure Plan: What does it mean for regional Australia? <http://www.regionalaustralia.org.au/home/2016/04/2016-australian-infrastructure-plan-mean-regional-australia/>

Feedback from Local Governments during this short consultative period indicates strong support for the establishment of Infrastructure WA as a statutory body enabled under legislation. Strengthening the relationship with Infrastructure Australia and the depth and quality of proposals is seen as an opportunity for the State to progress initiatives that will have a positive economic, social and environmental benefit even at a time of constrained public finance.

Conducting an infrastructure audit, developing an infrastructure strategy will take an extended period of time. Consequently, it is considered important that this work be resourced and commenced quickly, potentially prior to the passage of the establishing legislation.

From a Local Government perspective effective, transparent and genuinely open consultative and engagement processes with all stakeholders, including and particularly with Local Governments is critical to ensuring that the value of Infrastructure WA is realised. This should underpin all the development of legislation and policy relating to Infrastructure WA.

5.7 Interim Submission on ‘Australia’s Strategy for Nature 2018 – 2030: Australia’s Biodiversity Conservation Strategy and Action Inventory (05-014-03-001MD)’

By Melanie Davies, Biodiversity and Sustainability Project Officer

Recommendation

That WALGA’s interim submission to the Department of the Environment and Energy on Australia’s Strategy for Nature 2018 – 2030: Australia’s Biodiversity Conservation Strategy and Action Inventory’ be endorsed.

In Brief

- In November 2016, Australian, State and Territory Environment Ministers agreed to revise ‘Australia’s Biodiversity Conservation Strategy: 2010- 2030’ (the ABC strategy) based on the findings of a review into the first five years of the Strategy’s implementation.
- The resulting ‘Australia’s Strategy for Nature 2018-2030: Australia’s biodiversity conservation strategy and action inventory’ (the strategy), aims to improve its ability to drive change in biodiversity management priorities, and better align with Australia’s international biodiversity commitments.
- WALGA lodged an interim submission with the Department of the Environment and Energy (DoEE) on 16 March 2018. The submission recommends significant revision of the strategy to provide a strong national framework for biodiversity conservation, meet Australia’s international obligations, identify outcomes and set measurable targets, and commit adequate funding for the implementation of actions and monitoring of results.

Attachment

1. WALGA’s Interim Submission to the DoEE on ‘Australia’s Strategy for Nature 2018 – 2030: Australia’s Biodiversity Conservation Strategy and Action Inventory’.

Relevance to Strategic Plan

Key Strategies

Engagement with Members

- Ø Deliver a broad range of benefits and services that enhance the capacity of member Local Governments.

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government;
- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members’ aspirations in the further development of Local Government in Western Australia.

Enhanced Reputation and Relationships

- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government.

Background

The Australian Government has a crucial role in setting a national framework for biodiversity conservation and providing strong policy guidance for the government, business and community sectors that will deliver the required action. In Western Australia, Local Governments manage a variety of rich and diverse natural ecosystems. The south west of the state, from Shark Bay to

Esperance, is one of the world's 34 internationally recognised biodiversity hotspots, with a number of plant and animal species found nowhere else on earth.

Despite efforts to date and a range of specific national environmental frameworks and legislation, Australia's biodiversity continues to decline. Australia has a growing list of more than 1,800 plants and animals listed as threatened under the *Environmental Protection and Biodiversity Conservation Act 1999*, and is among the top 10 countries in the world for species that are endangered or threatened. The ongoing decline has been highlighted in all of the Australian State of the Environment reports commissioned by the Commonwealth of Australia over the past 20 years, demonstrating the need for effective planning and implementation of recovery effort.

WALGA's submission notes that the strategy does little to address the key pressures and gaps hindering effective recovery effort, or note the need for urgent action and investment. The strategy outlines three goals and 12 objectives but contains no measurable targets and lacks detail on how the objectives might be achieved. There is a significant loss of background and scientific information, as evidenced by the strategy's 17 pages compared with the 100-page previous ABC Strategy. The strategy oversimplifies complex matters in an effort to mainstream biodiversity, which has resulted in an ambiguous document at risk of having little practical application.

Local Governments in Western Australia regard it as essential that all levels of government remain focused on the protection and conservation of Australia's environment for future generations. WALGA recommends the strategy is revised to provide a coherent overarching policy framework to effectively direct and coordinate the effort of State and Local Government, and other professional organisations working in the conservation field. It is also recommended that the goals and objectives clearly demonstrate how they align with the Australian ratified *Convention on Biological Diversity 1993*. WALGA considers that measurable targets are crucial, and should be designed to inform future Australian State of the Environment reporting.

In its submission WALGA recommends the commitment of adequate funding for the implementation of actions and monitoring of results, potentially through the establishment of a bilateral agreement between the Government of Western Australia and the Commonwealth. Local Government and Natural Resource Management organisations work at the grass roots level and remain critical in the on-ground achievement of the goals and objectives, as well as engaging Australians to be active stewards of nature. However, Local Government reported a lack of resources internally and within State Government to undertake environmental management activities. WALGA also recommends that existing monitoring systems within jurisdictions are reviewed for their suitability to measure progress against action commitments, to avoid potentially onerous reporting requirements for contributing organisations or unnecessary investment in new reporting systems.

Comment

The DoEE released the strategy for public comment from 19 December 2017 to 16 March 2018. WALGA coordinated a submission on behalf of the Local Government sector, following distribution of an InfoPage on 30 January 2018 to assist Local Government provide feedback.

As of 13 March 2018, WALGA had received submissions from four Local Governments in response to the invitation to contribute to a coordinated submission; these being the cities of Perth, Canning and Kwinana, and the Town of Port Hedland.

Out-of-session approval for the interim submission by the Executive Committee was granted on 15 March 2018. The submission notes that WALGA reserves the right to modify or withdraw the comments provided as directed by State Council.

The strategy has been described as 'deeply inadequate' and a 'global embarrassment' by Australia's peak conservation groups, and is considered to demonstrate a general distancing and lack of commitment to biodiversity conservation at the national level.

Item 5.7 Attachment

WALGA's Interim Submission to the DoEE on Australia's Strategy for Nature 2018 – 2030: Australia's Biodiversity Conservation Strategy and Action Inventory'.



16 March 2018

Ref: 05-014-03-0014MD

National Biodiversity Strategy Secretariat
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

Dear Sir/Madam,

COMMENTS ON THE REVISED 'AUSTRALIA'S STRATEGY FOR NATURE 2018 — 2030: AUSTRALIA'S BIODIVERSITY CONSERVATION STRATEGY AND ACTION INVENTORY'

The Western Australian Local Government Association (WALGA) is the peak industry body for Local Government in Western Australia. WALGA is an independent, membership-based organisation that represents and supports the interests of 138 Local Governments in WA.

WALGA thanks the Department of the Environment and Energy (DoEE) for the opportunity to comment on the revised *Australia's Strategy for Nature 2018 — 2030: Australia's Biodiversity Conservation Strategy and Action Inventory* (the strategy). WALGA completed an InfoPage on the strategy and promoted the public comment period to the sector on 30 January. As of 13 March, WALGA had received submissions from four Local Governments in response to the invitation to contribute to a coordinated submission; these being the cities of Perth, Canning and Kwinana, and the Town of Port Hedland.

Due to the timeframe of the consultation period, the comments contained in this submission were endorsed by WALGA's Executive Committee, however have not yet been considered or endorsed by WALGA's State Council. Please be advised that as such this is an interim submission. WALGA reserves the right to modify or withdraw the comments as directed by State Council at the next meeting, to be held on 6 June 2018.

WALGA believes the Australian Government provides a crucial role in setting a national framework for biodiversity conservation and providing strong policy guidance. Local governments in Western Australia manage a variety of rich and diverse natural ecosystems, with the south west of the state being one of the world's 34 internationally recognised biodiversity hotspots. Local Governments in Western Australia regard it as essential that all levels of government remain focussed on the protection and conservation of Australia's environment for future generations. In particular, they feel strongly that the omission of outcomes, targets and funding pathways in the strategy demonstrate a general distancing and lack of commitment to biodiversity conservation at the national level. They also believe that the recommendations of the *Report on the Review of the first five years of Australia's Biodiversity Conservation Strategy 2010 — 2030* have, by large, not been addressed by the strategy. WA Local Governments also expressed concern that the strategy does not provide any tangible direction on how to overcome the fragmented nature of environmental management in Australia, as documented in the Australian State of the Environment Report (DoEE, 2016).

In accordance with the submissions received from Local Government, WALGA considers that the strategy requires significant revision to provide an effective national framework for biodiversity conservation, set measurable outcomes and targets, and commit adequate funding for implementation and monitoring of results. The three goals and objectives 1-12 outlined in the strategy are supported, subject to being integrated with the necessary revisions recommended in this submission.

The following positions statements and recommendations aim to strengthen the strategy's ability to drive action across jurisdictional and sectoral boundaries, and halt Australia's ongoing decline in biodiversity.

1) *Unclear alignment of the strategy with the Convention on Biological Diversity's Strategic Plan*

The strategy does not clearly demonstrate how the goals and objectives align with the Australian ratified *Convention on Biological Diversity 1993*, the associated *Strategic Plan for Biodiversity 2011-2020* and its Aichi Biodiversity Targets. As Australia's National Biodiversity Strategy and Action Plan for the Convention, WALGA recommends that the strategy clearly identifies the goals and objectives that aim to meet our international biodiversity obligations.

2) *Inadequate conveyance of the urgency of action required*

The strategy doesn't convey the urgency of action required to conserve Australia's biodiversity. The mission of Convention's *Strategic Plan for Biodiversity 2011 - 2020* is to "take effective and urgent action to halt the loss of biodiversity". Despite our efforts to date, and a range of specific national environmental frameworks and legislation, biodiversity continues to decline. Australia has a growing list of more than 1,800 plants and animals listed as threatened under the *Environmental Protection and Biodiversity Conservation Act 1999*, and is among the top 10 countries in the world for species that are endangered or threatened. Since the previous *Australia's Biodiversity Conservation Strategy 2010 — 2030* (the ABC Strategy) was released, there is growing consensus in the scientific community that humanity's impact on Earth is now so profound that the planet is entering a new geological epoch, the Anthropocene (Zalasiewicz *et al*, 2017).

The continuing decline in Australia's biodiversity has been raised in all of the Australian State of the Environment reports commissioned by the Commonwealth of Australia over the past 20 years. Each report has highlighted the value of biodiversity, the key pressures and the gaps hindering effective biodiversity management, and noted the need for urgent action and investment. WALGA recommends that the strategy clearly communicates the need for both immediate and long-term interventions required to protect biodiversity and maintain ecosystem services.

3) *Lack of detail for primary audience and inappropriate terminology*

The strategy moves away from detailed, technical information to simplistic, broad statements. There is a significant loss of background and scientific information, as evidenced by the strategy's 17 pages compared with the 100-page ABC Strategy. The purpose of a national strategy is to provide the context and overarching policy framework to effectively direct and coordinate the effort of State and Local Government, and other professional organisations working in the conservation field. It appears that the strategy has been developed with a general member of the community as the primary audience. WALGA believes the lack of

detail in the strategy is inadequate for the government, business and community groups that will drive the required conservation action. While the strategy needs to be clear and concise, and able to be readily understood and implemented, the oversimplification of complex matters will only result in a document that is ambiguous and has no practical application.

Language is critical in helping individuals to connect with the issue and trigger a desired response. WALGA believes that there is a need to find the right balance between the use of language that aims to mainstream biodiversity and the need for a scientifically rigorous strategy. The title 'Australia's strategy for nature' fails to inspire the connection between Australian's and nature, and the strategy itself is overly simplified. Finland's 'Saving Nature for People' national strategy and action plan (Finnish Government, 2012) and the City of Melbourne's 'Nature in the City' strategy (City of Melbourne, 2017) are good examples of strategies that achieve a balance between speaking to people's love of nature whilst being scientifically robust documents that provide strong strategic direction.

To connect with all Australians and encourage individuals to contribute personally to biodiversity conservation, it is suggested that the strategy be accompanied by a communication plan, rather than trying to achieve this through the document itself. For example, given farmers manage over 60% of the Australian landscape, Landcare and NRM regional bodies with existing relationships with local farmers are best placed to deliver targeted messaging and work with communities to coordinate the required on-ground action.

4) Goal 1: Connect all Australians with nature — Supported

WALGA supports Goal 1 and the accompanying Objectives 1-4, which focus on the need to reconnect individuals with nature and support increased participation of Aboriginal and Torres Strait Islander people in environmental management. WALGA recommends that the goal states the importance of early engagement and the development of strong, ongoing relationships with Aboriginal and Torres Strait Islander people to plan and deliver conservation activities. Many Local Governments have a number of culturally significant sites within their municipalities, and ensuring that Aboriginal people are actively engaged in conservation endeavours will only enhance partnerships and thus benefit whole communities.

Local Governments play a key role in empowering Australians to be active stewards of nature, and increase Australians' understanding of nature. Community events such as National Tree Day, and deliberative democracy to inform Local Government strategic priorities, are examples of successful mechanisms used to engage local communities in environmental matters.

5) Goal 2: Care for nature in all its diversity - Supported

WALGA supports Goal 2 and the accompanying Objectives 5-9, which focus on the need to conserve the biodiversity of all environments, use natural resources in a sustainable manner, reduce threats and build resilience.

WALGA notes that the goal discusses the need for enhanced ecosystem resilience, however the strategy does not provide any information on threatening processes. The key and emerging threats to biodiversity should be clearly outlined, given they underpin the need for the strategy. Particular attention should be given to climate change and its impacts, given its

geographic extent, magnitude, speed of potential changes, and in the way it can exacerbate other threats.

WALGA strongly supports the need for improvements to planning, regulation, environmental impact assessment and approvals processes outlined in Objective 7. In Western Australia, there is the need to ensure the conservation of biological diversity and ecological integrity is an integral part of the planning process, to address the accelerating land clearing and loss of habitat. There is also an inadequate understanding and capacity to measure and address the cumulative impacts of development. Across Australia, there is a key need for complementary policy and strengthened legislative frameworks to protect biodiversity that are enforced at the national, state and territory levels.

WALGA notes that '*Objective 8 — use and develop natural resources in an ecologically sustainable way*' needs to reflect not only the impact of industries such as agriculture and fisheries, but also consider that of heavy extractive industries and the role they play in the loss of biodiversity. The extraction, processing and export of mining commodities is important to the economy of Western Australia and the nation, however it is necessary to achieve a better balance between resource extraction and the delivery of conservation outcomes.

WALGA strongly supports '*Objective 9 - enrich cities and towns with nature*'. Given over 90% of all Australians live in urban areas, it is critical that land use planning and urban design retain ecologically diverse natural areas in an interconnected network within urban environments to provide communities with close proximity to nature. In particular, urban bushland areas are vital to foster the learning and nature based activities that will develop an individual's appreciation and connection with nature. The options outlined under this objective could also include the importance of streetscapes and public open space in providing for biodiversity, and the value of additional habitat features such as fauna nest boxes.

6) Goal 3: Build and share knowledge - Supported

WALGA supports Goal 3 and the accompanying Objective 10-12, which focus on the need to build and share knowledge, and effectively measure progress towards achievement of the strategy's goals and objectives.

7) Appropriate supporting principles

WALGA supports all the identified principles that underpin the implementation of the goals and objectives in the strategy. In particular, where the evidence base is lacking, the precautionary principle should be applied and appropriate risk mitigation actions taken. WALGA recommends the reinstatement of a principle in the previous ABC Strategy "biodiversity is best conserved by protecting existing natural habitats across landscapes and seascapes, including in urban and rural environments". WALGA also recommends inclusion of a principle regarding the environmental impact mitigation hierarchy of prevent, minimise, rehabilitate and offset.

8) Lack of measureable priorities and targets

The strategy does not include national outcomes and targets necessary to meet the goals and objectives. Rather, it introduces the concept of an on-line action inventory, where local, state and federal governments would partner to identify and coordinate actions that will achieve the strategy's goals and objectives. It is proposed that this would be provided in an easy-to-use

public format to allow non-government stakeholders identify where their effort is best directed to support the strategy. The strategy notes that the online capabilities, content and timelines for an action inventory are yet to be finalised and will be informed by the consultation process.

WALGA believes the Australian Government should reinstate the national-scale outcomes and targets in the ABC strategy following direct consultation with government and non-government stakeholders, to focus effort on the most pressing priorities for biodiversity conservation. The removal of all outcomes and targets outlined in the ABC Strategy, after five years of a 20 year implementation time frame, is unwarranted and will have negative impacts on the long-term stability in the planning and investment required for effective recovery effort.

The strategy should not be viewed as a national platform to draw together policies and programs, but rather as a driving force to focus the required action. WALGA considers that outcome driven targets are necessary to guide the contributing actions of government, business and community sectors, and without them the value of the strategy risks being lost. It would also be beneficial if the outcomes and targets could be used in future Australian State of the Environment reporting. WALGA also believes there is a need for clear lines of accountability for the roles and responsibilities of organisations to ensure follow-through of policy to action.

9) *Potentially onerous reporting requirements*

The strategy recommends the development of an on-line action inventory to provide an integrated, transparent and regularly updated database of nature conservation and management activity. WALGA supports the development of a robust method of identifying and measuring the action commitment by organisations, which is adaptable to allow for changes to institutional arrangements over the strategy's duration.

However, WALGA has reservations that the proposed action inventory could require significant investment that may be better directed towards strategy implementation, given it will require a new system that is able to aggregate and standardise data from multiple sources to enable a meaningful assessment of progress. WALGA is also concerned that the action inventory could impose onerous reporting requirements on contributing organisations.

WALGA recommends that state and local government are engaged to determine the most appropriate reporting mechanism that will allow progress of strategy implementation to be measured. This may include a review of the suitability of, or compatibility with, existing monitoring systems within jurisdictions to measure progress against action commitments. For example, Western Australia is covered by seven regional Natural Resource Management organisations that already provide project progress updates on a continual basis to the Australian Government through the MERIT monitoring and reporting system.

10) *Lack of funding for implementation*

The strategy provides no information on funding pathways and support mechanisms. Local government and natural resource management regional programs work at the grass roots level and remain critical in the on-ground achievement of the goals and objectives. There is a wealth of local experience and capacity that exists in these organisations that should be capitalised upon and supported through the provision of adequate funding for action

implementation and monitoring of results. The reliance on Local government rates revenue, or NGO fundraising, to undertake the required direct action is not sufficient nor sustainable.

WALGA suggests that the establishment of a bilateral agreement between the Government of Western Australia and the Commonwealth would be an effective method of delivering agreed outcomes for natural resource management, in particular biodiversity conservation. Undertaken successfully in the past, the bilateral agreement brought together the expertise of the Government of Western Australia and the Commonwealth, and local and regional organisations, to design, approve and deliver regional NRM strategies. The partnership successfully leveraged investment and goodwill towards achieving biodiversity conservation outcomes. With a new NRM Ministerial Council convened in Western Australia in 2018, WALGA considers discussions on a new bilateral agreement a business priority.

Should you wish to discuss this submission, please contact Melanie Davies, Biodiversity and Sustainability Project Officer, at mdavieswalga.asn.au or telephone (08) 9213 2065.

Yours sincerely

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Ricky Burges
CHIEF EXECUTIVE OFFICER

Attachment 1: Summary of recommendations

References

- City of Melbourne (2017). Nature in the City: thriving biodiversity and healthy ecosystems. <http://www.melbourne.vic.gov.au/community/parks-open-spaces/urban-nature/Pages/nature-in-the-city-strategy.aspx>
- Finnish Government (2012). Saving nature for people: national action plan for the conservation and sustainable use of biodiversity in Finland 2013-2020. <http://www.ym.fi/en-US/Nature/Biodiversity/Strategy> and action plan for biodiversity
- Zalasiewicz *et al.* (2017). The working group on the Anthropocene: summary of evidence and interim recommendations. *Anthropocene*, Vol 19, pp 55-60.

ATTACHMENT 1: SUMMARY OF RECOMMENDATIONS

- Consultation and focus group sessions are undertaken with all key stakeholders prior to the strategy being finalised.
- The strategy clearly identifies the goals and objectives to meet our international biodiversity obligations as per the ratified *Convention on Biological Diversity 1993*, and the associated *Strategic Plan for Biodiversity 2011-2020* and its Aichi Biodiversity Targets.
- The strategy conveys the urgency and immediacy of action required to protect biodiversity and maintain ecosystem services.
- The strategy provides an overarching policy framework to effectively direct and coordinate the effort of State and Local Government, and other professional organisations working in the conservation field.
- There is a better balance between the use of language that aims to mainstream biodiversity and the need for a scientifically rigorous strategy.
- The strategy outlines the key and emerging threats to biodiversity, with particular attention to climate change and its impacts.
- An accompanying communication plan is developed to deliver targeted messaging to general members of the community.
- '*Goal 1: Connect all Australians with nature*' identifies the importance of early engagement and the development of strong, ongoing relationships with Aboriginal and Torres Strait Islander people to plan and deliver conservation activities.
- '*Objective 8 — use and develop natural resources in an ecologically sustainable way*' notes Australia's wealth of extractive resources and the need to achieve a balance between resource extraction and conservation outcomes.
- The strategy reinstate a supporting principle in *Australia's Biodiversity Conservation Strategy 2010 — 2030 Strategy*; "biodiversity is best conserved by protecting existing natural habitats across landscapes and seascapes, including in urban and rural environments".
- The strategy include a supporting principle based on the environmental impact mitigation hierarchy of prevent, minimise, rehabilitate and offset.
- The strategy include national-scale outcomes and targets to focus effort on the most pressing priorities for biodiversity conservation. It would be beneficial if these could be used in future Australian State of the Environment reporting.
- The strategy outline a robust method of identifying and measuring the action commitment by organisations.
- The strategy provide funding commitments for implementation of actions and monitoring of results.
- Commence discussions on a new bilateral agreement between the Government of Western Australia and the Commonwealth to leverage investment and deliver agreed outcomes for biodiversity conservation.

5.8 Submission on the Emissions Reduction Fund Safeguard Mechanism (05-028-03-0016 LS)

By Laura Simes, Environment Policy Advisor

Recommendation

That the submission to the Department of the Environment and Energy (Cwth) relating to proposed changes to the Emissions Reduction Fund Safeguard Mechanism be endorsed.

In Brief

- The Commonwealth Government released the *Emissions Reduction Fund Safeguard Mechanism Consultation Paper*, proposing changes to the Safeguard Mechanism that would broaden the range of circumstances in which responsible emitters are able to increase their greenhouse gas emissions baseline.
- Due to the tight timeframe, WALGA provided a draft submission to the Executive Committee for its out-of-session approval and it was subsequently sent to the Commonwealth.
- Key points made in the submission are that the safeguard mechanism is currently not achieving its stated aim, the changes proposed in the Consultation Paper would fundamentally undermine an already compromised national mitigation policy and any changes to the safeguard mechanism must include more ambitious baselines for Australia's heaviest emitters.
- WALGA is seeking State Council's endorsement of the submission.

Attachment

1. Submission on the Emissions Reduction Fund Safeguard Mechanism Consultation Paper (April 2018)
2. [Emissions Reduction Fund: Safeguard Mechanism Consultation Paper](#)
3. [WALGA submission on the Emissions Reduction Fund Safeguard Mechanism \(2015\)](#)
4. [WALGA Advocacy Position Statements](#)

Relevance to Strategic Plan

Key Strategies

Engagement with Members

- Ø Deliver a broad range of benefits and services that enhance the capacity of member Local Governments;
- Ø Improve communication and build relationships at all levels of member Local Governments;
- Ø Provide ongoing professional development and interactive opportunities for Elected Members to contribute to debate on sector issues;
- Ø Build a strong sense of WALGA ownership and alignment.

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government;
- Ø Provide support to all members, according to need;
- Ø Foster economic and regional development in Local Government.

Enhanced Reputation and Relationships

- Ø Communicate and market the profile and reputation of Local Government and WALGA;
- Ø Promote WALGA's advocacy successes with the sector and the wider community;
- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated;

Policy Implications

WALGA's submission builds upon the previously endorsed WALGA *Submission on the Emissions Reduction Fund Safeguard Mechanism (2015)*, and is consistent with paragraph 4.1 of the WALGA Advocacy Position Statement, which provides:

Local Government acknowledges that:

- Anthropogenic climate change is occurring, and is committed to preventing it;
- Action should be immediate;
- Australia has an obligation to act. Local Government supports this by being committed to meeting obligations set by the other tiers of government;
- Mitigation and adaptation is interdisciplinary. Local Government will support its stakeholders (community and business) to transition towards sustainable lifestyles, but must be adequately resourced from the Australian Government to do so;
- Mitigation and adaptation strategies must be equitable, locally, nationally and internationally;
- Local Governments will individually determine their priorities and targets, but acknowledge that climate change must be addressed at all levels of their own operations; and
- Asserts that funds from Commonwealth or State NRM programs should be made available to assist Local Government NRM activities.

Paragraph 4.1 is supported by WALGA's *Policy Statement on Climate Change (2009)*, which was endorsed by State Council in June 2009 (521.3/2009). (Note that this Policy Statement is in the process of being updated, with a revised draft Policy Statement due to go to State Council for consideration at the May 2018 meeting.)

Budgetary Implications

Nil.

Background

Timing

On 21 February 2018 the Commonwealth released a Consultation Paper proposing changes to the Emissions Reduction Fund (ERF) Safeguard Mechanism. Submissions were due by 30 March 2018, and WALGA secured a one week extension on this deadline. As the Commonwealth timeframes did not align with State Council meetings, WALGA provided a draft submission to the Executive Committee for its out-of-session approval.

State Council's endorsement of this submission is now sought. WALGA made the submission to the Commonwealth under condition that it could be amended or withdrawn at any time – if State Council recommends changes these will be marked up accordingly.

Overview of the safeguard mechanism

The Safeguard Mechanism establishes emissions baselines for Australia's largest greenhouse gas emitters. The stated aim of the Safeguard Mechanism is to ensure that emissions reductions achieved under the Emissions Reduction Fund are not displaced by significant increases in emissions above business as usual levels elsewhere in the economy. It seeks to do this by requiring Australia's heaviest emitters to keep their emissions below baseline levels or purchase domestic carbon offsets to make up the difference.

During the design of the safeguard mechanism in 2015, WALGA made a submission expressing concerns that the baseline exceptions and flexibilities in the proposed safeguard mechanism would effectively allow significant emissions increases by responsible emitters, undermining emissions reductions achieved throughout Australia (including by Local Governments), and undermining Australia's emissions reduction target.

Two and a half years on from the design of the safeguard mechanism, WALGA's concerns appear to have been borne out. Of the 203 facilities covered under the safeguard mechanism, 57 were permitted to increase their emissions above their highest level, and only 15 facilities went over their baseline (requiring them to purchase and surrender Australian Carbon Credit Units). Commentary on the safeguard mechanism has noted that there is no doubt that emissions growth is outpacing the abatement from the Emissions Reduction Fund.

Changes proposed in the Consultation Paper

The Consultation Paper proposes a range of changes to the safeguard mechanism which it says will "bring Safeguard Mechanism baselines up-to-date with current circumstances and make it fairer and simpler" (Page1). If implemented, the proposed changes would significantly broaden the range of circumstances where a responsible emitter can apply to have its baseline increased.

As previously noted, WALGA's previous submission expressed concern that the existing baseline exceptions and flexibilities were too broad. The substantially increased flexibilities proposed in the Consultation Paper would potentially allow responsible emitters to regularly increase their baselines, resulting in effectively very little constraint on emissions. The upshot of this would be that emissions abatement achieved through the Emissions Reduction Fund (together with abatement achieved voluntarily and under other schemes) would be undermined by the continued emission increases by Australia's heaviest emitters.

WALGA's submission makes the following key points:

- the safeguard mechanism is currently not achieving its stated aim;
- the changes proposed in the Consultation Paper would fundamentally undermine an already compromised national mitigation policy; and
- any changes to the safeguard mechanism must include more ambitious baselines for Australia's heaviest emitters.

Comment

As the level of government closest to the community, Local Governments manage and plan for a range of impacts of climate change, including on community assets, disruption of council services, unbudgeted financial impacts and adverse health impacts on residents. Local Governments have, for a number of years, been actively engaged in a range of climate change mitigation and adaptation activity, together with education and encouraging awareness and behaviour change amongst residents. Local Governments therefore have a keen interest in seeing effective mitigation policy at a Federal level.

As noted above, the submission is consistent with the State Council endorsed position on climate change, and builds upon WALGA's 2015 submission on the safeguard mechanism. It is therefore recommended that State Council endorse WALGA's submission on the proposed changes to the safeguard mechanism.

Item 5.8 Attachment
Submission of the ERF Safeguard Mechanism Consultation Paper 2018 Final



Emissions Reduction Fund: Safeguard Mechanism Consultation Paper **March 2018**

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1.0 About us

The Western Australian Local Government Association (WALGA) is the peak industry body for Local Government in Western Australia. WALGA is an independent, membership-based organisation representing and supporting the work and interests of 138 Local Governments in Western Australia.

WALGA provides an essential voice for 1,222 Elected Members and approximately 22,000 Local Government employees as well as over 2.6 million constituents of Local Governments in Western Australia. WALGA also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

2.0 WALGA's submission

WALGA thanks the Department of the Environment and Energy (the Department) for the opportunity to comment on its *Emissions Reduction Fund: Safeguard Mechanism Consultation Paper* (the Consultation Paper).

3.0 Local Governments are key contributors to climate change mitigation

Climate change is a key issue for Local Governments that impacts almost all aspects of their operations and responsibilities. As the level of government closest to the community, Local Governments manage and plan for a range of impacts of climate change, including on community assets, disruption of council services, unbudgeted financial impacts and adverse health impacts on residents.

Local Governments have, for a number of years, been actively engaged in a range of climate change mitigation and adaptation activity, together with education and encouraging awareness and behaviour change amongst residents¹.

Many Local Governments have made voluntary commitments or pledges in relation to climate change, including the following:

Pledge	Description	Number of Local Government Participants
Local Government Climate Change Declaration	Developed by WALGA. A voluntary opportunity for Local Governments to demonstrate their political commitment to locally appropriate climate change adaptation and mitigation action. ²	40 (representing 65% of the WA population)

¹ See for example WALGA's Local Government Climate Change Project Map: <http://walga.asn.au/Policy-Advice-and-Advocacy/Environment/Climate-Change/Local-Government-Project-Map.aspx>.

² For further information see here: <http://walga.asn.au/Policy-Advice-and-Advocacy/Environment/Climate-Change.aspx>.

Divesting from fossil fuels	Commitment to shift money out of banks that fund fossil fuels. ³	12 (representing 30% of the WA population)
Compact of Mayors	A coalition of city leaders around the world committed to addressing climate change. ⁴	4
Cities Power Partnership	Launched July 2017 by the Climate Council, aims to celebrate and accelerate emission reductions and clean energy in Australian towns and cities. ⁵	10

In the past, Western Australian Local Governments have been key delivery agents of Commonwealth Government climate change mitigation programs, such as the Community Energy Efficiency Program (CEEP), the Local Government Energy Efficiency Program (LGEEP) and the Cities for Climate Protection (CCP) Program that was delivered by ICLEI with Commonwealth Government support.

Program	Program dates	WA Local Government participants
Cities for Climate Protection	1999-2006	30
Local Government Energy Efficiency Program (LGEEP)	2011-2014	50 (includes 1 WALGA grant)
Community Energy Efficiency Program (CEEP)	2011-2016	15 (includes 1 WALGA grant)
Emissions Reduction Fund (ERF)	2014-present	2 (both transitioned from the Carbon Farming Initiative)

The LGEEP and CEEP grants assisted Local Governments in undertaking a wide range of building energy efficiency, LED street lighting and geothermal projects.

Local Governments therefore have a keen interest in seeing effective mitigation policy at a Federal level.

³ For a list of Australian Local Governments that have committed to divest see here: <http://gofossilfree.org.au/fossil-free-councils/>. Not listed are City of Bayswater, City of Subiaco and the Shire of Mundaring, which have also recently committed to divest.

⁴ Cities of Joondalup, Perth, Melville and Mandurah. Further information about the Compact of Mayors available here: <https://www.globalcovenantofmayors.org/>.

⁵ The Cities of Armadale, Bunbury, Canning, Fremantle, Gosnells, Kalgoorlie-Boulder, Kwinana, Melville, Swan, and Shire of Serpentine-Jarrahdale. Further information about the Cities Power Partnership is available here: <http://citiespowerpartnership.org.au/>.

4.0 The safeguard mechanism is not achieving its stated aim

The stated purpose of the safeguard mechanism is that it “ensures emissions reductions purchased by the Government are not offset by significant increases in emissions above business-as-usual levels elsewhere in the economy.”⁶

When the Department released the Emissions Reduction Fund Safeguard Mechanism exposure drafts and explanatory statements in 2015, WALGA made a submission on the proposed safeguard mechanism⁷. WALGA gave its broad support for the policy intent of the safeguard mechanism, being to ensure that emission reductions achieved through mitigation action are not undermined by increasing emissions in other areas. However, at that time, WALGA also emphasised its concern that the particular design of the safeguard mechanism would not effectively guard against this:

WALGA is concerned that the baseline exceptions and flexibilities in the proposed safeguard mechanism would effectively allow significant emissions increases by responsible emitters, undermining emissions reductions achieved throughout Australia (including by Local Governments), and undermining Australia’s emissions reduction target. (p5)

The wide range of circumstances for seeking an increased baseline means that, in effect, only very modest constraints would be placed upon the CO₂-e emission levels of Australia’s most emission heavy industries. (p6)

Two and a half years on, WALGA’s concerns appear to have been borne out.

4.1 Emissions growth is outpacing ERF abatement

The Clean Energy Regulator has recently released data for the first year of operation of the safeguard mechanism (2016-17). There were 203 facilities covered under the safeguard mechanism, and these facilities reported a total of 131.3 million tonnes of CO₂-e emissions over that period. The Clean Energy Regulator permitted 57 industrial sites to increase emissions above their previous highest level.⁸ In the first year of operation, 15 facilities went over their baseline, with a little less than half a million (448,097) Australian Carbon Credit Units (ACCUs) purchased and surrendered to offset these emissions over their baselines.⁹

⁶ Australian Government, Emissions Reduction Fund Safeguard Mechanism: <http://www.environment.gov.au/climate-change/government/emissions-reduction-fund/about/safeguard-mechanism>. Accessed 21 March 2018.

⁷ WALGA, *Submission on the Emissions Reduction Fund Safeguard Mechanism* (2015). Available here: <http://walga.asn.au/getattachment/Policy-Advice-and-Advocacy/Environment/Climate-Change/Climate-Change-Policy-and-Advocacy/Submission-on-Safeguard-Mechanism.pdf.aspx?lang=en-AU>.

⁸ A Morton, “Emissions increases approved by regulator may wipe out \$260 million of Direct Action cuts”, *The Guardian*. 19 February 2018. Available at: <https://www.theguardian.com/australia-news/2018/feb/19/emissions-increases-approved-by-regulator-may-wipe-out-260m-of-direct-action-cuts>.

⁹ Clean Energy Regulator, *2016-17 Safeguard facility reported emissions*. Available here: <http://www.cleanenergyregulator.gov.au/NIGER/National%20greenhouse%20and%20energy%20reporting%20data/safeguard-facility-reported-emissions/safeguard-facility-emissions-2016-17>.

Put another way, of the total reported emissions under the safeguard mechanism, 0.34% of emissions occurred in excess of facilities' baselines and were required to be offset.

Reputex Carbon calculated that the increased baselines potentially allowed the emission of an additional 22 million tonnes of CO₂-e, stating "*reported baselines therefore act as a limit in name only, with companies largely free to 'choose their own cap', with no penalty or requirement to offset emissions increases.*"¹⁰ Further, Reputex executive director, Hugh Grossman has observed "*There is no doubt emissions growth is outpacing the abatement from the emissions reduction fund, so what has been the point?*"¹¹

WALGA is of the view that the safeguard mechanism is currently not achieving its stated aim, and any changes must include more ambitious baselines for Australia's heaviest emitters.

5.0 Proposed changes fundamentally undermine an already weak safeguard mechanism

Changes proposed in the Consultation Paper would weaken the safeguard mechanism even further, by allowing for increases to the baselines almost as a matter of course.

WALGA is concerned by the emphasis placed on the need to 'keep baselines updated' and a perceived issue with baselines becoming 'out-of-date' in the Consultation Paper. The Explanatory Statement relating to the implementation of the safeguard mechanism states:

*The safeguard mechanism will ensure that emissions reductions purchased through the Emissions Reduction Fund are not displaced by a significant rise in emissions above business-as-usual levels elsewhere in the economy. It will achieve this by requiring large businesses to keep emissions below baseline levels. **Baselines represent the reference point against which future emissions performance will be measured.** [emphasis added]*

(p9-10, NGER (Safeguard Mechanism) Rule 2015 Explanatory Statement 2015)

The Explanatory Statement goes on to outline the wide range of circumstances where baselines can be 'adjusted'. Note, WALGA did not support most of these circumstances in its 2015 submission. Even so, the assumption is that the baseline is a "reference point" acting as a cap on the heaviest emitters' emissions. This is also noted in the current Consultation Paper, where it is stated that "*under current policy settings, calculated baselines are updated once to reflect actual production, then remain fixed*" (p7).

¹⁰ Reputex Carbon, 'Choose your own baseline – Industrial emissions and the Safeguard Mechanism', 16 February 2018. Available at: <http://www.reputex.com/research-insights/update-choose-your-own-baseline-australias-industrial-emissions-problem/>.

¹¹ A Morton, "Emissions increases approved by regulator may wipe out \$260 million of Direct Action cuts", *The Guardian*. 19 February 2018. Available at: <https://www.theguardian.com/australia-news/2018/feb/19/emissions-increases-approved-by-regulator-may-wipe-out-260m-of-direct-action-cuts>.

The Consultation Paper proposes a significant shift in the safeguard mechanism, by suggesting there is a need for regular ‘updating’ of facilities’ baselines. If the proposed changes are implemented, WALGA cannot see how the baselines could effectively operate as a cap on facility emissions. Rather than having certain circumstances where facilities can seek to have their baseline increased (the current case), “all polluters could increase their emissions in this way, giving them a clear path to increase their pollution”¹². There would be such minimal constraints on greenhouse gas emissions for heavy emitting facilities, that emissions savings achieved through the ERF and other mitigation actions would be completely undermined. The proposed changes that are of particular concern to WALGA, are the following:

- The proposed approach to transition all facilities to calculated baselines over 2018-19 and 2019-20.
- Whether baselines annually updated for production should apply to emissions intensive, trade-exposed facilities only, a broader set of facilities, or to all facilities?
- The proposed approach for updating baselines based on actual production

These proposed changes would effectively result in a regulatory regime where the baselines mean very little: the ‘baselines’ would become a moving feast, rather than a reference point against which future emissions can be measured.

6.0 Concluding comments

As key contributors to climate change mitigation, and as the level of government that is already managing and planning for a range of impacts of climate change, WALGA’s members have a keen interest in seeing efficient, effective and equitable climate change policy at the Federal level. Unfortunately, the changes proposed in the Consultation Paper would fundamentally undermine an already compromised mitigation policy.

¹² N Hasham, “Biggest polluters get clear path to hike emissions under plan”, *SMH*. 27 February 2018. Available at: <https://www.smh.com.au/politics/federal/biggest-polluters-get-clear-path-to-hike-emissions-under-plan-20180227-p4z1y1.html>.

5.9 Surveillance Devices Act 1998 (WA) – Body Worn Camera use in Local Government Law Enforcement (05-067-09-0001 - LF)

By Lyn Fogg, Governance Advisor

Recommendation

That WALGA advocate for amendment of Regulation 4 of the *Surveillance Devices Regulations 1999 (WA)* so that it includes Local Government 'Authorised Persons' as a class of Law Enforcement Officers for the purposes of the *Surveillance Devices Act 1988 (WA)*.

In Brief

- Some Local Governments have either implemented or are considering implementation of body worn cameras, as both an enforcement tool and an occupational safety personal protection equipment item.
- The current *Surveillance Devices Act 1998 (WA)* prescribes the definition of law enforcement officers, which includes a list of specified offices (State Government), but does not include Local Government law enforcement officers.
- WALGA's advocacy for amendment of the *Surveillance Devices Act 1998* to include Local Government Law Enforcement Officers, will clarify local government operations under this Act, when using body worn cameras and dash cam devices.

Attachment

Nil.

Relevance to Strategic Plan

Key Strategies

Engagement with Members

- Ø Deliver a broad range of benefits and services that enhance the capacity of member Local Governments;
- Ø Improve communication and build relationships at all levels of member Local Governments;

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government;
- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;

Enhanced Reputation and Relationships

- Ø Promote WALGA's advocacy successes with the sector and the wider community;
- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated;

Policy Implications

State Council's adoption of the report's recommendation will establish a WALGA policy position for advocacy for the amendment of Regulation 4 of the *Surveillance Devices Regulations 1999 (WA)* so that it includes Local Government Law Enforcement Officers as a class of officers for the purposes of that Act.

Budgetary Implications

Nil.

Background

The Shire of Murray, in correspondence dated 27 November 2017, requested WALGA's consideration of support for an amendment to Regulations which would result in Local Government Law Enforcement Officers being prescribed under the *Surveillance Devices Act 1998 (WA)* as 'Law Enforcement Officers', to enable the use of body worn cameras by Rangers in the workplace.

The Shire of Murray proposes this change on the basis that, without the Regulatory amendment, the use of body cameras may constitute an offence under this Act where the device records a private activity to which the officer is or is not a party [s.6(1)].

WALGA's Governance and Organisational Services Policy Team considered this item at its meeting held 7 March 2018 and resolved to recommend to State Council:

That WALGA advocates for amendment of regulation 4 of the Surveillance Devices Regulations 1999 (WA) so that it includes Local Government Law Enforcement Officers as a class of officers for the purposes of that Act.

Comment

Relevant to this proposal, s.6(2) of the Surveillance Devices Act specifically excludes as an offence, an optical surveillance which records a private activity where:

- The installation, use or maintenance of the optical surveillance device is in accordance with prescribed public interest purposes; or
- The use of an optical surveillance device results in the unintentional recording or observation of private activity.

Section 24 of the Surveillance Devices Act prescribes the meaning of "public interest" as:

public interest includes the interests of national security, public safety, the economic well-being of Australia, the protection of public health and morals and the protection of the rights and freedoms of citizens.

It is notable that Local Governments which have already implemented body worn cameras, have also implemented protocols and employee training to ensure that members of the public are informed that audio and visual recording is occurring. Where the officer is required to enter into private property they must obtain consent to continue recording, and if consent is withheld the device is turned off or, alternatively the Local Government's protocol may require the officer to withdraw from the private property.

The following Local Governments have either trialled or are using body worn cameras:

City of Perth implemented Body worn cameras for Parking Officers and Rangers. Perth is currently investigating extending use to Environmental Health Officers and Activity Approval Compliance Officers (i.e. road obstruction and event permit inspections).

Town of Claremont Implemented Body Worn Camera's for Rangers through adoption of Policy on 27 June 2017, following a trial period.

City of Melville has not introduced Body Worn Cameras. However they have implemented Dash Cams in Ranger vehicles, which is governed by the same legislation as Body Worn Cameras.

The following Local Governments have advised that they are either currently undertaking trials or are in the process of investigating Body Worn Cameras:

- City of Joondalup
- City of South Perth
- City of Wanneroo

Local Governments have advised the following considerations were fundamental to the proposal for use of body worn cameras:

- Employee occupational safety and welfare:
 - Considered an effective deterrent for members of the public inflicting physical harm and/or verbal abuse of employees.
 - Capture evidence when an employee suffers physical harm and / or verbal abuse.
- Capture evidence to support the Local Government's performance of regulatory and enforcement functions.
- Employee behaviour and customer service standards monitoring and accountability.

Other Local Government inspection and enforcement activities may also benefit from use of Body Worn Cameras. For example:

- Building;
- Environmental Health;
- Welfare and community service or intervention;
- Security patrols.

Other Local Government compliance considerations arising from use of body worn cameras may include:

- Record keeping requirements for the audio / video records captured on a daily basis – *State Records Act 2000*.
- Protocols for officer's to advise members of the public when they are being recorded, particularly if the officer is required to enter into private property – *Surveillance Devices Act 1998 (WA)*.
- Employee procedures and training – *Occupational Safety and Health Act 1988*.
- *Freedom of Information Act 1998*;
- *Evidence Act 1906*

WALGA's research has therefore identified that the reach of the amendment to the *Surveillance Devices Regulations* should not be limited to Local Government Rangers, rather there be a broad definition to encompass all Local Government officers authorised to perform law enforcement, public health and public safety functions.

Regulation 4 of the *Surveillance Devices Regulations* currently prescribes the following classes of law enforcement officers:

4. Law enforcement officers, classes prescribed

For the purposes of paragraph (d) of the definition of **law enforcement officer** in section 3(1) of the Act, each of the following classes of persons is prescribed —

- (a) conservation and land management officers (as defined in the *Conservation and Land Management Act 1984* section 3);
- (b) forest officers (as defined in the *Conservation and Land Management Act 1984* section 3);
- (c) rangers (as defined in the *Conservation and Land Management Act 1984* section 3);
- (d) wildlife officers (as defined in the *Conservation and Land Management Act 1984* section 3);
- (e) inspectors (as defined in the *Environmental Protection Act 1986* section 3(1)) who are officers or employees of a department, authority or agency of the State;
- (f) fisheries officers (as defined in the *Fish Resources Management Act 1994* section 4(1)) who are employed in the Serious Offences Unit of the Department as defined in section 4(1) of that Act).

Clearly, Regulation 4 relies upon a legislative definition for each class of persons that it prescribes as Law Enforcement Officers. From a Local Government perspective, it is preferable that the Regulatory amendment refer to Local Government authorised persons' and then define each legislative reference that relates to a law enforcement, public health and public safety function; for example:

"Local Government authorised persons (as defined in the Local Government Act 1995 section 9.10, Building Act 2011 section 96(3), Health Services Act 2016 section 209(e))"

A regulatory amendment that inserts Local Government authorised persons, would resolve the current limitation on Local Government's use of body worn cameras when authorised to perform law enforcement, public health and public safety roles.

5.10 Vexatious or Malicious Freedom of Information Applications (05-103-01-0001 - LF)

By Lyn Fogg, Governance Advisor

Recommendation

That WALGA advocates for amendment of the *Freedom of Information Act 1992 (WA)* to:

1. Enable the Information Commissioner to declare vexatious applicants similar to the provisions of section 114 of the Right to Information Act 2009 (QLD); and
2. Enable an agency to recover reasonable costs incurred through the processing of a Freedom of Information access application where the application is subsequently withdrawn.

In Brief

- Local Governments are regularly required to respond to access applications under the *Freedom of Information Act 1992 (WA)*.
- Local Governments have advised of increasing incidents where Freedom of Information access applications are used for malicious or vexatious purposes.
- Where a Freedom of Information access application requires substantial resources to fulfill and the application is withdrawn, the responding Agency is unable to claim for costs incurred.
- The current *Freedom of Information Act 1992 (WA)* does not prescribe for the declaration of vexatious applicants nor sufficiently enable responding Agencies to claim costs arising from withdrawn Freedom of Information access applications.

Attachment

Nil.

Relevance to Strategic Plan

Key Strategies

Engagement with Members

- Ø Deliver a broad range of benefits and services that enhance the capacity of member Local Governments;
- Ø Improve communication and build relationships at all levels of member Local Governments;

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government;
- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;

Enhanced Reputation and Relationships

- Ø Promote WALGA's advocacy successes with the sector and the wider community;
- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated;

Policy Implications

State Council's adoption of this report's recommendations will establish a WALGA Policy position for advocacy to amend the *Freedom of Information Act 1992* to:

- Enable the Information Commissioner to declare vexatious applicants similar to the provisions of section 114 of the *Right to Information Act 2009 (QLD)*; and
- Enable an agency to recover reasonable costs incurred through the processing of a Freedom of Information access application where the application is subsequently withdrawn.

Budgetary Implications

Nil.

Background

At the August 2017 meeting of the South East Metropolitan Zone, the following resolution was passed:

That WALGA prepare a report for State Council consideration addressing the operation of the Freedom of Information Act and specifically the implications of and potential solutions for vexatious or malicious applications and withdrawn applications which have incurred substantial costs to the Local Government.

The Zone outlined increasing concerns arising from Freedom of Information access requests which appear to have been made for vexatious / malicious purposes. The Zone cited occasions where an access application, subject to a mandated \$30 application fee only, has been substantially progressed and incurred many hours of officer time and a large amount of copy costs, only to have the applicant withdraw the application, leaving the local government with no ability to recoup the costs incurred.

The March 2018 State Council Agenda, Item 5.1 Local Government Act Review, includes details of a submission regarding Unreasonable, Vexatious or Querulous Complainants, which seeks amendment of the *Local Government Act 1995* to:

- Enable Local Government discretion to refuse to further respond to a complainant where the CEO is of the opinion that the complaint is trivial, frivolous or vexatious or is not made in good faith, or has been determined to have been previously properly investigated and concluded, similar to the terms of section 18 of the *Parliamentary Commissioner Act 1971*.
- Provide for a complainant, who receives a Local Government discretion to refuse to deal with that complainant, to refer the Local Government's decision to a third party review.
- Enable Local Government discretion to declare a member of the public a vexatious or frivolous complainant for reasons, including;
 - Abuse of process;
 - Harassing or intimidating an individual or an employee of the Local Government in relation to a complaint;
 - Unreasonably interfering with the operations of the Local Government in relation to a complaint.

WALGA's Governance and Organisational Services Policy Team considered this item at its meeting held 7 March 2018 and resolved to recommend to State Council:

That WALGA advocate for amendment of the Freedom of Information Act 1992 to:

- ***Enable the Information Commissioner to declare vexatious applicants similar to the provisions of section 114 of the Right to Information Act 2009 (QLD); and***
- ***Enable an agency to recover reasonable costs incurred through the processing of a Freedom of Information access application where the application is subsequently withdrawn.***

Comment

The submission provided in regard to the Local Government Act Review also included a proposal for the resolution of the issues raised regarding the vexatious and malicious use of the *Freedom of Information Act 1992*. Amendment of the FOI Act to replicate powers available to the Queensland Information Commissioner under the *Right to Information Act 2009 (QLD)* would assist the WA sector:

114 Vexatious applicants

- (1) *The information commissioner may, on the commissioner's own initiative or on the application of 1 or more agencies, declare in writing that a person is a vexatious applicant.*
- (2) *The commissioner may make the declaration in relation to a person only if the commissioner is satisfied that—*
 - (a) *the person has repeatedly engaged in access actions; and*
 - (b) *1 of the following applies—*
 - (i) *the repeated engagement involves an abuse of process for an access action;*
 - (ii) *a particular access action in which the person engages involves, or would involve, an abuse of process for that access action;*
 - (iii) *a particular access action in which the person engages would be manifestly unreasonable.*
- (3) *The commissioner must not make the declaration in relation to a person without giving the person an opportunity to make written or oral submissions.*
- (4) *A declaration has effect subject to the terms and conditions, if any, stated in the declaration.*
- (5) *Without limiting the conditions that may be stated, a declaration may include a condition that the vexatious applicant may make an access application, an internal review application or an external review application only with the written permission of the commissioner.*
- (6) *The commissioner may publish—*
 - (a) *a declaration and the reasons for making the declaration; and*
 - (b) *a decision not to make a declaration and the reasons for the decision.*
- (7) *The commissioner may publish the name of a person the subject of a declaration under subsection (1) when publishing the declaration and the reasons for making it.*
- (8) *In this section—*

abuse of process, for an access action, includes, but is not limited to, the following—

 - (a) *harassing or intimidating an individual or an employee of an agency in relation to the access action;*
 - (b) *unreasonably interfering with the operations of an agency in relation to the access action;*
 - (c) *seeking to use the Act for the purpose of circumventing restrictions on access to a document or documents imposed by a court.*

access action means any of the following—

 - (a) *an access application;*
 - (b) *an internal review application;*
 - (c) *an external review application.*

Agency includes a Minister.

engage, for an access action, means make the access action.

It is further recommended that the Act be amended to enable an agency (Local Government) to recover reasonable costs incurred through processing a FOI access application, when the application is subsequently withdrawn.

5.11 Social Media – Cyber Bullying (07-003-003-0004 - LF)

By Lyn Fogg, Governance Advisor

Recommendation

That WALGA endorse a request to ALGA for its advocacy for changes to Commonwealth legislation to provide for implementing:

1. **Cyber-bullying protections for all Australians, similar to those provided to Australian children under the *Enhancing Online Safety Act 2015 (Cth)*;**
2. **Identification validation checks before a new social media account can be establish, including a timeframe by which social media providers must ensure that all existing active accounts retrospectively comply;**
3. **A social media / communications control order, similar to a violence restraining order, which prevents a person from contacting any other person through social media.**

In Brief

- Social media use and misuse is becoming increasingly prevalent in the community, with Local Governments similarly experiencing increasing incidents where cyber communications negatively impact Local Government operations and governance as well as the health and safety of Elected Members and employees.
- Commonwealth legislation controls social media communications and therefore it is recommended that ALGA be requested to take up advocacy for changes that prevent fake online identities.

Attachment

Nil.

Relevance to Strategic Plan

Key Strategies

Engagement with Members

- Ø Deliver a broad range of benefits and services that enhance the capacity of member Local Governments;
- Ø Improve communication and build relationships at all levels of member Local Governments;
- Ø Provide ongoing professional development and interactive opportunities for Elected Members to contribute to debate on sector issues;

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government;
- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;

Enhanced Reputation and Relationships

- Ø Promote WALGA's advocacy successes with the sector and the wider community;
- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated;

Policy Implications

Nil.

Budgetary Implications

Nil.

Background

Similar to the broader community, the Local Government sector is raising concerns with increasing incidents of cyber bullying, harassment and offence, which negatively impacts on the Local Government's operations and governance, and most often causes personal distress to the individuals who are subject to it.

In response to a number of prominent cyber bullying instances in the Western Australian Local Government sector, WALGA is developing a Social Media policy and guideline. The proposal for development of template documentation to assist the sector, includes:

- Template Social Media Council Policy
- Template Social Media Clause for the Code of Conduct
- Social Media User Guideline

Draft templates have been developed for sector consultation and an Infopage was distributed on 26 March 2018, with sector feedback requested by 27 April 2018.

Following sector feedback, finalised templates will be implemented as a Member's resource through the Governance subscription service.

WALGA's Governance and Organisational Services Policy Team also resolved at its March 2018 meeting to recommend:

That State Council endorse a request to ALGA for its advocacy for changes to Commonwealth communications legislation to provide for implementing:

- 1. A 100 point identification check before a new social media account can be establish, including a timeframe by which social media providers must ensure that all existing active accounts retrospectively comply;***
- 2. A social media / communications control order, similar to a violence restraining order, which prevents a person from contacting any other person through social media.***

Further to this proposal, the Commonwealth Government created the eSafety Commissioner as a statutory office under the *Enhancing Online Safety Act 2015 (Cth)*. The eSafety Commissioner's functions include:

- Promoting online safety for Australians;
- Administering a complaints system for cyber-bullying material targeted at an Australian child;
- Coordinating activities of Commonwealth Departments, authorities and agencies relating to online safety for children;
- Administering the online content scheme under the *Broadcasting Services Act 1992*.

The Commonwealth's complaints system for cyber-bullying material targeted at an Australian child includes the following:

- a 2-tiered scheme for the rapid removal from social media services of cyber-bullying material targeted at an Australian child;

- a tier 1 social media service may be requested to remove from the service cyber-bullying material targeted at an Australian child;
- a tier 2 social media service may be given a notice (a social media service notice) requiring the removal from the service of cyber-bullying material targeted at an Australian child;
- a person who posts cyber-bullying material targeted at an Australian child may be given a notice (an end-user notice) requiring the person to remove the material, refrain from posting cyber-bullying material or apologise for posting the material.

Comment

Recent press coverage of the suicide death of a young teenage girl, has generated national press coverage of community concerns regarding on-line social media bullying and harassment, which has generated comment for legislative changes including:

- Requirements for personal identification (i.e. the 100 point identification test) before a social media account can be opened, with the requirement to be implemented retrospectively. Preventing the ability to post anonymously under pseudonyms and providing opportunity for legal recourse for defamatory or bullying material.
- A control order, similar to a violence restraining order, which would prevent a person contacting another person through social media.
- A new type of control order, which would bar a perpetrator from accessing or using social media accounts for a prescribed period of time.

Whilst it is an offence under the *Criminal Code Act 1995 (Cth)* to use the internet, social media or telephone to menace, harass or cause offence (with a penalty of 3 years imprisonment or a fine of more than \$30,000), it is often difficult to bring about a prosecution due to the use of fake online identities' making it difficult to identify perpetrators.

The Commonwealth Government has also implemented legislation specific to the protection of children from cyber-bullying, which provides for a system of complaints and for the rapid removal of cyber-bullying material from social media services. Further, this legislation provides for a notice to be given to a social media end user, requiring them to remove material, refrain from posting cyber-bullying material or apologise for posting the material.

It is suggested that a cyber-bullying control framework similar to that provided to Australian children under the *Enhancing Online Safety Act 2015 (Cth)* may provide benefit for the protection of the mental health and well-being of all Australians.

Whilst these proposals may not be the panacea for all community issues arising from online bullying, harassment or offence, changes to Commonwealth legislation may contribute to a reduction in the number of incidents if perpetrators cannot hide behind the anonymity provided by fake online identities and if complaints can be lodged and actioned where cyber-bullying occurs, whether the victim is an Australian child or adult.

As Commonwealth legislation controls social media communications, it is recommended for WALGA to seek advocacy through the Australian Local Government Association.

5.12 Proposed Amendments to the WALGA Constitution (01-001-01-0001)

By Tony Brown, Executive Manager Governance and Organisational Services and Tim Lane, Manager Strategy and Association Governance

Recommendation

1. That Clause 18 and Clause 19 of the Association Constitution be amended as follows:

I. Clause 18, sub-clause (1) be amended with the addition of the underlined words, as follows:

(1) Following determination of the election of the President pursuant to clause 17 of this Constitution, the State Council shall elect a Deputy President from amongst its metropolitan and country representatives, provided the Deputy President represents the alternate constituency to the President elected pursuant to clause 17.

II. Clause 19 be amended with the addition of the underlined words and the deletion of the strikethrough words, as follows:

(1) If the office of the President becomes vacant or if for any other reason the President is unable to take or hold office at a period which exceeds six months from the date of the next scheduled election for that office, then the State Council shall meet to elect from among their number a President who, subject to this Constitution shall hold the office of President for the balance of the term of the President replaced.

(2) Where a vacancy occurs in the office of President at a period which is six months or less from the date of the next scheduled election for that office, the State Council may convene a meeting to elect from among their number a President who, subject to this Constitution, shall hold the office of President for the balance of the term of the President replaced, or the State Council may in its discretion, determine that the vacancy be filled by the Deputy President until the date of the next scheduled election.

(3) An election pursuant to sub-clause 19(1) or sub-clause 19(2) shall cause the office of Deputy President to be declared vacant immediately prior to the conduct of the election.

(4) Following an election pursuant to sub-clause 19(1) or sub-clause 19(2) an election pursuant to Clause 19(5) will be conducted for the office of Deputy President from amongst representatives of the alternate constituency to that of the President just elected.

~~(3)~~(5) If the office of Deputy President becomes vacant or if for any other reason the Deputy President is unable to take or hold office, then the State Council shall meet to elect from among their number a Deputy President who shall hold the office for the balance of the term of the Deputy President replaced, provided the Deputy President represents the alternate constituency to that of the President.

~~(4)~~(6) A State Council representative elected to fill a vacancy of President or Deputy President pursuant to clause ~~48~~ 19 shall still be eligible for election to a subsequent two (2) full consecutive terms.

2. That Clause 17A – Rotation of Presidency be added to the Association Constitution, as follows:

17A – Rotation of Presidency

1. At an election for the position of President conducted under sub-clause 17(2), only the incumbent President, subject to complying with sub-clause 17(5), or State Councillors from the alternate constituency to the incumbent President will be eligible to be elected.
2. At an election for the position of President conducted under Clause 19, only State Councillors from the alternate constituency to the incumbent President will be eligible to be elected.
3. That Clause 20 of the Association Constitution be amended with the addition of the underlined words as follows:
A person shall cease or be disqualified from being a representative or deputy representative on the State Council, or from being President or Deputy President of the Association, or from attending State Council in an ex-officio capacity, if that person:
4. That sub-clause 20(j) of the Association Constitution be amended with the addition of the underlined words and the deletion of the strikethrough words as follows:
(j) Is a Councillor that has been suspended by the Minister for Local Government under Part 8 of an Ordinary Member that has been peremptorily suspended under Section 8.15C(2)(c) of the Local Government Act 1995.
5. That sub-clause 10(2) of the Association Constitution be amended with the addition of the underlined words as follows:
(2) Each representative on the State Council shall be entitled to exercise one (1) deliberative vote on any matter considered by the State Council provided that this clause shall not apply to any ex-officio members of the State Council. The President shall exercise a casting vote only, in the event of there being an equality of votes in respect of a matter considered by the State Council but excluding an election held in accordance with Clause 16 in which the President is entitled to a deliberative vote only.
6. That sub-clauses 2(1), 5(7)(a), 9(1)(d), and 31(4)(b) be amended as follows:
 - I. That the following strikethrough words be replaced with the following underlined words in sub-clause 2(1):

~~“Local Government Managers Australia” means the Western Australian Division of the Local Government Managers Australia (LGMA), which body is incorporated under the Victorian Companies Act 1961.~~
“Local Government Professionals Australia WA” means the Western Australian Division of Local Government Professionals Australia.
 - II. That sub-clause 5(7)(a) of the Association Constitution relating to Associate Members of WALGA be amended with the words “Local Government Managers Australia (LGMA)” to be replaced with the words “Local Government Professionals Australia WA”.
 - III. That sub-clause 9(1)(a) of the Association Constitution relating to ex-officio members of State Council be amended to replace the words “Local Government Managers Australia (LGMA)” with the words “Local Government Professionals Australia WA”.

IV That sub-clause 31(4)(b) of the Association Constitution relating to a dispute resolution panel be amended by replacing the word “LGMA” with the words “Local Government Professionals Australia WA”.

Special Majority Decision Required.

In Brief

- A number of potential amendments to the Association Constitution have arisen since the last governance review and Constitutional amendments in 2016;
- Amendment to the Constitution requires endorsement by a special majority of State Council and by a special majority at a WALGA Annual General Meeting;
- The issues identified and discussed in this report are as follows, with each issue corresponding to the numbers of the recommendations above:
 - i. President and Deputy President – Metropolitan and Country Representation;
 - ii. President and Deputy President – Rotation of Presidency between Metropolitan and Country constituencies;
 - iii. State Councillor Eligibility – Ex-officio Members;
 - iv. State Councillor Eligibility – Ministerial Suspension of Council or Councillor;
 - v. Election Procedure – Confirmation that the WALGA President is entitled to vote in elections for the positions of President and Deputy President; and,
 - vi. Change of Name – Local Government Professionals Australia WA.
- If one or more of the amendments above are endorsed by State Council by special majority an item will be prepared for the 2018 WALGA Annual General Meeting to be held on 1 August.

Attachment

Nil.

Relevance to Strategic Plan

Key Strategies

Engagement with Members

- ☐ Deliver a broad range of benefits and services that enhance the capacity of member Local Governments;
- ☐ Improve communication and build relationships at all levels of member Local Governments;
- ☐ Provide ongoing professional development and interactive opportunities for Elected Members to contribute to debate on sector issues;
- ☐ Build a strong sense of WALGA ownership and alignment.

Sustainable Local Government

- ☐ Continue to build capacity to deliver sustainable Local Government;
- ☐ Provide support to all members, according to need;
- ☐ Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;
- ☐ Foster economic and regional development in Local Government.

Enhanced Reputation and Relationships

- ☐ Communicate and market the profile and reputation of Local Government and WALGA;
- ☐ Promote WALGA's advocacy successes with the sector and the wider community;
- ☐ Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- ☐ Develop simple and consistent messages that are effectively articulated;
- ☐ Promote WALGA's supplier agreements to assist Local Governments.

Policy Implications

Nil.

Budgetary Implications

Nil.

Background

This item considers a number of potential amendments to WALGA's Constitution that have been raised or identified since the last governance review and amendments to WALGA's Constitution in 2016.

Amendment of the Constitution involves a two-step process, as detailed in Clause 29 of the Constitution, as follows:

The Constitution of the Association may be altered, added to or repealed by:

- (1) A resolution at any meeting of the State Council on the receipt of a special majority of not less than 75% of representatives as, being entitled to do so, vote in person or by their deputy representatives; and
- (2) A resolution at an Annual General Meeting or Special General Meeting passed by a majority of not less than 75% of delegates as, being entitled to do so, vote in person or duly authorize a proxy vote to be exercised on their behalf, provided that:
 - a. 75% of Ordinary Members who are eligible to vote are present or represented; and,
 - b. The Chief Executive Officer has given not less than sixty (60) days notice of any proposal to alter, add or repeal the Constitution to all Ordinary Members.

This report considers six issues put forward for Constitutional Amendment, with each issue corresponding to the numbered recommendations, as follows:

1. President and Deputy President – Metropolitan and Country Representation
2. President and Deputy President – Rotation of Presidency between Metropolitan and Country constituencies
3. State Councillor Eligibility – Ex-officio Members
4. State Councillor Eligibility – Ministerial Suspension of Council or Councillor
5. Election Procedure – Confirmation that the WALGA President is entitled to vote in elections for the positions of President and Deputy President
6. Change of Name – Local Government Professionals Australia WA

Comment

Background and secretariat comment for the following issues have been combined below on a per-issue basis.

Issue 1 – President and Deputy President: Metropolitan and Country Representation

An emerging issue was raised at the March 2018 meeting of State Council in relation to the representation of both the Metropolitan and Non-metropolitan constituencies in the positions of President and Deputy President of WALGA.

Following consideration of this issue, State Council resolved as follows:

That an item for decision be prepared for the May 2018 State Council agenda to provide consideration to proposed amendments to the WALGA Constitution and Corporate Governance Charter to ensure representation from both Metropolitan and Country constituencies for the President and Deputy President positions.

Since the formation of WALGA as the single Local Government association in 2001, there has been a convention that the President and Deputy President would be elected from opposite constituencies. That is, if the President is from the country constituency, the Deputy President would be elected from the metropolitan constituency and vice-versa.

This convention has not been challenged or broken in the 17 years since WALGA's formation, although it is possible that State Council could elect a President and Deputy President from the same constituency.

The argument in favour of this Constitutional amendment is that it would ensure that the Deputy President is drawn from the alternate constituency from that of the President, ensuring representation for both constituencies.

The argument against this Constitutional amendment is that it reduces the decision-making function of State Council to elect the 'best person for the job' and, as the convention has not been broken since WALGA's formation, it may not be an issue that requires regulation via Constitutional amendments.

To effect the change, amendments are required to Clause 18 – Deputy President, and to Clause 19 – Vacancy: President and Deputy President.

The following amendment is proposed to Clause 18 –Deputy President, by adding the underlined text as follows:

- (1) Following determination of the election of the President pursuant to clause 17 of this Constitution, the State Council shall elect a Deputy President from amongst its metropolitan and country representatives, provided the Deputy President represents the alternate constituency to the President elected pursuant to clause 17.
- (2) The Deputy President shall be elected by the State Council at the first Ordinary Meeting of State Council of an even numbered year. The Deputy President's term shall commence from the date of election and shall conclude on the day of the first Ordinary Meeting of State Council of the following even numbered year.
- (3) Prior to expiration of a term of office, a Deputy President may seek re-election for a consecutive term.
- (4) Where a Deputy President seeks and is re-elected for a consecutive term, that person shall not hold office beyond two (2) full consecutive terms.

The proposed amendment above would sufficiently address the issue for regular, end-of-term elections following the election of a new State Council.

However, where a vacancy arises in the office of President, the election of a replacement President would need to ensure that metropolitan and country representation remains in the two positions. Ensuring continued representation of both constituencies in the event of a casual vacancy in the office of President could be addressed in one of two ways, both of which have pros and cons.

Either:

- A. The replacement President must be drawn from same constituency as the current President. That is, if the WALGA President is from the country constituency, election of the replacement President for the balance of the President's term must be drawn from the country constituency.

Or:

- B. The office of Deputy President is declared vacant at the time the election for President is held. This would enable State Council to elect a President from amongst all members with the subsequent election for Deputy President being limited to the alternate constituency.

Option A – Replacement President from the same constituency – limits the options of State Council in electing a President to half of State Council, the half representing the same constituency as the departing President. While this may be appropriate in some circumstances, it does not necessarily provide State Council with the ability to elect the 'best person for the job'. Secondly, the Deputy President may be an appropriate candidate for the position of President, but would be unable to nominate for the position under this scenario unless they resigned from the position of Deputy President.

Option B – Office of Deputy President declared vacant at election of President – addresses the issues with Option A outlined above in that State Council would be able to elect a President from amongst all State Councillors, including the Deputy President who may be suitable. However, it may not be considered appropriate that the Deputy President loses office due to the resignation or inability of the President to continue in the role.

On the basis that electing a President from amongst all State Councillors is considered the most important criteria, amendments in accordance with Option B have been drafted to Clause 19 – Vacancy: President and Deputy President –by adding the underlined text and amending the numbering as follows:

- (1) If the office of the President becomes vacant or if for any other reason the President is unable to take or hold office at a period which exceeds six months from the date of the next scheduled election for that office, then the State Council shall meet to elect from among their number a President who, subject to this Constitution shall hold the office of President for the balance of the term of the President replaced.
- (2) Where a vacancy occurs in the office of President at a period which is six months or less from the date of the next scheduled election for that office, the State Council may convene a meeting to elect from among their number a President who, subject to this Constitution, shall hold the office of President for the balance of the term of the President replaced, or the State Council may in its discretion, determine that the vacancy be filled by the Deputy President until the date of the next scheduled election.
- (3) An election pursuant to sub-clause 19(1) or sub-clause 19(2) shall cause the office of Deputy President to be declared vacant immediately prior to the conduct of the election.
- (4) Following an election pursuant to sub-clause 19(1) or sub-clause 19(2) an election pursuant to Clause 19(5) will be conducted for the office of Deputy President from amongst representatives of the alternate constituency to that of the President just elected.
- ~~(3)~~(5) If the office of Deputy President becomes vacant or if for any other reason the Deputy President is unable to take or hold office, then the State Council shall meet to elect from among their number a Deputy President who shall hold the office for the balance of the term of the Deputy President replaced, provided the Deputy President represents the alternate constituency to that of the President.
- ~~(4)~~(6) A State Council representative elected to fill a vacancy of President or Deputy President pursuant to clause 18- 19 shall still be eligible for election to a subsequent two (2) full consecutive terms.

Issue 2 – Rotation of Presidency between Metropolitan and Country Constituencies

Similar to issue 1, above, the Governance and Organisational Services Policy Team of State Council considered the issue of the Presidency of the Association being rotated between the Metropolitan and Country constituencies.

Again, this has been managed since WALGA's formation in 2001 by convention. When a President has retired or stepped down from the role, a representative from the other constituency (often the serving Deputy President) has been elected to the Presidency.

At their recent meeting, the Governance and Organisational Services Policy Team of State Council requested that the issue of rotating the Presidency between the constituencies on a formal basis through Constitutional amendments be considered.

The Policy Team resolved:

That an item for decision be prepared for the May 2018 State Council agenda to provide amendments to the WALGA Constitution and Corporate Governance Charter to cover the following issues:

- *That the position of WALGA President transfers between the two constituencies following the completion of the incumbent's entitlement to be elected for two full consecutive terms.*

Similar to Issue 1, above, implementation of this concept through Constitutional amendment has pros and cons. While, an amendment of this nature would ensure rotating representation of metropolitan and country constituencies in the office of President, it could also limit State Council's prerogative to elect the 'best person for the job'.

This proposal raises a number of scenarios that are not necessarily simple to deal with through Constitutional amendments. For instance, depending on the amendments to the Constitution, issues could arise if a President resigns part way through a term, or even if a President only completes one two-year term.

For example, if a President from the metropolitan constituency resigned after one two-year term, there would be three possible scenarios:

1. The country constituency could then have a claim to the Presidency as it would be the country's turn and only State Councillors from the country constituency would be eligible to be elected;
2. A replacement President could be elected from the metropolitan constituency as the metropolitan constituency had only held the Presidency for two years (the newly elected President may then expect to be re-elected for a second term, lengthening the reign of the metropolitan constituency to six years, thereby causing further issues); or,
3. State Council could elect a President from either constituency, as per current arrangements.

One option could be to only 'force' the rotation of the Presidency once the President has completed two terms, however this could create an issue if a President resigned part way through their second term as the replacement President would then be entitled to two terms before a constitutionally enforceable rotation of the Presidency.

In the interest of simplicity it is suggested that a new Clause 17A be added to the Constitution to ensure rotation of the office of Presidency no matter the length of time served by the President:

17A – Rotation of Presidency

3. At an election for the position of President conducted under sub-clause 17(2), only the incumbent President, subject to complying with sub-clause 17(5), or State Councillors from the alternate constituency to the incumbent President will be eligible to be elected.

4. At an election for the position of President conducted under Clause 19, only State Councillors from the alternate constituency to the incumbent President will be eligible to be elected.

This would mean, at any election for President, only the incumbent President or State Councillors from the alternate constituency would be eligible to nominate. If the President has retired or has completed two full terms (as per sub-clause 17(5)), only State Councillors from the alternate constituency would be eligible to nominate and be elected.

Issue 3 – State Councillor Eligibility: Ex-officio Members

At the July 2017 State Council meeting, an emerging issue was considered in relation to the continuing eligibility of to serve on State Council following a serious breach of the *Local Government Act 1995*.

State Council resolved as follows:

That:

1. *The issue of amending the Constitution relating to State Councillor, ordinary or ex officio, eligibility be considered by the Governance Policy Team;*
2. *The Policy Team to consider the implications of amending the Constitution so that if any State Councillor, ordinary or ex officio, is found guilty of a serious breach of the Local Government Act 1995, as amended, that person will become ineligible to become or continue as a State Councillor, ordinary or ex officio.*

As per State Council's resolution above, the Governance and Organisational Services Policy Team considered this issue at their March 2018 meeting and resolved as follows:

That an item for decision be prepared for the May 2018 State Council agenda to provide amendments to the WALGA Constitution and Corporate Governance Charter to cover the following issues;

- *That if any State Councillor, ordinary or ex officio, is found guilty of a serious breach of the Local Government Act 1995, as amended, that person will become ineligible to become or continue as a State Councillor, ordinary or ex officio.*

Clause 20, sub-clause (e) disqualifies a representative or deputy representative from serving on the State Council if that person is convicted of an offence under the *Local Government Act 1995*.

To give effect to the Policy Team's recommendation, an amendment is required to clarify that Clause 20 of the Constitution also applies to ex-officio members, with the addition of the underlined text, as per below:

A person shall cease or be disqualified from being a representative or deputy representative on the State Council, or from being President or Deputy President of the Association, or from attending State Council in an ex-officio capacity, if that person:

- (a) Dies;
- (b) Ceases to be a Councillor of the Ordinary Member;
- (c) Resigns the position by notice in writing delivered or sent by post to the Chief Executive Officer, and such resignation is accepted;
- (d) Is a member of State or Federal Parliament;
- (e) Is convicted of an offence under the *Local Government Act 1995*;
- (f) Is permanently incapacitated by mental or physical ill-health;
- (g) Is absent from more than 3 consecutive State Council meetings;
- (h) Is a member of a Local Government that ceases to be a member of the Association;

- (i) Is the subject of a resolution passed by the Zone from which that person was originally elected terminating his or her appointment as a representative or deputy representative of that Zone, except where that person is the subject of any resolution consequent upon his or her being elected President of the Association and in pursuance of sub-clause 17(4); or,
- (j) Is a Councillor of an Ordinary Member that has been peremptorily suspended under Section 8.15C(2)(c) of the *Local Government Act 1995*.

Issue 4 – State Councillor Eligibility: Ministerial Suspension of Council or Councillor

A further issue relating to State Councillor eligibility relates to the suspension of Councils and the proposed amendment to the *Local Government Act 1995* to enable the Minister for Local Government to stand down an individual Elected Member.

Currently sub-clause 20(j) of the Constitution states that a State Councillor will not be eligible to be elected or to continue on State Council if a Councillor of an Ordinary Member that has been peremptorily suspended under Section 8.15C(2)(c) of the *Local Government Act 1995*."

It is the opinion of the secretariat that sub-clause 20(j) is too specific as Councils can also be suspended under Section 8.19 of the *Local Government Act 1995*. Further, if the *Local Government Amendment (Suspension and Dismissal) Bill 2018* passes the Parliament, as expected, the Minister for Local Government will also have the power to suspend individual Elected Members.

It is therefore recommended that sub-clause 20(j) be amended to clarify that a State Councillor who is suspended or stood down by the Minister using various sections of the *Local Government Act 1995* is not eligible to be elected to, or continue on, State Council, as follows:

A person shall cease or be disqualified from being a representative or deputy representative on the State Council, or from being President or Deputy President of the Association if that person:

- (a) Dies;
- (b) Ceases to be a Councillor of the Ordinary Member;
- (c) Resigns the position by notice in writing delivered or sent by post to the Chief Executive Officer, and such resignation is accepted;
- (d) Is a member of State or Federal Parliament;
- (e) Is convicted of an offence under the *Local Government Act 1995*;
- (f) Is permanently incapacitated by mental or physical ill-health;
- (g) Is absent from more than 3 consecutive State Council meetings;
- (h) Is a member of a Local Government that ceases to be a member of the Association;
- (i) Is the subject of a resolution passed by the Zone from which that person was originally elected terminating his or her appointment as a representative or deputy representative of that Zone, except where that person is the subject of any resolution consequent upon his or her being elected President of the Association and in pursuance of sub-clause 17(4); or,
- (j) Is a Councillor that has been suspended by the Minister for Local Government under Part 8 of an Ordinary Member that has been peremptorily suspended under Section 8.15C(2)(c) of the *Local Government Act 1995*.

Issue 5 – Election Procedure – Confirmation that the WALGA President is entitled to vote in elections for the positions of President and Deputy President

Another clarification that has arisen is to confirm that the incumbent President is entitled to vote in elections for President and Deputy President of WALGA.

The Constitution is clear that the President does not exercise a deliberative vote on matters before State Council (but does have a casting vote if there is an equality of votes), but the Constitution is silent on whether the President is entitled to vote in elections. It has been standard operating practice that the President has voted in elections for the position of President and Deputy President.

Clause 10 – Proceedings of State Council, sub-clause (2) relates to the President's voting and it is proposed that it be amended with the addition of the underlined words, as follows to make clear that the President may vote for office bearer positions:

- (2) Each representative on the State Council shall be entitled to exercise one (1) deliberative vote on any matter considered by the State Council provided that this clause shall not apply to any ex-officio members of the State Council. The President shall exercise a casting vote only, in the event of there being an equality of votes in respect of a matter considered by the State Council but excluding an election held in accordance with Clause 16 in which the President is entitled to a deliberative vote only.

Issue 6 – Change of Name – Local Government Professionals Australia WA

Following the change of name of the Local Government Managers Australia (LGMA) to Local Government Professionals Australia WA it is proposed that the following sub-clauses be amended to reflect the name change:

- 2(1)
- 5(7)(a)
- 9(1)(d)
- 31(4)(b)

6. MATTERS FOR NOTING / INFORMATION

6.1 Review of the State Industrial Relations System – Update (05-034-01-0001 TL)

By Tim Lane, Manager Strategy and Association Governance and Kate Pillai, Employee Relations Service Manager

Recommendation

That State Council note the update on the Interim Report of the State Industrial Relations Review.

In Brief

- The Interim Report of the Ministerial Review of the State Industrial Relations Review has been released for comment.
- The Review recommends that Local Government employers and employees be regulated by the State industrial relations system, with the primary reason being to ensure jurisdictional certainty for the Local Government sector.
- WALGA's original submission to the review – endorsed by State Council in March 2018 – opposed Local Governments being regulated by the State system based on member feedback and that 96 percent of Local Government employees are currently regulated by the Federal system.
- A submission opposing the Interim Report's recommendation that Local Government be regulated by the State industrial relations system is being finalised.
- WALGA's submission will also make comment on the proposed transition process as well as a range of other recommendations that will impact the Local Government sector.
- The submission will be considered by the WALGA Executive Committee prior to being put forward to the review on an interim basis and will then be considered by State Council at the July 2018 State Council meeting.

Attachment

Ministerial Review of the State Industrial Relations System – Interim Report:

https://www.commerce.wa.gov.au/sites/default/files/atoms/files/ministerial_review_of_the_state_industrial_relations_system_interim_report_0.pdf

Relevance to Strategic Plan

Key Strategies

Engagement with Members

- Ø Deliver a broad range of benefits and services that enhance the capacity of member Local Governments;
- Ø Improve communication and build relationships at all levels of member Local Governments;
- Ø Provide ongoing professional development and interactive opportunities for Elected Members to contribute to debate on sector issues;
- Ø Build a strong sense of WALGA ownership and alignment.

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government;

- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;

Enhanced Reputation and Relationships

- Ø Communicate and market the profile and reputation of Local Government and WALGA;
- Ø Promote WALGA's advocacy successes with the sector and the wider community;
- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated;

Background

In September 2017, the State Government announced a Ministerial Review into the State Industrial Relations System.

Most importantly for the Local Government sector, the Review is considering whether the Local Government sector should be regulated by the state industrial relations system, as per the following Term of Reference:

"Consider whether local government employers and employees in Western Australia should be regulated by the state industrial relations system, and if so, how that outcome could be best achieved."

WALGA put forward a submission to the Review opposing the transfer of all Local Government sector employers and employees to the State industrial relations system. WALGA's submission was endorsed at the 7 March 2018 State Council meeting.

The Interim Report of the Review was released in late March and put forward the following recommendations:

69. *Local Government employers and employees be regulated by the State industrial relations system.*
70. *To facilitate recommendation 69 the State Government introduce legislation into the State Parliament consistent with s 14(2) of the FW [Fair Work] Act that declares, by way of a separate declaration, that each of the bodies established for a local government purpose under the Local Government Act 1995 (WA) is not to be a national system employer for the purposes of the FW Act (the declaration).*
71. *If the declaration is passed by the State Parliament, the State expeditiously attempt to obtain an endorsement under s 14(2)(c) and s 14(4) of the FW Act by the Commonwealth Minister for Small and Family Business, the Workplace and Deregulation, to make the declaration effective (the endorsement).*
72. *As a counterpart to recommendation 70 the State enact legislation that has the effect, upon the endorsement, of deeming local government Federal industrial awards, agreements or other industrial instruments to be State awards, agreements or other industrial instruments for the purposes of the 2018 IR Act.*
73. *If the endorsement is obtained, a taskforce be assembled and chaired by a representative of DMIRS and include a representative of the Department of Local Government, Sport and Cultural Industries, the WAIRC, the Western Australian Local Government Association, the Western Australian Municipal, Administrative, Clerical and Services Union of Employees, the Western Australian Municipal, Road Boards, Parks and Racecourse Employees' Union of Workers Perth, the State Solicitor's Office and a nominee of the President of the Law Society of Western Australia, to oversee, monitor, assist, facilitate and progress the transition of local government employers and employees between the Federal and State industrial relations systems.*

The Review also addresses a range of topics, mostly relating to modernising the State Industrial Relations system and the Western Australian Industrial Relations Commission (WAIRC).

Submissions are being sought on the Interim Report by 1 May 2018 and, at the time of writing, the secretariat is in the process of finalising a submission on the interim report.

Comment

WALGA is in the process of finalising a submission on the Interim Report that will reiterate and expand on the recommendations of WALGA's original submission to the Review.

In particular, WALGA's submission will argue that the Local Government sector should not be regulated by the state industrial relations system.

Firstly, this is because Local Government is a separate and distinct sphere of Government and that there are significant differences between the Local Government Sector and the State public service.

Secondly, 96 percent of employees in the Local Government sector are currently employed in the Federal system and it is unclear that the benefits of transferring to the state system outweigh the significant transition costs. Feedback from WALGA's members has overwhelmingly endorsed rejection of the Interim Report's recommendation to transfer the Local Government sector to the State industrial relations system.

The Review's Interim Report argues that jurisdictional certainty will be the main benefit of a complete transfer to the state system. However, the other option – complete transfer to the Federal system – was prohibited from consideration by the terms of reference of the review, and the interim report does not make the case why transfer to the state is the preferred solution, nor whether jurisdictional certainty outweighs the significant financial resources required to transition to the state system.

Thirdly, the state system requires significant modernisation before it is equivalent to the current Federal system with which Local Government employers and employees are familiar. To that end, WALGA's submission will argue that modernisation of the state system (most of the interim report's other 68 recommendations) should be implemented prior to commencement of the transfer of the Local Government sector to the State system. This will allow comparison of the newly recommended State Employment Standards with the current National Employment Standards and will allow both employers and employees to develop an understanding of the new system.

WALGA will also make comment on a number of other recommendations likely to have an impact on the Local Government sector, if the transfer of the Local Government sector to the State industrial relations system proceeds as recommended.

WALGA's submission to the Interim Report will be considered by the WALGA Executive Committee prior to its submission and will be an item for decision at the July meeting of State Council.

Following the current submission period, it is expected the Review will release a Final Report for Government consideration later this year. Depending on the Government's response to the report and its recommendations, legislation would need to be drafted and passed by Parliament, and Federal Government agreement obtained, prior to the transfer of the Local Government sector to the State industrial relations system.

6.2 Local Government Performance Monitoring Project (05-036-04-0004 VJ)

Vanessa Jackson, Policy Manager Planning and Improvement

Recommendation

That the results of the Local Government Performance Monitoring Project be noted.

In Brief

- Eleven Local Governments initiated the *Local Government Performance Monitoring Project* to accurately reflect the planning and building performance of their organisations during the 2016/17 financial year.
- The Report has been presented to the Minister for Local Government, Minister for Planning and Minister for Commerce and the various State Government Departments, to consider these data sets in any regulations that might be prepared by the State for the Local Government sector.
- WALGA encourages other Local Government members to participate in the project in future years.

Attachment

Nil

Relevance to Strategic Plan

Sustainable Local Government

- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;

Enhanced Reputation and Relationships

- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated.

Policy Implications

Supported by the current position statement – *The Local Government sector supports the underlying principles of planning reform and the continuing focus of streamlining the planning system.*

Budgetary Implications

Nil

Background

In September 2016, the Property Council released a report entitled *Benchmarking Greater Perth Local Governments*, which purported to measure best practice planning performance of Local Government planning systems in 29 of greater Perth's councils. The media stated that the report had "*shone a light on the poor performance of local planning by most Local Governments in Greater Perth*" and also highlighted "*a worrying lack of strategic and statutory planning amongst councils.*"

Needless to say that the release of this report was not well received by the sector, with members criticising the report as it;

- Failed to acknowledge the uncertainty around the Local Government reform process over a four (4) year period, which would have delayed strategic planning for many of the Local Governments in the survey;
- Recommended changes to the State's performance in the processing of strategic planning matters, but did not provide any data to show the State's timeframes within this process;
- Categorised and ranked Council processes in a simplistic fashion without taking into account many activities Councils undertake that also contribute to their strategic plans;
- Commented on the 'Age of Schemes' which is a diversionary issue, as it fails to understand that the 'Age' of a Scheme is no reflection of its relevancy;
- Failed to acknowledge the standardisation of provisions through the new Local Planning Scheme Regulations deemed provisions in 2015, the 'Scheme Audit' requirements, and the numerous Omnibus amendments that have occurred to ensure a Scheme remains current; and
- Translated and modified the data provided by the researchers into an artificial ranking of each Local Government.

In response, the CEO's of WALGA's Growth Alliance Perth and Peel (GAPP) policy forum, initiated the *Local Government Performance Monitoring Project* to accurately reflect the planning and building performance of their organisations during the 2016/17 financial year.

Comments

The Councils which make up the GAPP policy forum include the Cities of Armadale, Cockburn, Gosnells, Kwinana, Mandurah, Rockingham, Swan, Wanneroo and the Shire of Serpentine-Jarrahdale. The Cities of Belmont, Canning and Melville were invited to participate in this project with GAPP members. The project was proactively initiated by these eleven Local Governments in response to the concerns over the 2016 Property Council report, as it did not accurately represent all of the planning and building functions a Local Government undertakes.

The eleven Local Governments encompass 54% of the total population of the Greater Perth region and accounted for 70% of Perth's growth between 2011 and 2016, providing an excellent picture of how the sector is achieving its Strategic and Statutory Planning functions and achieving the statutory timeframes of the Planning and Building Approvals processes.

The key points of the *Local Government Performance Monitoring Project* report:

- Three Local Governments have a current Local Planning Strategy with seven currently reviewing their strategies
- Although a current local planning strategy may not have been adopted, on average the group had eight Strategic documents that supported land use planning functions, either a Strategic Community Plan, Community infrastructure, Commercial, Housing, Environment, Economic, Transport, Activity Centre, Heritage or Open Space Strategy.
- Six of the Local Governments had reviewed, consolidated or undertaken an audit of their Local Planning Scheme in the last five years.
- In 2016/17 the Local Governments finalised an average of six scheme amendments, taking an average of 19 months to complete.
- On average, 45% of an amendment time is with the WA Planning Commission or Minister for Planning, around 4% of the time is with the Environmental Protection Authority awaiting its advice, resulting in an average time that a Local Government has any control over the Scheme amendment process around 52%.
- 98% of all applications were approved or responded to within the statutory timeframes (applications includes all planning development applications, subdivision referrals and clearances, building strata clearances (Form 26s) and building permits).
- On average 95.9% of applications were approved under delegated authority, allowing Council officers to assess and approve the application rather than being considered at a full Council meeting.

The report provides a collated view of the eleven Local Governments involved, as it is about the performance of the sector as a whole and not about an individual Councils performance. An individual report for each Local Government will also be provided to participants, showing where the Local

Government sits within the benchmarked group of Councils, but not ranking them against each other. In future years, the Local Governments will also be able to show their performance against their own previous year's performance to enable continued improvement and a true monitoring of their own performance.

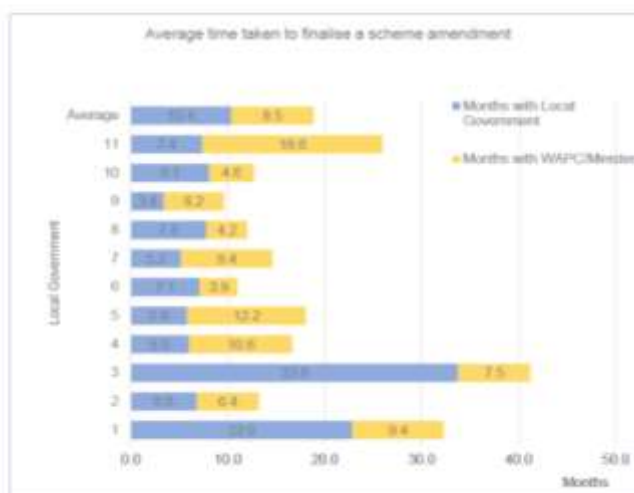
The State Government has been advised of this project with the Ministers for Local Government, Planning and Commerce advising that they are encouraged by the results and proactive nature of the project. The State has had the ability to prepare regulations to collate this planning and building information since 2009, but has never been progressed. WALGA would like to see that the data sets in this report are included in any regulations that might be prepared by the State for the Local Government sector. The Minister for Planning has advised that Independent Planning Reform Team will be considering this project in their review of the planning system.

WALGA has been discussing this project with other Local Government members, with a view to increasing the Local Government participation in the coming years. If interested in the *Local Government Performance Monitoring Project*, please email planning@walga.asn.au or call one of the Planning team on 9213 2000.

4.3 Average Time to Finalise Amendments

It takes the Benchmark Councils an average of 19 months to complete a Scheme Amendment. This time is divided between time taken for Local Governments to adopt draft amendment and time taken for the State to approve and gazette amendments.

Average
19
Months



6.3 Update on the Building Commission's State Wide Cladding Audit (05-015-02-0010 VJ)

By Vanessa Jackson, Policy Manager, Planning and Improvement

Recommendation

That State Council note the progress of the Building Commission's State Wide Cladding Audit and possible implications on the Local Government sector.

In Brief

- The State Government has initiated a State Wide Cladding Audit following the Grenfell Tower disaster in June 2017.
- The Audit involves the Building Commission investigating whether buildings are 'low' 'medium' or 'high' risk based on the type of cladding on the building.
- The number of buildings that will require a Local Government to issue a Building Order for remedial works is still unknown due to the investigation process still being undertaken, however, there will be financial and resource implications for the sector to undertake any enforcement actions on properties found to be a 'high' or 'medium' risk.

Attachment

Details of the Building Commission's Cladding Audit can be found online:- <https://www.commerce.wa.gov.au/building-commission/state-wide-cladding-audit>

Relevance to Strategic Plan

Key Strategies

Sustainable Local Government

- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;

Enhanced Reputation and Relationships

- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated;

Background

On 14 June 2017, fire engulfed a 24-storey apartment block in West London's North Kensington district known as the Grenfell Tower, causing at least 80 deaths and many injuries. Following this tragedy, Prime Minister Malcolm Turnbull wrote to Premier Mark McGowan MLA seeking the support of all state and territory governments to ensure the necessary steps are taken to prevent a similar tragedy from occurring in Australia.

Building Commissioner Peter Gow announced on 4 July 2017 that, in response to the Grenfell Tower fire, the WA Building Commission (Commission) would broaden the scope of an initial audit it had been carrying out on aluminum composite panels (ACPs) into a state-wide cladding audit that would include all high-risk, high-rise buildings with cladding attached. Similar audits have been commenced or undertaken in other states including South Australia, Queensland, New South Wales and Victoria.

The Commission's new audit scope for the State Wide Cladding Audit includes all high-risk, high-rise buildings in WA that have cladding attached. The state-wide cladding audit will:

- Identify buildings three storeys and over, classes 2, 3, 4 and 9 with cladding, constructed or refurbished (where a building licence/permit was issued) after 2000. These are generally buildings in which people sleep – such as apartments, hotels and other short-stay accommodation – or which accommodate vulnerable occupants or high occupancy events.
- Determine whether cladding associated with these buildings poses an unacceptable risk of fire spread.
- Apply an appropriate intervention where an unacceptable risk is found to exist.

The Commission will assess the buildings based on their degree of risk to public safety. The Commission has advised that the audit is being carried out in the three phases as detailed below.

Phase One – the Planning phase – complete

This phase involved:

- the establishment of an audit team, audit plan, assessment methodology and communication plan; and
- the establishment and regular meetings of an Audit Regulator Group and an Audit Stakeholder Group.

Phase Two – the Execution phase – commenced

This phase involves:

- Stage 1A – the identification of buildings in the metropolitan area (complete) and in regional areas (almost complete) of the class and height falling within the audit scope;
- Stage 1B – the identification of buildings within stage 1A that have cladding attached (almost complete);
- Stage 2A – the collation of data for preliminary assessments of buildings in the metropolitan area and in regional areas (almost complete);
- Stage 2B – the preliminary assessment of buildings in the metropolitan and in regional areas to determine buildings that require further investigation (almost complete);
- Stage 3 – the gathering and assessment of building information and the carrying out of site inspections to determine whether any action is required in relation to the existence of cladding on the building. This stage may involve testing of façade materials (about to commence); and
- Stage 4 – determination of buildings requiring remedial action (not yet commenced).

These stages are operating concurrently and the figures in the audit update are updated weekly to reflect this.

Phase 3 – the Reporting phase – not yet commenced

This phase will involve drafting and publishing an audit report.

Since July 2017, WALGA and LGIS have been involved in the Commission's Audit process through the: -

- *Audit Regulator Group (ARG)* consisting of Building Commission, Department of Fire and Emergency Services (DFES) WALGA, LGIS and Local Government representatives; and
- *Audit Stakeholder Group (ASG)*, consisting of the above representatives and the building industry and building owner representative bodies.

Comment

The Building Commission have advised that the initial focus is on the buildings within the Perth and Peel Metropolitan Region, with 228 buildings still subject to further investigation by the Commission as part of the auditing process, preliminarily identified as either a 'medium' or 'high risk' building as shown in Table 1. The 228 buildings are located within 28 Local Government areas. However, another 64 buildings are currently in the preliminary assessment phase in the 'Regional Areas' to determine what their risk status is, as shown in Table 2.

Permit Authority records are currently being used to identify buildings with the flammable cladding. The number of affected permit authorities is likely to reduce as a result of the Building Commission reviewing this documentation under the current stage of the audit process (*Phase 2 and Stage 3*). It is anticipated that not all of the Local Governments within Table 1 and 2 will need to take

enforcement action after that review has been completed, i.e. some of the buildings that were assessed as medium or high risk may be consigned to the low risk category, if the cladding is determined to be non-combustible.

Since the commencement of the Cladding Audit, the Commission indicated that they would work 'collaboratively' with Local Governments and advised that they would oversee the Audit to make sure the process would be undertaken in a consistent manner. On Friday 9th March, the Building Commission advised that they wouldn't be assisting Local Government through *Phase 2 and Stage 4 – determination of buildings requiring remedial action* and that they will step back from helping the Local Government sector. The next phase of the Cladding Audit involves enforcement actions to be undertaken by Local Government based on the Commission's investigations.

As mentioned, the number of buildings subject to the cladding audit are being further investigated by the Commission and once fire engineer reports are received, many buildings may be removed from the Audit. If a building isn't removed in the above process, the fire engineer's reports will be sent to the Local Government, to request a Building Order to be issued on the property.

Last year, it was promised to provide Local Governments with 'assistance' in framing up the words to use in the issuing of a Building Order, which will either seek more information or will request any immediate remedial actions. The Commission's new approach is disappointing, as the Association wasn't asking for the Commission to write the order, just put the basic advice in place so that all Local Governments could follow the same process and wording for consistency of approach.

The State Government initiated this Audit, however because the Building Act 2012 has been written in such a way that enforcement is only for the Permit Authority to follow up on, they appear to be backing away from the consequences of commencing the Audit. The Building Commission has also received legal advice that they are unable to use the Building Services Levy, which funds the operation of the Commission, in providing any specific information that would assist the Local Government sector.

Given the complexity of this issue, the number of buildings being investigated, the number of Local Governments involved, the potential resource implications and the possible risk implications for the sector, WALGA and LGIS have been working together since the audit started and will continue to work together with the Sector to provide clear and consistent advice on this Cladding Audit (a joint InfoPage was sent to members on the 6 October 2017).

The following actions are being undertaken:-

- An information session for CEO's and Building Surveyors of the 28 Metropolitan and Peel Local Governments (up to 228 buildings) was held on 4 April 2018. One Local Government has issued a Building Order, and provided an outline of their experiences and processes they have undertaken.
- Once the Commission advises WALGA on the exact location of the 'Regional' buildings (in Table 2), a similar session will be arranged for those regional Local Governments that may progress into *Stage 4*.
- WALGA and LGIS will prepare a guidance document for all members to help in providing a consistent approach in this enforcement phase.
- LGIS and WALGA will be seeking legal advice to clarify a range of risk and liability concerns, and to provide a base template for words to use in a Building Order.
- A meeting with Hon Minister Templeman & Minister for Commerce, Hon Bill Johnson will be sought as soon as possible, so both Ministers are aware of the change in the previously agreed Audit process, as well as the workload that is going to be placed on the Local Government sector.
- A report will be presented to the May WALGA State Council meeting to inform members of the Cladding Audit and possible implications.

TABLE 1 – Number of Buildings within the Perth and Peel area, currently under investigation by the Building Commission (NB: details of the exact locations of these buildings will not be publically released until the investigation have been completed).

Permit authority	Medium	High
Bassendean	1	
Bayswater	4	
Belmont	14	3
Cambridge	7	4
Canning	1	
Claremont	1	
Cockburn	2	4
Cottesloe		1
East Fremantle	1	
Fremantle	15	
Gosnell	2	
Joondalup		2
Kalamunda	1	
Mandurah	8	2
Melville	3	1
Mosman Park	1	
Nedlands	3	
Perth	40	18
Rockingham	7	2
South Perth	8	
Stirling	12	3
Subiaco	13	2
Swan	4	
Victoria Park	7	
Vincent	26	4
Wanneroo	1	
Total	182	46

TABLE 2 – Collation of data and preliminary assessment of Buildings within the 'Regional areas' to determine whether the risk is 'low', 'medium' or 'high'.

Permit authority	# of Buildings
South West	22
Pilbara	16
Kimberley	5
Great Southern	1
Other	3
Total	64

6.4 Public Libraries Strategy Consultation Forum (05-057-02-0051 EDR)

Evie Devitt-Rix, Senior Policy Advisor, Community

Recommendation

That the Association's contribution to the consultation process for the *Draft WA Public Libraries Strategy* be noted.

In Brief

- WALGA assisted the State Library WA in hosting a Consultation Forum to gather Local Government feedback on the Draft WA Public Libraries Strategy (the Draft Strategy) and *Our Future Background Paper* (the Background paper).
- The Consultation Forum was well-attended by Local Governments, and provided an opportunity for participants to play an active role in the development of the final WA Public Libraries Strategy.
- The Draft Strategy and Background paper are the culmination of years of work from State Library WA, WALGA and Public Libraries WA to consult the sector, develop a strategic view of library services and identify how they will need to evolve to suit 21st century requirements.

Attachment

Nil

Relevance to Strategic / Business Plan

Key strategies

Engagement with Members

- Ø Deliver a broad range of benefits and services that enhance the capacity of member Local Governments;
- Ø Improve communication and build relationships at all levels of member Local Governments;
- Ø Provide ongoing professional development and interactive opportunities for Elected Members to contribute to debate on sector issues;
- Ø Build a strong sense of WALGA ownership and alignment.

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government;
- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;
- Ø Foster economic and regional development in Local Government.

Enhanced Reputation and Relationships

- Ø Communicate and market the profile and reputation of Local Government and WALGA;
- Ø Promote WALGA's advocacy successes with the sector and the wider community;
- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;

Budgetary Implications

Nil.

Background

In 2004, an agreement between the State and Local Government for the Provision of Public Library Services in Western Australia (Framework Agreement) was established. The Framework Agreement sets out a shared vision, roles and responsibilities, and principles and objectives for public libraries in Western Australia. By 2014, the Framework Agreement (as revised from time to time) had been in place for a decade and is managed through a joint State – Local Government Advisory Group.

Through extensive consultation over several years WALGA members indicated that the current Framework Agreement and governance arrangements were not working effectively. In 2014 WALGA's State Council resolved to support the development of a new vision for public library services in WA, together with appropriate governance arrangements that would support achievement of this (Resolution 37.2/2014).

In addition to WALGA's commitment, the Library Board of Western Australia met in December 2013 and "confirmed its continued support of the partnership between SLWA and Local Government as articulated in the Framework Agreement", and "will work with WALGA to determine a new model of governance for the partnership".

As a consequence of these agreements, WALGA engaged with members and stakeholders, including Public Libraries Western Australia, Local Government Elected Members, Chief Executive Officers and Librarians regarding the future of public libraries and the need for them to evolve over the next decade, if they are to remain valued by the public.

Historically, the financial partnership between the WA State Government and Local Government for public library services was an equal one of 50/50 investment. However, today the average investment from the State Government is 12%, with Local Governments picking up the balance of 88%. Given the State's tight fiscal environment there is an inherent risk that even this small investment into materials for public libraries could be cut.

Much of the Association's focus on libraries has, to date, been on operational issues such as declining State funding, shared library management systems, business processes, radio frequency technology (RFID), stock ownership, exchange systems and regional activity planning. However, given the current environment of Local Government reform, the difficulties in meeting public library reforms previously, and the social and technological changes taking place in society at large, it was considered timely to take much more strategic view of library services and identify how they will need to evolve to suit 21st century requirements.

The Association engaged consultants, AEC Group, to undertake a comprehensive visioning and strategic planning process for how public libraries in WA will need to adapt or change to ensure they are relevant, valued and sustainable in 2025. The outputs from the project guided WALGA and its member Local Governments in their strategic planning and advocacy to the State Government.

In order to help guide the project, a CEO / Elected Member Advisory Group with representatives from six Local Governments was established. In addition, consultation was carried out with Members to ensure that the vision and strategic framework for public libraries in 2025 was consistent with the diverse range of needs and expectations of all communities and Local Governments across the State.

WALGA held a series of targeted workshops with AEC to discuss their research outcomes. The Vision 2025 and Framework for Strategic Action for Public Library Services in Western Australia recognised the key role that public library services in Western Australia play in developing stronger communities.

Inspiring Stories was a document commissioned by Public Libraries Western Australia, demonstrating and celebrating the diversity of public library services. This document also formed part of the background for the Vision 2025 document.

The Vision 2025 and Framework for Strategic Action were endorsed by State Council in September 2015. The resolution included a request for support from the Minister for Culture and the Arts and the

Minister for Local Government and Communities for the documents, and a request for development of a Public Libraries 2025 Strategic Plan (Resolution 101.6/2015).

Four key pillars emerged through the consultation and visioning process to provide the building blocks of the Framework for Strategic Action. This provided the template for the development of the Draft Public Libraries Strategy.

The four pillars were:

- Integrated Planning
- Good Governance
- Strategic Positioning and
- Best Value Service Delivery

These four pillars formed the basis of the five priorities in the Draft Strategy:

1. Governance
2. New model to support public library service delivery in Western Australia
3. New model to support regional and remote public library services
4. Single access card system
5. Public Value

Comment

The *Draft WA Public Libraries Strategy* (the Draft Strategy) and *Our Future Background Paper* (the Background paper) were released for public consultation by the State Library WA on 8 December 2017. The State Library requested WALGA's cooperation to jointly run a Local Government consultation process to gather feedback on the documents. WALGA offered to host and promote a Public Libraries Strategy Consultation Forum for Local Government, and the event was hosted at the Association's offices on 6 March. The Forum registered 43 participants from 33 Local Governments, including four webinar participants. Feedback was gathered based on the five priorities of the Draft Strategy, and included questions on whether the priorities reflect WA communities; whether there were any additional priorities that needed to be represented; and any other information participants felt State Library WA and WALGA needed to know.

Consultation on the Draft Strategy and Background paper closed on 29 March 2018. The State Library WA will collate the feedback from Local Governments gathered at the Forum, and feedback from the broader community, and a report on the consultation findings will be presented to the Public Libraries Working Group (PLWG). WALGA Chief Executive Officer Ricky Burges and Policy Manager, Community Kirstie Davis are members of the PLWG. The next meeting of the PLWG is scheduled for Monday 23 April 2018.

6.5 Aboriginal Heritage Act 1972 Review 05-032-01-0001 (KD)

Kirstie Davis, Policy Manager Community

Recommendation

That State Council note the Association is currently engaging with Members in order to develop a submission to State Government for the review of the *Aboriginal Heritage Act 1972*.

In Brief

- The Department of Planning, Lands and Heritage are conducting a [review](#) of the *Aboriginal Heritage Act 1972* (the Act)
- The Act is the States' principal legislation enabling the preservation of Aboriginal cultural heritage places and objects
- The review is being conducted in three phases and commenced on 9 March 2018 with the release of a [Consultation Paper](#)
- The Association is seeking feedback from Members on the Consultation Paper to provide a submission to State Government by 1 June 2018.

Attachment

Nil

Relevance to Strategic Plan

Key Strategies

Engagement with Members

- Ø Provide ongoing professional development and interactive opportunities for Elected members to contribute to debate on sector issues

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government
- Ø Provide support to all members, according to need
- Ø Represent the diversity of members' aspiration in the further development of Local Government in Western Australia

Enhanced Reputation and Relationships

- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government
- Ø Develop simple and consistent messages that are effectively articulated

Policy Implications

All Local Governments are bound by the *Aboriginal Heritage Act 1972*. The submission will reflect the Association's related policy positions.

Budgetary Implications

Nil.

Background

There have been several reviews of the Act, with amendments gazetted in 1981, 1995 and 2008. The 2018 review of the Act will be conducted over three phases:

Phase One	Release of a Consultation Paper to seek public comment on aspects of the Act as it operates now
Phase Two	Release of Discussion Paper outlining proposals for public comment
Phase Three	The draft legislation, or 'Green Bill', will be published for stakeholder and community consultation. The outcome of this consultation will inform the final version of the new legislation, which will be introduced into Parliament

Comment

It has become clear that elements of the Act are no longer fit for purpose. The growth of Western Australia over the last 40 years has highlighted that changes are necessary to better protect Aboriginal heritage. It is anticipated that through the review and amendments of the Act, heritage preservation and promotion will be retained as the key focus while providing a more efficient land use application process.

The Association has called for Expressions of Interest from Members to form a Sector Reference Group to guide the review process.

A report will be presented to State Council advising the outcomes of the consultation process.

6.6 Heritage Bill 2017 (05-036-03-022 NH)

Nina Hewson, Senior Policy Advisor, Community

Recommendation

That State Council notes WALGA has received a response from the Hon David Templeman MLA, Minister for Local Government; Heritage; Culture and the Arts addressing the Goldfields Esperance Country Zone concerns regarding parts of the *Heritage Bill 2017*.

In Brief

- On 8 November 2017 the State Government introduced the *Heritage Bill 2017* which is currently being debated in Parliament.
- The Goldfields Esperance Country Zone raised concerns on parts of the *Heritage Bill 2017* around ownership and the potential impacts on Local Government.
- WALGA wrote to the Minister seeking feedback to these concerns and has received a response.

Relevance to Strategic Plan

Engagement with Members

- Ø Deliver a broad range of benefits and services that enhance the capacity of member Local Governments;
- Ø Improve communication and build relationships at all levels of member Local Governments;
- Ø Build a strong sense of WALGA ownership and alignment.

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;

Enhanced Reputation and Relationships

- Ø Promote WALGA's advocacy successes with the sector and the wider community;
- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated;

Background

The Heritage Act review commenced with State Government community consultation in 2011 and again in 2015.

The first phase of the review involved a release of the 'Review of the Heritage of Western Australia Act 1990 Consultation Paper' which sought views on the effectiveness of current legislation with the intention of improving its lack of clarity and efficiency.

This feedback informed a Review of the Heritage of Western Australia Act 1990 Discussion Paper' which outlined a series of proposals that could have formed a platform for a new Heritage Act.

In March 2012, WALGA State Council endorsed the interim submission to the Heritage Council on the Discussion Paper – Review of the Heritage of Western Australia Act 1990, and also endorsed that further consultation with the Local Government sector be undertaken during the preparation and release of the Green Bill for a new Heritage Act for WA.

Further stakeholder meetings were held and formal submissions invited. This information contributed to the preparation of the *Heritage Bill 2015 (Exposure Draft)* which at the time was the first major

change to the State's heritage legislative framework in 25 years. WALGA sought member comment to the *Heritage Bill 2015* and submitted an interim submission to the Heritage Council endorsed by WALGA State Council in December 2015.

The *Heritage Bill 2016* was introduced to Parliament by the previous government. The change in State Government in early 2017 saw the legislative process recommence under the McGowan Labor Government, and the *Heritage Bill 2017* was introduced to Parliament on 8 November 2017.

Comment

The *Heritage Bill 2017* was tabled in Parliament at the end of 2017, for further discussion.

WALGA sent a letter to the Hon David Templeman MLA, Minister for Local Government; Heritage; Culture and the Arts dated 31 January 2018 following Local Government concerns around parts of the *Heritage Bill 2017* and was seeking clarity on several issues:

- How ownership is determined with regard to repair orders especially in terms of structures on reserves when ownership is not always clear on the Certificate of Title
- The Bill outlines that repair orders will be subject to review by SAT to protect against undue hardship, and there will be opportunity for owners to have a right of appeal. The Association was seeking clarity on whether this right of appeal applies to the Local Government sector, as the current provision only refers to a 'person' (refer to Part 4, Div. 2 s.66)
- How financial hardship will be determined, especially when Local Governments are involved
- The consequences for Local Government should a community group with a listed building surrender them to Local Government for management, and
- The State Government contribution to a building/structure's preservation, when the State Government has determined that a structure is of value to the State.

Additionally, the prospect of repair orders was not mentioned in the previous briefing paper issued by the Heritage Council, 'Local Governments and the Heritage Bill 2015 (Exposure Draft)', which could have the potential to significantly affect Local Governments.

The Minister responded to WALGA's concerns noting the following:

- Ownership with regard to repair orders, especially in terms of structures on reserves is readily ascertained via an initial search of land information such as titles, which provide information on the ownership of the reserve and any other interests in the land parcel, for example a vesting or management order made by the Minister for Lands. Enquiries with the relevant Minister or State agency responsible for the reserve provides information on any lease or licence arrangements that may be present. In any event, according to the provisions of *Heritage Bill 2017*, a recommendation to issue a Repair Order can only be made once all attempts on the part of the Heritage Council to negotiate works to make a heritage place safe and secure with an owner have been exhausted. This process ensures that the ownership and responsibility for the upkeep of a listed place is well and truly understood.
- The Bill enables an affected owner the right of review of a Repair Order via the State Administrative Tribunal. As proposed in the *Heritage Bill 2017*, an Order must be served on a person to whom it is directed, which would generally be the CEO of a local government. Accordingly, it is open to the CEO, or such person upon which the order is served, to seek a review of the order by the State Administrative Tribunal under section 69 of the Bill
- Undue hardship would need to be assessed on a case-by-case basis
- In regards to the surrender of a listed building by a community group to a local government for management, it would be reasonable to expect that a responsible local authority would only accept such a property having satisfied itself that it is in its community's interests, and it has the resources available to manage the building in its forward plans
- The inclusion of a place in the Register of Heritage Places is recognition that it has special cultural significance to all Western Australians and should be preserved for current and future generations. Consistent with the current Act, and heritage legislation throughout Australia and overseas, the inclusion of a place in the Register does not interfere with the rights and responsibilities of owners, and does not transfer responsibility for upkeep to the

State. Rather, heritage recognition through listing provides a framework to ensure that identified heritage values are maintained through any changes proposed by an owner, and

- When public consultation on the need for modernised heritage legislation commenced in 2011, and throughout the later consultation processes, the issue that appeared most frequently in submissions was an insistence that Western Australia's legislation must include a repair order. The Minister indicated that this included a meeting with the Goldfields Voluntary Regional Organisation of Councils at its invitation in Kambalda in September 2016 to specifically discuss the Repair Order provisions. The State Heritage Office also provided information about the Repair Order processes, and no further concerns were raised after this meeting.

The Minister has assured the Association that the State Government will be working closely with stakeholders as the Regulations are developed to support the Act and WALGA will keep the sector informed of any progress.

6.7 Waste Levy Policy Review (05-037-04-0001RNB)

By Rebecca Brown, Manager Waste and Recycling

Recommendation

That State Council note the Discussion Paper on the Review of the Waste Levy Policy Statement.

In Brief

- MWAC has developed a Discussion Paper to inform a review of the WALGA Waste Levy and Strategy Waste Funding Policy Statement.
- Key issues for Local Government to consider include:
 1. Application of the Waste Levy to the Non-Metropolitan area
 2. The Rationale for Local Government support for the Levy
 3. The expenditure of the Levy.
- It is requested that State Council note this Discussion Paper and identify any areas of concern regarding the Waste Levy, including its application and expenditure.

Attachment

Discussion Paper on Review of Waste Levy Policy Statement, link is below.

<http://www.wastenet.net.au/news/76/policy-statement-review-waste-levy>

Relevance to Strategic Plan

Key Strategies

Engagement with Members

- Ø Deliver a broad range of benefits and services that enhance the capacity of member Local Governments
- Ø Improve communication and build relationships at all levels of member Local Governments
- Ø Build a strong sense of WALGA ownership and alignment.

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government
- Ø Provide support to all members, according to need
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia
- Ø Foster economic and regional development in Local Government.

Enhanced Reputation and Relationships

- Ø Develop simple and consistent messages that are effectively articulated.

Background

The current WALGA Waste Levy and Strategic Waste Funding Policy Statement was last reviewed in 2009. This review occurred in response to a substantial increase in the Levy and a diversion of funds away from strategic waste management activities. The Policy is available from the WasteNet Website (www.wastenet.net.au).

Since this time, both the State Waste Strategy and a five year schedule of increases have been introduced. The Government has also moved away from charging different levies on different waste

streams. These issues, coupled with a change in Government, provides an opportunity to review and amend the Policy.

Comment

It is important for State Council and all Zones to be aware of the Discussion Paper and identify any concerns regarding the Levy. Discussion at the Municipal Waste Advisory Council meeting highlighted that a key concern for Local Government was the expenditure of the current Levy. The majority of Levy expenditure, \$11 million out of \$19 million, is on the staffing of the Department of Water and Environmental Regulation.

The Paper also asks two questions:

- Should the Policy Statement be amended to focus only on the portion of the Levy that is allocated to the WARR Account?
- Should the Policy Statement be amended to support the application of the Levy to non-metropolitan areas, and if so, under what circumstances should application of the Levy be considered?

Feedback is requested from State Council and Zones on these questions and the other matters raised in the Discussion Paper. This feedback will inform a revised Policy Statement which will be considered by the Municipal Waste Advisory Council then circulated to the Zones and State Council for consideration.

6.8 Report Municipal Waste Advisory Council (MWAC) (01-006-03-0008 RNB)

By Rebecca Brown, Manager, Waste & Recycling

Recommendation

That State Council note the resolutions of the Municipal Waste Advisory Council at its 28 February meeting.

In Brief

- This item summaries the outcomes of the MWAC meeting held on 28 February.

Attachment

Nil

Relevance to Strategic Plan

Key Strategies

Engagement with Members

- Ø Deliver a broad range of benefits and services that enhance the capacity of member Local Governments;
- Ø Improve communication and build relationships at all levels of member Local Governments;
- Ø Provide ongoing professional development and interactive opportunities for Elected Members to contribute to debate on sector issues;
- Ø Build a strong sense of WALGA ownership and alignment.

Sustainable Local Government

- Ø Continue to build capacity to deliver sustainable Local Government;
- Ø Provide support to all members, according to need;
- Ø Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;
- Ø Foster economic and regional development in Local Government.

Enhanced Reputation and Relationships

- Ø Communicate and market the profile and reputation of Local Government and WALGA;
- Ø Promote WALGA's advocacy successes with the sector and the wider community;
- Ø Strengthen effective relationships with external peak bodies and key decision makers in State and Federal Government;
- Ø Develop simple and consistent messages that are effectively articulated;
- Ø Promote WALGA's supplier agreements to assist Local Governments.

Background

The Municipal Waste Advisory Council is seeking State Council noting of the resolutions from the **28 February 2018** meeting, consistent with the delegated authority granted to the Municipal Waste Advisory Council to deal with waste management issues.

Minutes of the meeting are available from the WALGA website <http://walga.asn.au/About-WALGA/Structure/State-Council/Agenda-and-Minutes.aspx>. Copies of specific items and further supporting information are available on request from Municipal Waste Advisory Council staff.

Comment

The key issue considered at the meeting held on **28 February 2018** included:

Draft Submission on the State Waste Strategy

The Environment Minister released the review of the State Waste Strategy on 20 October 2017. The development of the new Strategy is a key opportunity for Local Government to influence the future direction of waste management in WA. The collaborative approach that has been pursued by State Government through actions such as the Waste Round Table and the signing of a State/Local Government Partnership Agreement, indicates that there is also the capacity to influence. A number of Consultation Sessions on the Strategy were scheduled for February. WALGA has promoted these sessions to the sector. Submissions on the Consultation Paper closed on Thursday 1 March.

The Consultation Paper presents a range of ideas/concepts and suggested areas of activity. In developing the Draft Submission the approaches taken by other Australian jurisdictions have been considered. The Draft Submission provides context for Local Government on the current status of waste management policy, analyses the ideas/concepts presented in the Consultation Paper and provides recommendations on areas of activity that should be included in the Strategy.

A key consideration for the sector is the idea of 'shared responsibility' and what this concept translates to in the implementation of the Strategy. The State Waste Strategy Working Group, established by MWAC in December 2017, has been an effective way of engaging with a range of Local Governments to identify key feedback on the Strategy. The next phase of the development of the Strategy, is that a Draft will be developed for consultation. It is suggested that the term of the Working Group is extended, facilitating Local Government input into the process.

MUNICIPAL WASTE ADVISORY COUNCIL MOTION

That the Municipal Waste Advisory Council:

1. Endorse the Draft Submission on the State Waste Strategy Consultation Paper
2. Extend the Term of the State Waste Strategy Working Group to provide input into the Draft State Waste Strategy
3. Write to the Minister Environment; Disability Services highlighting the key points from the Submission.

**Moved: Cr Court Seconded: Cr Lynes
CARRIED**

Draft Submission on the Lightweight Single-use Plastic Bag Ban Discussion Paper

On 12 September 2017, the McGowan Labor Government announced its intention to implement a ban on lightweight single-use plastic bags from 1 July 2018. The Discussion Paper, released in December 2017, clearly articulates the scale of the environmental problems presented by plastic bags, and explores both local and international responses to this issue. Information is also provided on how retailers and consumers can begin preparing for the ban. The proposed scope of the ban aligns with the approach taken by other jurisdictions to restrict the sale or supply of lightweight plastic bags with handles and a thickness of 35 microns or less. The Government is also considering expanding the scope of the ban to include biodegradable, degradable and compostable bags, due to the impact of these products on the environment. The Department has partnered with the Boomerang Alliance to engage the community and key stakeholders in discussions on how best to reduce lightweight single-use plastic bags.

Feedback from Local Government indicates there is widespread support for a ban on single-use plastic bags, with previous debate in the sector resulting in a July 2017 WALGA State Council resolution to advocate for a state wide ban on single-use plastic bags.

There has been ongoing discussion in the Local Government sector on the impact that biodegradable, degradable and compostable bags have on the environment. The Draft Submission supports an expansion of the scope of the ban to include biodegradable, degradable and compostable bags – but notes one Regional Council supports compostable bags being excluded from the ban. In drafting the Regulations for the ban, there will be a need for a mechanism that allows the State to proactively

mitigate and respond to any unintended consequences of a ban, such as a shift by retailers towards supplying heavyweight thicker plastic bags.

MUNICIPAL WASTE ADVISORY COUNCIL MOTION

That the Municipal Waste Advisory Council:

1. Endorse the Draft Submission on the Lightweight Single-use Plastic Bag Ban Discussion Paper.

**Moved: Cr Court Seconded: Cr Cook
CARRIED**

Draft Submission to the ACCC on Tyre Stewardship Australia

In November 2009, Environment Ministers agreed to support the development of an industry led Scheme to increase the recycling rate of end of life tyres (EOLTs). ACCC approval is required to operate the Scheme put forward by industry, as a voluntary levy of 25c/EPU on new tyres is raised from participating tyre importers, vehicle manufacturers and importers and miners. The ACCC originally authorised the establishment of Tyre Stewardship Australia and the Tyre Stewardship Scheme (TSA) in April 2013 for a period of five years, with the Scheme launched in January 2014.

TSA has sought ACCC authorisation to continue delivering the Scheme for a period of 10 years. The ACCC has the ability to place a range of conditions on any reaccreditation of TSA, and could compel the organisation to improve its performance. When the Scheme was first proposed, MWAC expressed concern that it was not likely to be an effective Product Stewardship Scheme as it does not directly address the costs of illegal dumping, transporting material to markets and recycling. At the time, WALGA took the position that the Government must introduce a mandatory or co-regulatory Tyre Product Stewardship Scheme, should the voluntary Scheme fail to address these issues.

Five years on, there has been no improvement in market conditions or an increase in the national resource recovery and recycling rate of used tyres. Tyre management practices continue to be driven by cost, as opposed to commitments to the environmentally sound use of tyres within Australia. The deadline to provide submissions to the ACCC was 25 January 2018. The Association is a member of TSA and has committed to the environmentally sound use of EOLTs in its business activities. In its Draft Submission the Association identifies a number of issues with the performance of the Scheme in relation to unmet targets, inaccurate data collection and inconsistent reporting. The recommendation suggests that as well as endorsing the Submission, MWAC should cease to be a member of TSA if the outcome of the ACCC review does not result in any improvement in TSA's performance.

MUNICIPAL WASTE ADVISORY COUNCIL MOTION

That the Municipal Waste Advisory Council:

1. Endorse the Draft Submission to the ACCC on Tyre Stewardship Australia
2. Cease to be a member of Tyre Stewardship Australia, pending the outcome of the ACCC Review.

**Moved: Cr Court Seconded: Cr Lynes
CARRIED**

Reducing Illegal Dumping Working Group

Illegal dumping continues to be significant issue for, and cost to, Local Government. Reports of illegally dumped materials are regularly provided to MWAC staff. In 2017, MWAC requested that Local Governments provide information on illegal dumped mattresses. This information showed there was substantial illegal dumping of this material across a wide area. This information was provided to the Department of Water and Environmental Regulation, with work commencing on this issue. Mattresses are one of many materials that are illegally dumped.

The City of Wanneroo has suggested that WALGA establish an illegal dumping working group with members from both Local Government and State Government agencies that are currently dealing with this issue in the Perth Metropolitan and Peri-urban areas. Through cooperation and information

sharing, this Group could begin to identify issues such as infrastructure needs, and work together on potential solutions.

From the work undertaken in 2017 on mattresses, it is clear there are benefits in spatially mapping and tracking illegal dumping. This allows issues to be identified and addressed across Local Government borders and land ownership.

MUNICIPAL WASTE ADVISORY COUNCIL MOTION

That the Municipal Waste Advisory Council:

1. Endorse the formation of an Illegal Dumping Working Group, for the period of 2 years
2. Seek nominations for the Working Group.

Moved: Cr Court Seconded: Cr Lynes
CARRIED

Review of the Litter Act / Helium Balloon Release

The Municipal Waste Advisory Council has previously developed and has endorsed a Helium Balloon Litter Background Paper which outlines the impact that Balloons have on the environment and potential approaches Local Governments can take to address the issue. Several Local Governments have made decisions to ban the organized release of helium balloons on Local Government land. Most recently the Town of East Fremantle agreed to:

"Amend the standard condition forming part of the approval for the hiring of parks and reserves within the Town to read:

"In the interests of reducing litter into the environment, Council bans the planned release of balloons within the Town on all Town owned public open spaces including parks, reserves and the East Fremantle foreshore. If balloons are used in conjunction with the hire of parks and reserves they are to be tied securely and removed on conclusion of the hire period".

The Council also resolved to advocate through the Municipal Waste Advisory Committee for an amendment to the Litter Act 1979, so that the release of balloons in public areas would constitute an offence.

The Litter Act 1979 does not clearly provide the head of power to issue infringements for helium balloon release. The Keep Australia Beautiful Council has previously received from the State Solicitors Office (SSO) indicating that an authorised officer must be certain that a balloon actually fell to the ground/water before they can take action. Research by the SSO indicates that balloons shattering into miniscule pieces may create a reasonable doubt as to whether or not they did fall to the ground. This is one issue which has been highlighted with the Litter Act. The Act has not been reviewed recently. Rather than seeking a single amendment, it is suggested that it may be useful to review the Legislation to ensure it is still relevant and meets Local Government's needs.

MUNICIPAL WASTE ADVISORY COUNCIL MOTION

That the Municipal Waste Advisory Council:

1. Write to the Minister for Environment; Disability Services suggesting that a review of the Litter Act be undertaken.

Moved: Cr Cook Seconded: Mayor Howlett
CARRIED

7. ORGANISATIONAL REPORTS

7.1 Key Activity Reports

7.1.1 Report on Key Activities, Environment and Waste Unit (01-006-03-0017 MJB)

By Mark Batty, Executive Manager Environment & Waste

Recommendation

That the report from the Environment Unit be noted.

The following report outlines key activities for the Environment Policy Unit since the March 2018 State Council meeting:

Sector Engagement and Support

Land Use Planning for Improved Environmental Outcomes Event

The Association hosted an event on Land Use Planning for Improved Environmental Outcomes on Thursday, 22 February, with approximately 100 delegates from Local and State Government, business and community sectors attending. Expert speakers from the Local Government Authorities of Chittering, Mandurah and Stirling, together with State Government and the development industry, discussed ways to work more effectively within the planning framework to improve environmental outcomes during the land development process. Key messages included the importance of Local Government developing a vision and strategic plan to set the framework for appropriate future development, and the need to challenge entrenched practices and take the opportunities that exist for innovation and leadership. The presentations from the forum can be found on WALGA's website [here](#).

Local Government Coastal Hazard Risk Management and Adaptation Planning (CHRMAP) Forum

WALGA facilitated a Local Government CHRMAP Forum on behalf of coastal Local Governments. The purpose of the Forum was to provide opportunities for officers working in coastal Local Governments to share information, challenges and experiences in relation to coastal hazard risk management adaptation planning and coastal adaptation in general.

WALGA in partnership with LGIS organised site visits and a Coastal Adaptation presentation by NSW coastal expert, Angus Gordon, on 20 March 2018. Local and State Government officers visited coastal hotspots including Quinns Rocks Beach, Two Rocks, Seabird, Sorrento Beach, Watermans Bay, Mettams Pool and Scarborough Beach. Angus Gordon's presentation covered many of the issues and challenges that coastal planners and managers face in the coastal zone. His key message was that Local Governments need to be aware of past, current and future coastal risks and put appropriate plans in place for areas currently at risk and / or potentially at risk in the future. The presentation, which can be found on the WALGA website [here](#), was well attended with 26 officers in attendance.

Policy Advice and Advocacy

Climate Change Policy Statement Review

Following on from WALGA's release of the [Climate Change Policy Statement Discussion Paper](#), WALGA has produced a [draft revised WALGA Climate Change Policy](#) for comment by the Sector.

26 responses to the Discussion Paper were received, half of which were individual responses (some officers, some councillors) and the other half were responses endorsed by a Local Government.

Responses were overwhelmingly supportive of producing a strong policy statement reflecting the scientific consensus, international developments (e.g. the Paris Agreement and the UN Sustainable Development Goals) and most importantly, the fact that Local Governments are already experiencing climate change, and taking mitigation and adaptation action.

Members are encouraged to consider the draft Statement and provide comment by COB Tuesday 24 April. WALGA is currently considering comments received and will submit the draft Policy Statement to State Council for endorsement at its June meeting. If endorsed, the Statement will provide the basis for WALGA's climate change advocacy plan, which will be developed in consultation with the sector and further detail how WALGA will promote and prosecute Local Governments' key climate change priorities over the next few years.

WALGA Submission on 'Australia's Strategy for Nature 2018 – 2030: Australia's Biodiversity Conservation Strategy and Action Inventory' (Agenda Item 5.7 refers)

The Association has completed an interim submission on behalf of the Local Government sector on 'Australia's Strategy for Nature 2018 – 2030: Australia's Biodiversity Conservation Strategy and Action Inventory'. The Strategy is considered to demonstrate a general distancing and lack of commitment to biodiversity conservation at the national level. The submission recommends significant revision of the strategy to provide a strong national framework to prioritise and drive the action of the government, business and community sectors and halt Australia's ongoing decline in biodiversity. Additionally, it recommends inclusion of outcomes and measurable targets, and commitment of adequate funding for the implementation of actions and monitoring of results.

Submission on the Emissions Reduction Fund Safeguard Mechanism (Agenda Item 5.8 refers)

The Association has also completed a submission to the Commonwealth Government's consultation paper proposing changes to the Emissions Reduction Fund (ERF) Safeguard Mechanism. Due to the tight timeframe of the consultation, WALGA sought and received out-of-session approval from the Executive Committee for its draft submission.

The submission refers to WALGA's previous 2015 submission on the design of the safeguard mechanism. In that earlier submission, WALGA stated its concern that the baseline exceptions and flexibilities in the proposed safeguard mechanism would effectively allow significant emissions increases by responsible emitters, undermining emissions reductions achieved throughout Australia (including by Local Governments), and undermining Australia's emissions reduction target. In this submission, WALGA notes that these concerns appear to have been borne out, and that the changes proposed in the Consultation Paper would fundamentally undermine an already compromised national greenhouse gas mitigation policy. WALGA has put a paper to this State Council seeking its endorsement of the submission.

Urban Tree Canopy

WALGA is assisting the Department of Planning, Lands and Heritage (DPLH) in preparing guidance to support Local Governments in the development and implementation of urban forest plans. A draft was provided to key Local Governments for comment and it is anticipated that DPLH will make the information available to Local Governments in the coming months.

Environmental Planning Tool

In March, the Environmental Planning Tool (EPT) underwent an upgrade including new and updated datasets, new reporting function and new annotation tools. The EPT data layers can now be viewed on mobile platforms such as iPad providing access to data during site visits.

Two EPT training sessions were delivered, one at WALGA and one in-house at the Shire of Denmark, both focusing on the benefits of Minor Infrastructure Purpose Permits and what support the Department of Water and Environmental Regulation provides to Local Government.

EPT presentations were also delivered to Regional Road Groups in Northam, Wickiepin and East Perth, and to the Roadside Conservation Committee.

Corella Coordinated Control Program

A new contractor to undertake corella control activities and work has begun at three sites in metropolitan Perth, running until the end of June, or earlier if insufficient numbers of corellas are being caught.

WALGA is also working with the Department of Biodiversity, Conservation and Attractions to organise an information and demonstration session for prospective contractors and Local Government officers. This session will be aimed at increasing the number of contractors that are able to undertake control work by ensuring a thorough understanding of standard operating protocols and practical application of the control method.

South West zone Local Governments are continuing to explore a coordinated approach to corella control in their region.

WALGA also met with the Shire of Moora on Wednesday 4 April to discuss the Coordinated Corella Control Program and options available to reduce the impacts of native corellas in the area.

7.1.2 Report on Key Activities, Governance and Organisational Services (01-006-03-0007 TB)

By Tony Brown, Executive Manager Governance and Organisational Services

Recommendation

That the Key Activity Report from the Governance and Organisational Services Unit to the May 2018 State Council meeting be noted.

Governance and Organisational Services comprises of the following WALGA work units:

- Governance Support for Members
- Employee Relations
- Training
- Regional Capacity Building
- Recruitment
- Strategy & Association Governance

The following provides an outline of the key activities of Governance and Organisational Services since the last State Council meeting.

Governance

Social Media – Template Policy and Guideline

In response to increasing concerns for how social media is used, and at times misused, in matters communications Local Government, WALGA has developed some tools to assist the sector address communications and social media risks and would appreciate feedback to assist in finalising the following:

- Template Communications & Social Media Policy
- Model Code of Conduct – new social media clause, and
- Elected Member Personal Use of Social Media Guideline

An Infopage has been circulated requesting feedback on the draft documents to the WALGA Governance team.

Regional Capacity Building

Local Government Economic Development Framework Project

State Council was presented with an overview of the project to develop an Economic Development Framework for Local Government at its December meeting. Since that time an Industry Reference Group has been established comprising Chief Executive Officers and Economic Development practitioners from small and large metropolitan and regional local governments. The first meeting was held on 19th February and the second meeting is scheduled for the end of April. WALGA has established an alliance with the Centre of Local Government at the University of Technology Sydney for peer review of the research component of the project.

A survey has now been distributed to all Local Governments to collect information relating to their economic development approach, resourcing and activities. Since February WALGA has been meeting with a wide range of stakeholders from across Government and the business sector, which much interest and support for the project being demonstrated. A survey of the business sector will be distributed via a number of business associations in late April. The purpose of this survey is to learn about businesses' experience working with local government and to identify opportunities for the future.

The next phase of the project will be to develop an engagement strategy for Elected Members.

WA Plan for Jobs Project

The State Government has released its *Plan for Jobs*, a comprehensive plan for the growth of the WA Economy which provides an opportunity for Local Governments, both individually and regionally, to align their planning, strategies, projects and funding to take advantage of this new initiative. WALGA has commissioned a review of the *Plan for Jobs* and produced a report for the sector. An industry launch is currently being planned.

Training

Webinar – Presiding Over Meetings

The Association continues to provide governance webinars for the sector.

WALGA's 'Presiding Over Meetings' webinar aims to create an awareness of the roles and responsibilities of those who preside over Local Government Council, Committee and WALGA Zone Meetings

This webinar is targeted at Mayors/Presidents, Committee Presiding Members, WALGA Zone Presiding Members, Deputies of the aforementioned, and Elected Members who want to know more about the Presiding Member's roles and responsibilities.

Topics will include:

- knowing how to apply the rules of the meeting - Meeting Procedures Local Law
- keeping order and setting the tone of the meeting
- how to be a *leader* to the meeting and *servant* of the meeting
- being impartial
- processing the business through the meeting
- dealing with motions and amendments, and
- managing points of order and procedural motions.

The webinar will be held on Thursday 19 April 2018 at 5pm to 6pm (including presentation and Q&A session).

A recording of the webinar will be available on the WALGA website under Training, from Thursday 26 April 2018.

Recruitment

The Recruitment Service provides a number of professional placements in a variety of roles within the sector coupled with a significant number of Chief Executive Officer and Senior Executive positions.

The following recruitment projects are being carried out:

- CEO – Shire of Dowerin
- CEO – Shire of Yilgarn
- CEO – Shire of Wyalkatchem
- Manager Works – Mt Marshall
- Works Supervisor – Shire of Exmouth
- Manager Aviation – Shire of Exmouth

- Aquarist – Shire of Exmouth

Employee Relations

WALGA Salary and Workforce Survey 2018

The WALGA Salary and Workforce Survey 2017/18 is a comprehensive survey of Local Government workforce, remuneration, benefits and human resource management information. The Salary and Workforce Survey provides valuable data and insights for Local Governments in workforce planning, structuring remuneration and HR management. Subscribers to the survey receive a written report and access to an online portal with more customised results and additional resources.

WALGA has published a remuneration survey for over 20 years to assist Local Governments in designing and implementing salary structures and to help guide strategic workforce planning. Following a review of the survey in 2016, in consultation with the sector, the WALGA Salary and Workforce Survey 2017/18 has been compiled in conjunction with SalaryOne, to produce an expanded data set available to subscribers in two fresh formats.

PDF Report

Some key features of the WALGA Salary and Workforce Survey report include:

1. Exclusive for WA and NT Local Governments.
2. Current remuneration data for 2018/19 budget planning.
3. Base salary and total remuneration data for 144 unique positions.
4. Enterprise agreement pay rises.
5. Organisation priorities for people and culture.
6. Workforce data by employment type, age, occupation, diversity and gender.
7. Industry trends for leave, superannuation, terminations and 30 types of allowances and benefits.
8. Industry trends in human resource management.
9. Increased privacy, while retaining some pay transparency.

Online Portal

WALGA is pleased to provide Local Governments who subscribe to the survey report, access to an online portal for full salary data and workforce resources.

The online portal has a number of features not included in the written PDF report, including:

- Salary data search of over 3000 Local Government salaries
- your survey results ranked against industry benchmarks (for survey participants)
- position task descriptors, and
- additional data tables and charts.

**An online remuneration calculator is coming to the online portal soon.*

Executive Summary

An Executive Summary is available to Local Governments free of charge. The Summary includes a snapshot of the information that has been collected and presented in the report and the online portal.

Subscribing

If a Local Government wishes to purchase an annual subscription to the 2017/18 survey, please contact WALGA Employee Relations.

7.1.3 Report on Key Activities, Infrastructure (05-001-02-0003 ID)

By Ian Duncan, Executive Manager Infrastructure

Recommendation

That the Key Activity Report from the Infrastructure Unit to the May 2018 State Council meeting be noted.

The following provides an outline of the key activities of the Infrastructure unit since the last State Council meeting.

Roads

Review of the Road Classification System

The road classification system used to determine the responsibility for roads in WA under the requirements of the *Main Roads Act 1930*, has recently been reviewed by a working group of representatives from Local Governments, Main Roads and WALGA. It is proposed that the new system adopt a two tier process. The first tier will consider the planning and statutory functions of the road and the second will comprise a more detailed assessment of the road's current and future function. Testing of the revised methodology indicates that approximately 25 Metropolitan roads could qualify for redesignation as State roads. A report for decision to endorse the methodology was approved by State Council in March and subject to further discussion on timing of implementation, it is expected that the methodology will now be formally adopted by Main Roads. A separate process is being now being developed for consideration that will deal with non-metropolitan roads.

Methodology for Calculating the Cost of Road Wear on Unsealed Roads

In response to member requests, WALGA has worked closely with ARRB to develop a guide for calculating the cost of road wear on unsealed roads subject to a significant increase in heavy vehicle traffic. This builds on similar work completed for sealed roads and now adopted by many Councils. A model has now been developed for unsealed roads that is currently being calibrated and tested in a range of situations for which the traffic data and road maintenance costs are known. It is anticipated that this work will be finalized before the end of the financial year. The final phases of this project involve the development of a User Guide to enable the model to be applied in a practical way.

Development of a Model Policy for Managing Third Parties Working in the Road Reserve

The requirements for notifications, traffic management and reinstatement when third parties are working in road reserves under the control of Local Government are specified in a number of different documents. This is causing confusion for Local Governments, utility providers and contractors. Local Government practitioners and members of the Utility Providers Services Committee have asked WALGA to develop a model policy to assist Local Governments frame consistent and robust management policies and practices. WALGA will consult with Local Government and provide opportunity for input and feedback during the development process.

Review of the IPWEA Restoration and Reinstatement Specification

WALGA has commenced a project in partnership with the Institute of Public Works Engineering Australasia (IPWEA) to review and update the *Restoration and Reinstatement Specification* and will be seeking industry experts to join the working group. This specification will be a key supporting resource to a Model Policy Guideline for Managing Third Parties Working in the Road Reserve. The Specification was published in 2002 and IPWEA has endorsed a comprehensive review to be performed by a working group of industry experts.

Revised *Traffic Management for Works on Roads Code of Practice*

Based on input from WALGA and other stakeholders, Main Roads WA has released a revised Traffic Management for Works on Roads Code of Practice (March 2018). A new section (4.5 Authorising Traffic Management Plans) was added to the Code, which impacts on Local Government. Section 4.5 states (in part) that “by signing the Road Authority Authorisation section of a Traffic Management Plan (TMP) the Road Authority (Main Roads and/or LGA) is endorsing the implementation of temporary traffic management on that road. The Road Authority is not responsible for ensuring every aspect of the TMP is compliant with AS1742.3-2009, this code and/or the Traffic Management for Events Code of Practice (Events Code).”

2018 Transport and Roads Forum

The 2018 Local Government Transport and Roads Forum will be held on Tuesday 16 October at Crown Perth. The program is currently being developed and more details will be released in coming months.

Regional Road Groups

A successful Regional Road Group Chairs workshop was held to share successful approaches to resolving common challenges and agree actions to strengthen Regional Road Groups. Six of the ten Regional Road Groups have elected a new Chair since the October 2017 Local Government elections. Key points were recorded and have been provided to all Chairs to raise with each of the Regional Road Groups and actions agreed that will be followed up in August 2018.

Funding

Proposed New State Road Funds to Local Government Agreement

The State Road Funds to Local Government Agreement (SRFLGA) provides an allocation of funds to Local Governments in Western Australia. The amount of funding is based on a percentage of the motor vehicle license fee (MVLFF) revenue collected by the State Government. The funding arrangement provides Local Government with some surety in funding for the term of the Agreement. The current Agreement ran from 2011/12 to 2015/16 and was extended a further two years to 2017/18.

Following a meeting between the Minister for Transport; Planning; Lands and the WALGA President and CEO on 27 August 2017, the Minister agreed to the negotiation of a new Agreement. The Minister authorised Main Roads to proceed to negotiate with WALGA to draft the New Agreement.

Based on a Local Government survey performed by WALGA in 2015 and ongoing consultation with the Regional Road Groups and Main Roads WA, WALGA drafted a proposed new Agreement in December 2017. From 2015/16 to 2017/18, the State Government decreased the MVLFF portion provided under the Agreement from 27% to approximately 20%. The draft agreement is broadly the same as the current agreement but seeks to return the level of funding to 27% of VLF over the term of the Agreement.

The draft was submitted to Main Roads for consideration and they have responded with several points of difference. The major difference being that the State Government is offering only 21% of MVLFF over the term of the Agreement. A report summarising the proposed changes in the draft Agreement and the points of difference raised by Main Roads was submitted to State Council in March for noting. The WALGA President and CEO are seeking to meet with the A/Managing Director of Main Roads and Director General of the Department of Transport to seek resolution of the outstanding issues. When agreement is reached, the draft will be submitted to the Zones and State Council for endorsement.

Western Australian Natural Disaster Relief and Recovery Arrangements (WANDRRA)

Work is continuing with representatives from the Office of Emergency Management seeking to achieve effective implementation of new natural disaster relief and recovery funding arrangements proposed to commence on 1 July 2018.

Current efforts are focussed on:

- Ensuring Local Governments are appropriately and directly engaged;
- Processes are developed, in consultation with Local Government, that are practical and deliver the required outcomes;
- Cashflow and other constraints facing Local Governments responding to natural disasters are addressed effectively.

Senior officers from the Office of Emergency Management have commenced engaging directly with Local Government senior officers and elected members at Regional Road Groups and in other forums. This will continue, with WALGA support, over the coming months.

Street Lighting

The Association is advocating that LED street lighting technology be available and supported to improve the quality of public area lighting, reduce costs, reduce energy consumption and reduce greenhouse gas emissions.

Western Power has advised that it is close to concluding commercial agreements with the successful respondent(s) to a tender for supply of LED street lights. This will provide an option for developers and Local Governments wishing to take advantage of this technology. The Association will shortly be engaging with Local Governments concerning preferred default arrangements for replacement of failed Western Power and Horizon Power street lights.

The Association has provided an initial response to enquiries from the Federal Government regarding implications for Local Governments should it ratify the Minamata Convention on Mercury, which would effectively ban the import of mercury containing products, including mercury vapour street lights. Western Power has approximately 150,000 mercury vapour street lights and Horizon Power around 8,000 mercury vapour streetlights. There are also a significant number of mercury vapour lamps owned and operated by Local Governments. While this Convention may stimulate more rapid uptake of new lighting technology, there are significant capital costs to be met in replacing potentially redundant street lights.

In consultation with a working group of Local Government representatives, the Association assessed a proposal for a new Small Load Metering Regulatory Framework for street lighting, and expressed conditional support for a request for a rule change to the Australian Energy Market Commission (AEMC) on this subject. Currently the energy consumption component of street lighting tariffs are based on a laboratory calculated load and fixed operating times (based on sunrise and sunset). This approach does not support the adoption of readily available technology to dynamically control the brightness and operating times of street lights. A cost effective way of “metering” street light electricity consumption may also open the opportunity for Local Governments to procure this electricity through a competitive market, rather than under Gazetted tariffs.

Urban and Regional Transport

Secondary Freight Routes in the Wheatbelt Regions

WALGA is supporting Local Governments in the Wheatbelt North and Wheatbelt South Regional Road Groups working collectively to define freight routes in the region, identify the investment required to provide the desired levels of service and develop a business case for investment. Through RDA Wheatbelt application has been made for a \$1.25 m Leverage Fund grant from the Department of Primary Industries and Regional Development, subject to a successful funding application to the Federal Government Building Better Regions Fund.

Discussions were held with Nicole Lockwood in her capacity as a Board Member of Infrastructure Australia, with senior officers from Main Roads WA as well as Minister MacTiernan and her advisers.

Bus Stop Infrastructure Agreement

A review of the Bus Stop Infrastructure Partnership Agreement between Local Government and the Public Transport Authority (PTA), that was endorsed by State Council in March 2016, has commenced as set out in the provisions of the agreement. The Agreement defines the roles and responsibilities for providing and maintaining bus stop infrastructure and sets out the consultation process between the PTA and Local Governments to be applied when bus routes are changed, bus stops added or removed and bus stop infrastructure upgraded.

Initial consultation with Local Governments and PTA indicates that the Agreement is working well. It has proven challenging to maintain awareness of the Agreement amongst Local Government officers and a small number of Local Governments have not been claiming bus shelter maintenance contributions to which they are entitled. Depending on further advice from members, a new agreement with minor changes is likely to be proposed for consideration.

Bicycle share scheme discussion paper

Docked and dockless bike sharing schemes have been established in some Australian cities with varying degrees of success and various external impacts. These ventures usually require Local Government approval and/or support. The service provided will often extend over several Local Government jurisdictions adding a degree of complexity in supporting the opportunities and managing any adverse impacts.

With a small working group, WALGA is working to produce a discussion paper on bicycle share schemes for consideration by members and to facilitate feedback on how the Association can assist Local Governments dealing with this. This work will build on a position paper on bicycle share schemes drafted by the Department of Transport that indicates broad support for such schemes and identifies some issues and opportunities for consideration.

Road Safety

Road Safety Council Update

The first meeting of the Road Safety Council for 2018 was a one-day strategic planning workshop. The group discussed and debated a range of topics including:

- future directions for and the highest priorities for road safety;
- fostering and promoting shared responsibility for improved implementation; and
- the future approach to Road Trauma Trust Account funding decisions and recommendations.

In view of the State Government's current road safety strategy, *Towards Zero*, finishing in 2020 the Council also discussed positioning and preparation for the next road safety strategy for WA.

RoadWise Road Safety Newsletter

The February 2018 and March 2018 editions of the *RoadWise Road Safety Newsletter* can be accessed electronically at <http://roadwise.asn.au/roadwise-road-safety-newsletter.aspx>. The April edition is scheduled for release on Tuesday, 17 April 2018.

New subscribers should email roadwise@walga.asn.au to register to receive the newsletter directly. The newsletter is currently distributed to almost 2000 members of the community road safety network in Western Australia. Readership of the newsletter is estimated to be significantly higher than distribution.

7.1.4 Report on Key Activities, People and Place (01-006-03-0014 JB)

By Jo Burges, Executive Manager People and Place

Recommendation

That the key Activity Report from the People and Place Team to the May 2018 State Council meeting be noted.

The following provides an outline of the key activities of the People and Place Team since the last State Council meeting.

COMMUNITY

The indicators of, and impact of, regional inequality in Australia

The Senate Economics References Committee has called for submissions regarding regional inequality in Australia. Specifically, the Committee is requesting submissions regarding experiences of individuals and localities of unequal access to opportunities and outcomes, view on the causes of inequality, insight to economic regional inequality and the wider impacts, examples and solutions to regional causes and information regarding the policy settings which could help address regional inequality. The Association will gather information from members regarding regional development, infrastructure, education, social capital, workforce skills, innovation, manufacturing and whole of government policies to make an informed submission by **30 April 2018**.

Accessibility and quality of mental health services in rural and remote Australia

The Senate Community Affairs References Committee has opened an inquiry and will commit to report on the accessibility of mental health services in rural and remote Australia, with specific reference to the nature and underlying causes of rural and remote Australians accessing mental health services. Also included in the inquiry will be the high suicide rates, mental health workforce composition, service delivery attitude and challenges and technological opportunities for improved service delivery. The Association will work with Members to submit an informed submission to this enquiry by **11 May 2018**.

Changing Places

The *Changing Places* and *Community Infrastructure Grant Programs* are funded by the Department of Communities: Disability Services (Disability Services) and administered by the Western Australian Local Government Association (WALGA). The Association has received a Variation to the Grant until **30 June 2018**.

A preliminary Final Report has been developed noting the key deliverables that have been achieved and are yet to be achieved, as well as the preliminary outcomes. A secondary and Final Report will be completed at the cessation of the Grant Agreement. Once completed, the preliminary Final Report will be on the WALGA website.

Spotlight on Homelessness

WALGA staff presented to a 'Spotlight on Homelessness' event at the City of Joondalup on Friday 6 April 2018 at the invitation of LG Professionals. The presentation outlined Local Governments growing involvement in Homelessness and acknowledged the excellent work being undertaken by Councils across the State.

Community Safety Events

WALGA hosted a Local Government Community Safety Network (LGCSN) meeting on March 1, with the theme of Crime Prevention through Environmental Design (CPTED). Speakers at the meeting included Simon Hensworth from Engineering Technology Solutions, who showed participants how CPTED audits are carried out, and demonstrated new technology which assists in designing building and public spaces to minimise opportunities for crime. Matt Stack from the Department of Planning

spoke on the integration of CPTED principles into Department's Design WA Guidelines, and Dr Paul Cozens from Curtin University presented on new developments in CPTED from around the world.

The next LGCSN meeting will be held at the City of Mandurah on Wednesday, 9 May. The Network will also host a full-day conference at the Perth Convention and Exhibition Centre alongside the WALGA Convention on Thursday, 2 August. The LGCSN is open for anyone in Local Government with an interest in community safety. The Network also hosts an online google group to enable members to ask questions or share information with others in the space.

Public Health Act 2016

WALGA is currently involved in providing feedback to the Department of Health's Regulatory Review program as part of Stage 4 of the *Public Health Act 2016* implementation. Regulations on Aquatic Facilities, Public Buildings and Offensive Trades are under review, and the Department is considering the development of an Events regulation. WALGA sits on working groups to assist the development of discussion papers for these regulations, and in early 2018 hosted a workshop to gather Local Government feedback on an Offensive Trade regulation in collaboration with the Department of Health.

The Association is also working to assist Local Governments in preparing for the Local Public Health Planning requirements of the Act when they come into force during Stage 5, which will commence in approximately 2021. WALGA will host an information session in mid-2018, to advise health not-for-profits on how they can assist Local Governments in the programs they use in their Local Public Health Plans. A session will also be held for Elected Members and CEOs later in the year to outline the role of Local Government in Stage 5 the Act, including Local Public Health Planning. Details of events open to Local Government officers and Elected Members will be made available through WALGA's communication channels.

WALGA representatives will continue to meet regularly with Department of Health to advocate for the needs of Local Governments throughout the implementation of the Act, including training, gathering data and resources for Local Public Health Planning.

Community and Place Newsletter

The Community and Place e-newsletter launched in February, taking over from the People and Place newsletter to showcase more of Local Governments' activities and successes in the Community space. In this time, the newsletter has increased its subscribers by more than 50, and has been inundated with items from Local Governments wishing to share information on their projects with their peers, as well as events and grant funding opportunities. A subscription link is available on the People and Place pages of the WALGA website, or email Louise Cockcroft lcockcroft@walga.asn.au

Productivity Commission Inquiry - Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services

The Productivity Commission released an inquiry in May 2017 into Human Services on *Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services*. The Australian Government has requested the Commission make recommendations on reforms that will improve the effectiveness and efficiency of human services using policy tools and the introduction of greater user choice and contestability. WALGA has made a submission and provided comment at a public hearing on 31 July 2017 on the areas of interface with Local Government including the social housing system, family and community services, indigenous people living in remote communities and public hospitals. The final report on *Introducing Competition and Informed User Choice into Human Services* has been released and sets out the Productivity Commission's recommendations on reform options that would improve the effectiveness of human services and help ensure all Australians can access timely, affordable and high quality services. The report is available to download at www.pc.gov.au/inquiries/completed/human-services

Off-road vehicles

Local Governments have raised concerns around the use of off-road vehicles and their impacts on community safety, and the environment. WALGA has conducted a Local Government survey and developed a discussion paper including recommendations for WALGA to action. The paper has been released for consultation with Local Governments for comment before its inclusion in the July State Council Agenda.

PLANNING

Upcoming interim submissions

Position Statement – Housing on lots less than 100m² – seeking comment.

The Department of Planning, Lands and Heritage (DPLH) has released for comment a position statement on housing on lots less than 100m². The Statement provides guidance for the location and development of houses on lots less than 100m² and an implementation mechanism to ensure consistent application across the State. Feedback on the statement is required by 14 May. The Association will be developing sector-wide submissions on this position statements, which will be submitted to the DPLH as an interim submission due to the timing of the consultation, and presented to the July State Council for endorsement.

Revised Model Subdivision Conditions

DPLH have released revised model subdivision conditions relating to the Fire and Emergency conditions, specifically the Unexploded Ordnances and Bush Fire Management conditions.

The bush fire condition has been modified to have Local Government as the only Agency to sign off on the condition, which is not in line with the March State Council resolution. An interim submission will be prepared to meet the deadline of 14 May.

Position Statement – Renewable Energy

DPLH will shortly release a new Position Statement on Renewable Energy to guide the land use planning assessment of proposed renewable energy facilities. It will replace, update and expand on the existing Planning Bulletin 67: Guidelines for Wind Farm Development.

Position Statement – Tourism

DPLH will shortly release a new Position Statement on Tourism to guide the land use planning assessment of tourism accommodation proposals. The Statement will also create a new land-use definition, 'hosted tourism accommodation' that seeks to better define the 'home-sharing' arrangements that have become more common with the growth of the 'sharing-economy'. It will supersede and expand on the existing Planning Bulletin 49 Caravan Parks, Planning Bulletin 83 Planning for Tourism, and Planning Bulletin 99 Holiday Home Guidelines.

Copies of the draft interim submissions will be available on WALGA's Planning Improvement Portal. <http://walgapip.ning.com/upcoming/>

Parking Ratio Project

The Planning team has been working alongside members on a project that looks to create a more standardised and rigorous set of land-use parking ratios for use in planning documents. There are currently hundreds of different parking rates across Perth, and a lack of understanding of the historical origins of these rates. This project has been expedited in the past few months following an unsolicited offer of support by the Department of Transport to fund the first stage of the research. This is currently underway and we expect it to be completed by the end of April.

Workshops

- 14 February – A workshop was held with the Building Commission and Local Government Planning and Building Staff to discuss problems and possible options to improve the planning and building interface in the building approvals process for residential development. The Building Commission will be preparing a formal discussion paper based on the information compiled.
- 14 February – A workshop held with the Building Commission and Local Government Building Surveyors on the current role of the Building Departments. Discussion included what Local Governments actually do in respect of building control activities, and the costs involved in carrying out these functions; and the possible minimum roles and functions Local Governments could/should have in respect of building control activities.

The Building Commission will be preparing a formal discussion paper based on the information compiled.

- 28 February - 'Future Roles' – A workshop held with the Building Commission and Local Government Building Surveyors from both inner and outer metropolitan Local Governments, to discuss the role of all stakeholders i.e. Local Governments, Builders, Certifiers and the Building Commission. The Building Commission will be preparing a formal discussion paper based on the information compiled.
- 16 March – The Association hosted an information session with Landgate and Department of Planning staff, on the proposed Community Strata Titles Bill. The session outlined the new proposed strata schemes, called Community Schemes, the interaction of this new legislation with the Planning and Development Act, and how the Local Government sector would be involved in the assessment and processing of these new titles. The Bill is expected to be sent to Parliament in July 2018.
- 15 & 29 March – The Association and Local Government Building Surveyors met with the Housing Industry of Australia - HIA (15 March) and Master Builders of WA - MBA (29 March) regarding improvements to the process in the lodgment of privately certified building plans to Local Government. The meeting discussed the preparation of a best practice guide for the stamping of plans by a certifier, to reduce the amount of time a local government spends checking that all of the plans have in fact been submitted. Both Industry Associations supported the proposal and will be working with the sector in preparing and promoting the process.

7.2 Policy Forum Reports (01-006-03-0007 TB)

The following provides an outline of the key activities of the Association's Policy Forums since the last State Council meeting.

Recommendation

That the report on the key activities of the Association's Policy Forums to the May 2018 State Council Meeting be noted.

7.2.1 Mayors/Presidents Policy Forum

Tony Brown, Executive Manager Governance & Organisational Services

The Mayors/Presidents Policy Forum has been tasked with addressing the following key issues;

- i. Advise the WALGA President on emerging policy issues;*
- ii. Serve as a stakeholder forum to effectively support and complement the broader work of the Western Australian Local Government Association;*
- iii. Provide a networking opportunity for all Mayors and Presidents across the State;*
- iv. Provide a forum for guest speakers to present on topical sector issues.*

Comment

A Mayors/Presidents Policy Forum was held on 6 March 2018.

The meeting received two presentations on the following;

Ø Transition from State Government to Local Government

Mayor of the City of Joondalup and former Minister in the Barnett Government, Mayor Albert Jacob will spoke about the transition from State Minister to Mayor of one of Western Australia's most populous Local Governments.

Ø Launch of Performance Reporting Project

Chief Executive Officer of the City of Wanneroo, Daniel Simms, launched the Local Government Performance Reporting Project to Mayors and Presidents on behalf of the Growth Perth and Peel Group (GAPP).

Initiated in conjunction with WALGA, the project aims to measure how well Local Government manages its development functions through a suite of indicators.

The 11 Local Governments involved in the project would like to encourage more Local Governments to join and Mr Simm's presentation provided an opportunity for Mayors and Presidents to learn about the project for 2018.

The next Policy Forum will be scheduled for Tuesday 31 July 2018 just prior to the 2018 Local Government convention.

7.2.2 Mining Community Policy Forum

Wayne Scheggia, Deputy CEO

The Mining Communities Policy Forum has been tasked with addressing the following key issues;

- v. Monitor and assess the continuing impacts of State Agreement Acts on Local Government revenue raising capacity and service delivery;*

- vi. Monitor and assess the impacts of State Government legislation, regulation and policies on the capacity of Local Governments to appropriately rate mining operations.
- vii. Develop and recommend relevant advocacy strategies in relation to i & ii;
- viii. Consider and recommend relevant strategies in respect to “Fly-in, Fly-out (FIFO) and “Drive-in Drive-out” (DIDO) workforce practices with specific reference to;
 - a. The effect of a non-resident, FIFO/DIDO workforce on established communities, including community wellbeing, services and infrastructure;
 - b. The impact on communities sending large numbers of FIFO/DIDO workers to mine sites.

Comment

There has not been a meeting of the Policy Forum since the previous State Council meeting.

7.2.3 Container Deposit Legislation Policy Forum

Mark Batty, Executive Manager Waste and Environment

A Container Deposit Scheme (CDS) is a form of Extended Producer Responsibility which seeks to place financial/physical responsibility for a product (at end of life) on the original producer.

The objectives of the Container Deposit Scheme Policy Forum shall be to:

- *Provide constructive input into the development of a CDS for WA*
- *Ensure that regional and remote communities have access to the benefits of a CDS*
- *Engage with Local Government, and collectively negotiate with the Scheme operator, to ensure the sector has the opportunities to be involved in the implementation of a CDS.*

Comment

The Policy Forum met on Monday 19 February to discuss a range of issues about the Scheme design. Matters considered were:

- How a material recovery facility (MRF) would be defined for the purposes of the Scheme
- The process for contract negotiation between Local Governments and operators of MRFs
- The planning approval process for CDS Drop off locations
- Roles and responsibilities for the State Government and Scheme Coordinator
- Key targets and performance measure for the Scheme
- How containers collected through the Scheme would be recycled
- How containers would be ‘approved’ through the Scheme.

Feedback on these matters were provided to the Department at the meeting and through the CDS Advisory Group.

The Policy Forum is scheduled to meet again on Monday 16 April.

7.2.4 Freight Policy Forum

Ian Duncan, Executive Manager Infrastructure

This Freight Policy Forum will focus on the agricultural (cropping and livestock grazing, excluding pastoral activities) areas of Western Australia and their links to port. The objectives are to better define and manage the freight network on Local Government roads and establish sustainable funding arrangements.

Comment

The Freight Policy Forum has completed the key outputs set out in the terms of reference. The future role of the Forum to be considered by the WALGA President and Forum Chair.