

City of Canning Submission to the Local Act Reform – Opportunities to Support Best Practice Sustainability

The review of the *Local Government Act (1995)* (the Act) provides an opportunity to ensure the Act reflects contemporary local government roles and responsibilities, and meets community expectations for inclusive, transparent and efficient decision making and service delivery.

The City of Canning would like to present a number of recommendations to the review to ensure that existing regulatory barriers inhibiting initiatives that support best practice sustainability are addressed to enable local government to develop and partner in projects that best meet community needs.

Background

In 2017, the McGowan Government announced a review of the Act to ensure that the legislative framework governing local government accounted *‘for the diversity of Western Australia’s local government and the varying roles that they perform to service their unique communities’*¹.

This is a significant opportunity to ensure that the Act is reflective of the current and future needs of local government in Western Australia. Further, it is an opportunity to ensure that the language within the Act reflects a 21st Century understanding of sustainability and intergenerational equity, and facilitates appropriate levels of local government action.

The *Local Government Act 1995* provides for a system of local government in Western Australia and intends to²:

- (a) Provide for the constitution of elected local governments in WA.
- (b) Describe the functions of local governments.
- (c) Provide for conduct of elections and other polls.
- (d) Provide a framework for the administration and financial management of local governments and for the scrutiny of their affairs.

The Act intends to result in improved local government decision making that is consultative and accountable with local governments that are efficient and effective³. Notably, the Act was amended in 2004 to include s1.3 (3), which gives scope to include sustainability considerations within local government decision making.

*‘In carrying out its functions a local government is to use its best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity’*⁴

¹ Department of Local Government, Sport and Cultural Industries, (2017) *Local Government Act 1995 Review, Agile-Smart-Inclusive – Local Governments for the future, Phase 1 Consultation Paper*. p 11.

² s1.3(1)(a)-(d) *Local Government Act 1995* (WA)

³ s1.3(2)(a)-(d) *Local Government Act 1995* (WA)

⁴ s1.3(3) *Local Government Act 1995* (WA)

Executive Summary

If the current review of the *Local Government Act 1995* is to truly consider the sustainability not only of local government as a sector, but also of the community it represents, it must embed sustainability within the *Act* as more than a cursory consideration and include the following amendments:

- An amendment to strengthen the commitment to sustainability both in language and intent.
- An amendment to support the measurement, monitoring and evaluation of sustainability outcomes for local government.
- Amendments to section 3.60 to provide for supplementary powers to local government to facilitate tripartite financing arrangements between commercial business, financiers and local governments to:
 - Permit commercial business to secure low interest loans be repaid via rates.
 - Tie 'loans' to property titles.
 - Limit liability for local government.
 - Limit ability to transfer cost to tenant.
 - Permit local governments to recover costs of managing scheme via rates.
- An amendment to provide for local governments to participate in and facilitate energy efficiency and renewable energy bulk-buy / community arrangements and transfer to residents via 'loans' attached to rates.
- An amendment to permit local governments and community organisations to enter into commercial arrangements / agreements to develop and facilitate community-owned / managed energy efficiency and renewable energy projects, including, but not limited to the formation of companies; co-operatives; mutuals and social enterprises.

Opportunities

Sustainability - Updating the language to reflect a modern understanding.

Sustainability is often referred to using the descriptor – the 'triple bottom line plus one' (TBL+1). Effectively this encapsulates society, environment, economy and governance.

Sustainability does not merely include environmental factors (i.e. waste, water, energy and climate change, transport, land-use and biodiversity), but also importantly includes the social and economic determinants of community health (i.e. equity and local economy, culture and community, heritage, happiness and public health etc.). These issues are also articulated in the goals and objectives of the Strategic Community Plans of most local governments, which reflects public expectation.

Sustainability is not a service, project or product delivered to or on behalf of a local government. It is a means to communicating and protecting the social licence to operate for the local government itself. It should, in essence, be a local government's guiding mandate.

Without a clear view to ensuring that the projects and services delivered to our community meet the test of being socially, environmentally and economically responsible; future local governments that operate within a 21st Century, knowledge-based, social media driven landscape will court reputational risk at best, and legal liability at worst.

While the 2004 inclusion of basic sustainability considerations in the Act was possibly forward thinking for its time – it does not now adequately reflect the need for local governments to address sustainability risks and opportunities strategically. It is no longer appropriate for local government to simply apply ‘best endeavours’ to sustainability without any appropriate measurement, performance indicators or evaluation.

Opportunities – Capturing efficiencies in cost management, resource management and engagement.

There are a vast number of opportunities and risks that local governments are facing in the sustainability space that should be clearly acknowledged by the Local Government Act review; and included in a recommendation around the evaluation and communication of sustainability progress indicators for local government decision-making and operational frameworks. A range of these are outlined below.

Waste Minimisation & Recycling. Rationalising and minimising waste to landfill and increasing recycling rates can significantly reduce gate fees and carbon emissions.

Energy Efficiency & Renewable Energy. Major energy strategies inclusive of identification of best areas for major impact / reduction projects and upgrades can yield significant cost reductions to local government. Rolling upgrades on City facilities and best practice energy management / contracts based on a marginal abatement cost curve can determine best value energy reduction treatment options, for example: reducing energy use and emissions from street lighting by up to 75% using LED (reducing energy spend and emissions / offsets costs).

Water Conservation & Quality. Water conservation initiatives including storm water reuse, eco-zoning, facilities audits and upgrades can reduce water consumption costs and environmental impacts and help to meet water licensing requirements.

Sustainable Transport Planning. Reduction of fuel use via the purchase of efficient fleet vehicles, car sharing opportunities, cycling and walking initiatives and a staff travel planning process can yield significant cost, emissions reduction and health benefits.

Biodiversity, Green Infrastructure & Land Use. Biodiversity and ecological systems have intrinsic worth beyond their value as community amenity or economic resource. The natural environment plays an essential role in the cultural, spiritual, mental and physical health of employees and community. Through stewardship and responsible natural resource management local government can support the health of the community, and the environment.

Culture & Community. A local government that proactively delivers policy, actions and events that support the community to express and engage with its unique and diverse culture provides a platform for social cohesion and positive engagement.

Local & Sustainable Economy. A local government that supports the development of healthy, thriving and sustainable local and regional economies and works directly with local supply chains can ensure its cumulative economic impact is more sustainable. It can also nurture innovation and entrepreneurship to provide new opportunities for sustainable local economic development.

Public Health. In striving to undertake urban development that meets the needs of the present without compromising future generations' ability to meet their own needs, local governments can work towards taking a long term, future-proofing view of our role in the local, regional and global community and strive to protect dignity, equity and health for current and future communities.

Planning, Development & Infrastructure. In actively guiding the sustainable evolution of the urban form local governments can address the impacts of these processes through the channels it can influence, such as Planning Strategies and Schemes, design guidelines, policy and approvals. They can also ensure that the assets, infrastructure and services procured, built, maintained and delivered for the community represent value for money; and can account for their economic, environmental and social impacts, over the full term of their life.

Undertaking land-use planning that takes an integrated, transit-oriented design approach can facilitate accessibility, mobility and appropriate local economic growth.

Integrating green infrastructure into the built and natural landscape can future-proof a local government against potential impacts of climate change; including heat island effect, water management and drainage infrastructure pressures, energy and fuel poverty and mental and physical health impacts.

Building, maintaining and improving our City facilities and assets can ensure operational efficiency and reduce the impact of current and future operations.

Climate Change & Emissions. Adaptation strategies for carbon emissions, often linked to renewable energy production and urban heat island management / green infrastructure, can have major impacts on energy costs (corporate costs) and human health (community costs). Well developed and managed adaptation and risk management processes can protect current and future Councils, against climate change liabilities and transferred costs.

Sustainable Procurement. The cumulative impact of local government operations, consumption and waste management can be significant. Development of tools and guidelines to identify best practice purchasing options when choosing suppliers of goods or services and including best practice supply chain management can reduce the downstream impacts of purchases, and can reduce overall procurement costs.

All of these opportunities however rely on the proactive legislative, regulatory and policy support of State and Federal governments.

Risk Management – protecting local government's social licence to operate in the 21st century.

While sustainability represents a wealth of cost and resource efficiency opportunities for local government, in a modern society it is also acknowledged that not adequately addressing sustainability issues can present a range of direct risks to organisations. Some of these risks are outlined below.

Reputational Risk. Sustainable performance is one of the strongest determinants of organisational reputation, which has a significant effect on public perception. Studies show more than 25% of an organisation's stakeholder reputation is based on social and environmental performance.

Productivity Risk. Sustainability, if properly embedded, can help improve organisational efficiency which boosts public profile and can positively impact a local government's bottom line. If ignored, the reverse can also be true.

Productivity includes reduced material requirements, reduced energy for production, reducing the use of toxic chemicals, improving recyclability, improving the durability and reliability of products, and maximising the use of renewable resources. It also includes the productivity of staff and their loyalty to an organisation, which impacts human resourcing costs.

Operational Burden and Interference. Ignoring sustainability concerns can lead to public distrust, greater regulatory scrutiny, operational burden and cost. Public distrust of governments has been well documented in recent years, and leads inevitably to negative stakeholder / ratepayer reaction as well as regulatory attention.

Demonstrating a high level of leadership in the sustainability space, and appropriately communicating this leadership, can be a driver for enhanced public perception around local governments, and therefore reduces the burden of interference.

Supply Chain Costs. By working on sustainability issues with suppliers and contractors, local governments can ensure that critical supplies and services will be available to the community and that costs will be controlled.

It is becoming more common for organisations to require that their suppliers meet minimum requirements for sustainable performance – by strengthening these procurement processes local governments can avoid significant cost (and legal liability) risk around poor financial governance, poor value-for-money and non-transparent procurement processes. It can also reduce compliance risk with regards minimum wage and working condition standards across a supply chain.

Cost of Capital. A growing number of investors and lenders are basing their investment and lending decisions on an evaluation of social and environmental performance as well as economic results.

Legal Liability and Compliance Risk. Local governments guided by sustainability principles are less likely to incur major legal liabilities which can affect the bottom line. This is especially true for claims arising out of environmental incidents, poorly considered planning decisions and inappropriate employment practices.

Internal Capacity / Capability Risk. While local governments can offer benefits and good pay – the human benefits of 'the sense of working collaboratively toward a higher goal' are less well articulated, but no less valuable as a social indicator. It is well documented that organisations with strong sustainability commitments consistently have higher staff morale.

***Recommendation:** That S1.3 (3) be amended and modernised to more clearly acknowledge and articulate sustainability risk and opportunity for local government, and include a specific commitment to measurement, monitoring and evaluation.*

Recommendation: *That the Integrated Planning and Reporting Framework be updated to reflect this amendment, and require sustainability reporting outcomes.*

Recommendation: *That the State Government consider supporting the development of a Sustainability Performance Framework for local government in order to facilitate the efficient data aggregation, progress reporting and cross-sectoral benchmarking of sustainability impacts and outcomes taking into account the capacity of different local governments to manage this reporting responsibility and enabling appropriate flexibility.*

Sustainability / Building Efficiency Upgrade Finance.

Access to finance has been identified as a key barrier to undertaking energy efficiency upgrades in commercial buildings, resulting in older building stock that is inefficient and costly to run.

The City of Perth has prepared a summary of building upgrade finance and the legislative amendments that would be required in order to facilitate it, so the specifics will not be repeated here, suffice it to say that the provision of a three way finance partnership between building owner, financier and local government allows the cost of building upgrade measures to be amortised, and limits liability to local governments by tying the finance to the property rather than the owner.

Commercial buildings achieve an average of 45% energy efficiency improvements through design and construction upgrades. This would support the creation of efficient and desirable commercial buildings and precincts and place activation within local government areas. The City of Canning supports the City of Perth's recommendations in this instance.

Upgrade financing models need to be tied to education and marketed at multiple levels in order to avoid the perception that this opportunity only exists for major corporations or commercial operations looking to maximise green credentials.

Mechanisms also need to be put in place to avoid adverse downstream impacts for tenants, as there is a risk of property owners accessing finance and increasing rents in tenancies to profit from the program. This needs to be considered under tenancy legislation and appropriate amendments made if any adverse impacts are observed.

This risk is illustrated by Andrew Flannery, Partner at DibbsBarker:

'An EUA is an innovative funding model which allows landowners to make improvement to the resource efficiency or environmental sustainability of their buildings (thereby increasing the buildings' value), and recover a substantial part of the costs from their tenants over time'.

'Landlords can recover the cost of building upgrades from tenants if they are done under an EUA. This is because the 'loan repayments' are made by way of rates payable to Council, and rates and taxes can be recovered from tenants under a net lease.

This applies to the extent that tenants can be shown to be saving money by the building upgrades, and where the lease allows recovery for these rates. Note this will not be possible under leases with gross rent provisions (i.e. where outgoings are not payable by tenants).

Our concern has been whether the lease had to make specific reference to EUAs in the outgoings clause. We understand the E&H's view is that a plain vanilla net lease outgoings recovery clause in a lease is all that is necessary to allow landlords to recover EUA contributions from tenant, and we expect E&H to state this as its position shortly' [E&H = NSW Office of Environment and Heritage]'.

Recommendation: *That Division 5 – Financing Local Activities, be amended to make provision for declaring charges, levies and collection of payments to support Building Upgrade Finance opportunities.*

Climate Change Support for Local Government

Fossil fuels and industrial processes have contributed to 78% of the total increase in greenhouse gas emissions between 1970 and 2010⁵ and the need for and importance of reducing anthropogenic greenhouse gas emissions has been acknowledged since the late 1980's.

In 1988 the Intergovernmental Panel on Climate Change (IPCC) warned that by 2050, greenhouse gas emissions needed to be reduced by 60% to avoid dangerous climate change⁶. This message has been reiterated and reinforced by the Fifth Assessment Report⁷ and the more recent IPCC Special Report on the Impacts of Global Warming of 1.5°C which called for 'urgent transformational change' to limit increased global warming to below 2°C⁸. Demand management, energy efficiency, renewable energy and carbon capture provide opportunities for Australia to achieve significant cuts to its emissions profile.⁹

Local governments are responsible for a range of functions and decisions that can impact climate change and increase, or decrease, greenhouse gas emissions. They are directly affected by climate change impacts and have heretofore been largely responsible for addressing these impacts, both immediate and predicted (through local adaptation planning and risk management) with insufficient State or Federal Government support for this devolved responsibility. They also have the ability to positively influence community understandings of, attitudes to, and local action on climate change.

Collectively, local governments have been leaders in climate adaptation and mitigation and it remains one of the top five priority policy issues¹⁰; however they have generally been undertaking this role at best in a policy vacuum, and at worst in an actively non-supportive environment, leading to a disjointed, ad hoc approach.

Roles and responsibilities for local government in the climate change adaptation space particularly need to be more clearly articulated, particularly where local government investigations lead to

⁵ IPCC (2014) *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*. IPCC, Geneva. 151pp

⁶ IPCC (2007) *Fourth Assessment Report. WG2. Climate Change 2007: Impacts, Adaptation & Vulnerability*. IPCC

⁷ IPCC (2014) *Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*. IPCC, Geneva. 151pp

⁸ IPCC (2018). *Special Report on the Impacts of Global Warming of 1.5°C; Summary for Policymakers*. IPCC

⁹ Smith, M, Hargroves, K, Stasinopoulos, P, Stephens, R, Desha, C and Hargroves s (2007) *Engineering sustainable Solutions Program: Sustainable Energy solutions Portfolio*, CSIRO, GU, ANU, The Natural Edge Project. p

¹⁰ Australian Local Government Association climate change position <https://alga.asn.au/?ID=210> accessed 12/02/19

acknowledged risk. By devolving this responsibility to local government, State and Federal governments place a disproportionate and inequitable burden of responsibility on local government for climate adaptation actions, with inadequate funding to support necessary interventions, infrastructure upgrades and maintenance programs. This in turn may lead to increased risk and potential liability.

Any strengthening of climate change mitigation, adaptation and / or reporting requirements for local governments via amendments to the *Act* should be accompanied by the appropriate level of State Government support and funding both to bolster the capacity of the State Government to undertake appropriate levels of governance and support in this area, and for local governments to be able to adequately address the major climate risks and impacts their communities are facing.

Recommendation: *That local government role(s) in climate change mitigation and adaptation action is clearly articulated in the Local Government Act at a reasonable community scale, and that commensurate State Strategy and Policy is concurrently developed, in order to clearly delineate roles and responsibilities at all levels of government, equitably.*

Limitations on Local Government's ability to form corporations.

The *Act* specifically prevents local governments from forming or acquiring control of a body corporate. s3.60 of the *Act* states:

'A local government cannot form or take part in forming, or acquire an interest in giving it the control of, an incorporated company or any other body corporate except a regional local government or regional subsidiary unless it is permitted to do so by regulations'.

This places limits on local governments wishing to enter into certain legal arrangements – including those that may provide or partner to provide services / facilitated delivery of energy efficiency and renewable energy opportunities to the community within a local government area.

As noted above, amending the legislation to enable building upgrades at a commercial scale is of value, however restricting amendments to only facilitate corporate and commercial energy efficiency upgrades does not provide for an equitable approach and limits opportunities for local governments to support community level emissions reductions and enhance community resilience. This is inconsistent with the sustainability objectives identified in s1.3 (3).

The high degree of transparency and accountability required under the *Corporations Act 2001* would apply to local governments if this restriction under the *Act* was removed.

Local governments have demonstrated the will and ability to achieve significant reductions in their own carbon budgets, however, the ability to significantly influence and support community and commercial initiatives is limited by availability of emissions and energy data and ability to facilitate innovative community bulk-buy programs.

The review of the *Act* is an opportunity to consider equity and ensure that a social return on investment at community level is an acceptable outcome, rather than a purely financial return.

There is a genuine need to ensure that the people most at risk of energy poverty are able to opt into programs that enhance their ability to meet and manage rising energy costs.

Recommendation: *The removal of restrictions on local government under s3.60 to permit the development of community energy efficiency and bulk-buy renewable energy programs to benefit local communities and reduce emissions.*

Other limitations on Local Government's ability to ensure energy equity and facilitate community energy initiatives.

Following on from the above; residential tenants, unit / strata residents and low income households are often most susceptible to energy price shock and may be least able to take advantage of commercially available renewable energy and efficiency options. The *"concept of energy equity should be a consideration for any proposed solutions aimed at addressing the energy efficiency gap in the private rental market"*¹¹.

In Australia, rental properties represent approximately 30% of the property market.¹² Residential properties are responsible for 11% of total energy consumption and 9% of greenhouse gas emissions¹³.

Addressing energy efficiency in the residential sector can support emissions reductions, climate change mitigation and support Australia's commitment to the Paris Agreement targets. Research has found that rental properties managed by agencies access *'significantly less energy efficiency upgrades'* and agents had *'very low levels of knowledge about energy efficiency'*¹⁴.

Both tenants and landlords identified access to financial capital as a significant barrier to energy efficiency improvements¹⁵. The uncertainty and short nature of residential tenancies was identified as another barrier to tenants who were reluctant to invest in efficiency – *a distortionary regulatory policy and... a market failure'*¹⁶.

The current tax system *'provides greater assistance to established home owners and investors than to renters'*.¹⁷ Classifying energy efficiency upgrades as *'repairs'* under regulations would allow upgrades to be fully deductible against income¹⁸

¹¹ Koel Wrigley, Robert H Crawford, (2017), 'Identifying policy solutions for improving the energy efficiency of rental properties. *Energy Policy* 108, 369-378. p370

¹² http://stat.data.abs.gov.au/Index.aspx?DataSetCode=ABS_CENSUS2011_B32# accessed 12 Feb 2019

¹³ Bureau of Resources and Energy Economics (BREE), 2014. 2014 Australian Energy Update, Canberra, July.

¹⁴ Strempel, A., Horne, R., Dalton, T., Berry, M., 2010. Understanding drivers, attitudes, and barriers to 'green' investment by landlords of private rental properties in Victoria – Stage 2, unpublished article, pp. 1–151. In Koel Wrigley, Robert H Crawford, (2017), 'Identifying policy solutions for improving the energy efficiency of rental properties. *Energy Policy* 108, 369-378.

¹⁵ Koel Wrigley, Robert H Crawford, (2017), 'Identifying policy solutions for improving the energy efficiency of rental properties. *Energy Policy* 108, 369-378. p371

¹⁶ De T'Serclaes and Jollands, 2007 in Koel Wrigley, Robert H Crawford, (2017), 'Identifying policy solutions for improving the energy efficiency of rental properties. *Energy Policy* 108, 369-378. p370

¹⁷ Sullivan, D., 2007. Climate Change: Addressing the Needs of Low-income Households in

Given that these are market-based barriers / failures in the main, and that despite many years of local government policy attempting to redress them there has been little shift in the ability for local government to influence best sustainability practice across the residential development sector; legislative change that specifically supports local government to provide incentives to make sustainability related improvements to residential properties is increasingly necessary.

Amending the *Act* to specifically support community financing models / bulk-buy schemes (and their enabling financial instruments), and marketing these via local government to property owners and tenants would potentially decrease tenancy inequities, support participation by low income households, reduce financial stress associated with rising energy costs and incentivise efficiency in multi-unit dwellings by removing financial barriers and split incentives.

It would in turn provide fairer access to renewable energy opportunities, local employment diversification and growth and community climate resilience.

Recommendation: Amend the *Act* to specifically support community financing models / bulk-buy schemes and their enabling financial instruments.

the Private Rental Market. Brotherhood of St Lawrence, Melbourne. In Koel Wrigley, Robert H Crawford, (2017), 'Identifying policy solutions for improving the energy efficiency of rental properties. Energy Policy 108, 369-378. p370

¹⁸ Australian Tax Office (ATO), 2015. Taxation ruling income tax: deductions for 'repairs', at (<http://law.ato.gov.au/atolaw/view.htm?>