

Mr Duncan Ord

Director General
Department of Local Government, Sport and Cultural Industries

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Dear Mr Ord

Submission on *Local Government Act 1995* Review Phase 2 Discussion Papers

The Property Council is grateful for the opportunity to provide feedback on the *Local Government Act 1995* Review Phase 2 Discussion Papers and congratulates the McGowan Labor Government on pursuing these welcome improvements to Western Australia's local government system.

We welcome the recent introduction to Parliament of the Local Government Legislation Amendment Bill 2019, which will deliver on many of the local government reforms considered to be a priority to the Property Council and its members. As expressed in our submission on phase one of the review, we particularly support mandatory training of councillors and any initiatives that will ensure greater transparency and accountability for the community and other stakeholders.

Many of our members have direct and indirect contact with local government through their business operations - the service provided by local government directly impacts on the ability of the property industry to deliver outcomes. The property industry is very supportive of the overall intent of the review, and of the phase two focus on ensuring local government is agile, smart and inclusive.

The following comments provide our assessment of the positives and negatives of each potential phase two reform initiative outlined in the discussion papers. We outline those aspects we consider would add most value to the property industry, and would assist with the critical role the industry plays in creating prosperity, jobs and strong communities for current and future generations of Western Australians.

AGILE

Beneficial enterprises

The Property Council has significant concerns around some of the proposals outlined in the beneficial enterprises discussion paper. While we understand the potential benefit of making it easier for local government to deliver community services, and possibly some existing business activities, we are opposed to allowing local government to pursue new commercial

opportunities that should properly be delivered by commercial enterprises in a competitive marketplace.

The major significant risk would be the conflict of interest caused when local government is both a regulator and a market competitor. This has become an issue at the state level with the Metropolitan Redevelopment Authority, and for a local government that doesn't have the advantage of the expertise, resourcing and state-level competition policy oversight that the MRA does, the risks would be significantly higher.

Local government already has the ability to pursue major trading undertakings and major land transactions. We understand that some in the local government sector have called for measures to overcome their "commercial disadvantage in a competitive marketplace" especially for progressing "urban renewal activities", however we don't believe this ambition aligns with the proper business of local government.

The comparison is made with eastern states that allow for local government beneficial enterprises. The major difference between WA and those eastern states, Queensland and Victoria for example, are that in WA local government is not charged with delivering hard infrastructure services such as power and water, which is the remit of the WA state government. In the eastern states examples local government does provide these services so there is more justification for beneficial enterprises to allow local government there to "provide various services to the community where private sector or the State Government are unable or unwilling to do so".

This is also the major flaw in WALGA's promotion of the Council Controlled Organisation model from New Zealand. As pointed out in the discussion paper, local government in NZ has a far greater community and urban development remit than in WA, and importing a model formulated to deal with very different operating circumstances would be ill-advised.

The Property Council agrees with the risks identified in the discussion paper, being the financial risks to the community; the conflict with National Competition Policy; and the potential risk of privatisation of local government services, and we conclude that the beneficial enterprises initiative represents more of a risk and a threat to the proper business of local government than is justified by any possible benefits.

Financial management

As identified in the discussion paper, local governments must be prudent users of public funds, balancing community expectations with the practical limitations of expenditure and revenue. In this context, the Property Council supports many of the initiatives outlined to improve the ability of local government to manage its finances effectively and transparently in the interests of the communities it serves.

We support the online publication of annual reports.

We agree that the guidelines and regulations around local government investment need to be reviewed to ensure they are fit for purpose. As stated, local government through development contributions and other revenue raising holds significant amounts in cash reserves and these funds need to be invested prudently to ensure the public benefits.

If, as referenced, the permitted and non-permitted categories of investment in the current regulations do not align with risk then this must be fixed. This is particularly the case given funds raised via development contributions should be specifically aligned to the cost of delivering relevant infrastructure – if invested funds aren't managed appropriately then future communities will suffer when planned infrastructure cannot be paid for.

We agree that local government procurement rules should be reviewed. While suppliers and the public must have confidence in the robustness of the process, the procurement process must ensure that value for money and an outcomes-based assessment framework is not compromised in the interests of over-regulating the process. On this basis we agree with ensuring oversight by the State Government is tailored to the circumstances of each local government; there should be consequences for non-compliance with procurement standards; and standards for timely payments should be introduced.

In October 2018, the Auditor General's *Review into Local Government Procurement* found that "local governments should review their (procurement) policies to ensure things like thresholds and quote requirements reflect current needs." Our members' experience has demonstrated that, in an effort to restrain costs, local governments have tended to outweigh the cost of a project over the quality of a project. While it is acknowledged that the cost of a project is important, it should not be the key driver in determining successful bidders, both for consultants and contractors. Selecting the cheapest bidder means innovation is stifled, a poor urban design outcome is reached and documentation is often restricted as less time is spent on the project to resolve issues up front. Poor quality documentation leads to poor quality construction and often increased costs during construction from variations. It also results in downstream costs for local government as the upfront requirements are not properly developed or considered and eventuates in higher building life-cycle costs that far outweigh the upfront savings that are made on selecting the cheapest bidder. This becomes a false economy for local government, and their ratepayers.

Building Upgrade Finance

With regard to Building Upgrade Finance (BUF), and given the Property Council's involvement in advocating for the inclusion of this initiative in the discussion paper, we make the following comments in favour of introducing the mechanism into the relevant legislation. The comments echo those contained in the City of Perth's submission on the subject, as we have partnered with the City in our advocacy on this matter. The additional detail in the City's submission is supported by the Property Council while not repeated here in favour of brevity:

- Building Upgrade Finance (BUF) is a mechanism that allows non-residential building owners access to funds from select commercial lenders to upgrade the sustainability performance of their buildings.
- The Building Upgrade Charge methodology means that the loan is tied to the property rather than property owner. Responsibility to pay for the loan shifts if ownership of the property changes. In other Australian states that have employed this approach, the local government is not, by law, financially liable for any non-payment by the building owner.
- As the loan is recovered via the same powers as rates or a service charge, in the event of non-payment, local governments have the same powers available to recover unpaid rates or service charges. This can include taking possession of the land and selling the property.
- The BUC also secures the loan, making the loan 'senior debt' in the eyes of the financier in the event of a default. This means that should the building owner go bankrupt, the financier can be satisfied they will be paid back as a priority. Because of this reduction in risk, finance terms can be made more attractive than for standard commercial loans.
- The building owner may choose to invite tenants to contribute to the repayments however this contribution must be equal to or less than the energy/water bill savings they receive. No tenant can be worse off because of BUF.

- Tenants therefore benefit from better amenity in a better building whilst building owners benefit from an improvement to the value of their building.
- As tenants and owners can share in the costs and savings associated with BUF and the financier has the additional security of the BUC, all parties win.
- A BUF mechanism can -
 1. Rejuvenate economic activity around buildings and precincts.
 2. Boost the WA Economy.
 3. Assist building owners to adhere to increasingly stringent sustainability requirements.
 4. Reduce the energy, water and waste intensity of a building's operations.
 5. Contribute to emissions reductions targets set by Australia under the UNFCCC Paris Agreement.
 6. Create buildings that are adapted to a changing climate.
- BUF can unlock significant economic, environmental and social opportunities for commercial districts across WA by removing the barriers that have hampered investment in non-residential buildings: access to capital, particularly for private investors, and the split incentive where building owners incur the cost of upgrades and the tenant receives efficiency benefits.
- BUF is a way to engage and support the private owners of lower grade properties, the part of the market with great potential yet in need of the most support, whilst also encouraging top performing buildings to continue to show leadership in the push towards net zero buildings.

Rates, fees and charges

The following initiatives outlined in the rates, fees and charges discussion paper are supported by the Property Council:

- Introduction of a requirement for a Rates and Revenue Strategy to be prepared by local government alongside its other strategic planning exercises, to improve setting of rates, fees and charges and ensure a transparent and robust methodology is applied.
- Some level of consultation on rate-setting, however we would caution the level of weight applied to the outcome of the consultation depending on methodology, given the need to balance community expectation around service delivery against the same community expectations about possible rate rises.
- Standardisation of rate categories across local government as implemented in NSW.

However, we would not support any removal of the requirement for Ministerial approval of large disparities in rates, as this seems incongruent with other reform ideas that focus on improving transparency and accountability.

SMART

Administrative efficiencies

One of the Property Council's key advocacy positions is that excessive regulation creates costs on system users and stakeholders that far outweigh any associated compliance benefits. We support the position taken in the administrative efficiencies discussion paper, that opportunities to remove regulatory burden are being looked at, however we are somewhat disappointed that there seem to be relatively few of these opportunities identified.

We have run a focused and long term campaign to remove over-regulation in many areas of local government business, particularly relating to the planning function of local governments. As outlined in our submission on phase one of the local government review, we have

communicated our recommendations on various occasions to other relevant state government agencies, in particular the Department of Planning, Lands and Heritage, the MRA and LandCorp, and we will continue to do so.

We encourage the Department of Local Government to work alongside other agencies operating in this space to identified shared initiatives to streamline administrative and regulatory processes.

Local laws

We strongly support the proposal to introduce model local laws. Better consistency of policy and legislation across local government significantly increases certainty and useability for community and stakeholders, and is something the Property Council has long advocated for.

We appreciate the need for some local variation to reflect specific local circumstances, however this should be the exception rather than the rule. We support the approach taken by the planning portfolio in the Local Planning Schemes Regulations, where variation to the model provisions may be approved subject to justification. Local laws should be as standardised as possible with changes being the exception rather than the rule.

We support retaining the existing requirement to review all local laws after a set time period. Without regular review, laws may become outdated or inconsistent with context or other legislation. An 8 year review period appears to be a reasonable suggestion.

We agree that some matters currently dealt with in local laws may be better addressed in regulations at the state-level. The test for this should be strategic importance and the likelihood that local circumstances would outweigh the need for centralised control. This would particularly be the case if model local laws aren't introduced. Examples of matters we would like to see contained in state regulations are the rules for activities and trading on thoroughfares – given the strategic importance of these laws for place-making and place-activation; and meeting procedure standards, to provide increased certainty, clarity and transparency for stakeholders.

Council meetings

As mentioned above, consistency of meeting procedures across local government should be one of the goals of this phase of local government reform. The variation in procedures across WA is significant, and makes interacting with local government and dealing with matters that go before Council a real challenge for proponents. This is particularly the case with those local governments that appear not to be following best practice in their approach to meeting governance.

The Property Council acknowledges that it is not just proponents that struggle with inconsistency in Council meeting procedures. The community too should have better certainty of a consistent and best practice approach to procedures around public question time, public statements, transparency of voting and debating etc.

We seek better guidance by the state on these matters, and would welcome the imposition of a standard approach that applies across local government. Much of the current trend to mistrust between community and local government may be addressed by removing the confusion, uncertainty and inconsistency that stakeholders experience when dealing with council meetings.

As flagged in the discussion paper, better use of modern technology could be one step forward in addressing this. We welcome any effort to improve efficiency and transparency of

local government decision-making through the use of technology, for example by live-streaming council meetings as occurs with State Parliament.

Finally, we note the review of the role and practice around Special Electors' Meetings. It has been the experience of our members that these meetings are most often used to derail the decision-making process on particularly contentious matters. In many cases they unnecessarily raise the expectations of community members around what might be achieved at the special meetings, when in fact the decisions made are not binding on Council.

In many cases Special Electors' Meetings simply take elected members and council staff away from the business they would otherwise be focusing on, slowing down other matters while not achieving anything concrete. As we move to increasingly politicised communities, it would be preferable to open up and standardise the ability for stakeholders to be involved and to raise matters during regular Council Meetings, rather than to continue to allow the process of Council decision-making to be abused through the calling of often spurious meetings that last many hours and cannot, under the legislation, have any substantive outcomes.

Interventions

As we noted in our submission on phase one, we support initiatives that will allow the State Government to intervene in local government matters where warranted, to improved public confidence and the functionality of local government activities. We acknowledge the need, outlined in the discussion paper, to balance the ability of the state to intervene with enabling local government to operate as autonomous bodies.

The biggest challenge facing all regulators in contemporary times is the increased politicisation and activism in communities and the impact this has on the ability for government of all levels to make decisions on behalf of the community under the established system of representative democracy. This trend appears to have caused two outcomes as far as state-intervention in local government is concerned – an increased need for State Government oversight of local government activity to ensure misconduct and corruption do not occur; and an increase in the likelihood of nuisance complaints and scrutiny by the community.

There is a clear need for better support by the State Government in the form of governance advice and assistance for functional local governments, and a strengthened ability for appropriate intervention where dysfunctional local governments exist. The Property Council supports the suggested introduction of an independent party to act as circuit-breaker in complex and/or contentious situations, as in Victoria.

We note that a similar initiative a number of years ago at state-level in WA created the position of Independent Planning Reviewer in the (then) Department of Planning, and it has been the experience of our members that this has resulted in a more effective and less antagonistic approach to resolution of conflicts between the decision-making body and its stakeholders. We see a real benefit in the introduction of a similar mechanism across local government.

We support the extension of the 'improper use of information' offence to former council and committee members and to council staff. We also support introduction of the 'false or misleading information' offence to local government as exists for State Parliament.

INCLUSIVE

Community engagement

The importance of effective community engagement by decision-makers has been increasingly understood by both public and private sectors. For the property industry, local councils provide a critical intermediary between themselves as proponents of place-making initiatives and communities as current and future users of those places.

We agree with the comments in the community engagement discussion paper around the challenge for decision-makers when balancing communities' often competing priorities. We support the observation that good engagement enhances decision-making where people's well-being or interests may be affected, and that it builds trust between community and local government. We note that it also builds trust between communities and those in industry responsible for creating places, which results in much more inclusive and built outcomes that the community can feel a sense of ownership for.

When providing comment on the State Government planning portfolio's recently advertised reform initiatives, the Property Council indicated support for the development of a State-level Community Engagement Charter, as has been recently introduced in South Australia. We are pleased to see this initiative mentioned in the discussion paper and support the idea of extending the need for an engagement charter and community consultation policies to all aspects of the business of local government.

This is an area where local government will benefit from guidance and leadership by the State Government, so a model policy and charter endorsed by the Department of Local Government would be a welcome initiative. As noted, finding the balance between different priorities in the space of community engagement can be challenging, so the development of a principle-based framework by the State for implementation at local government level is a welcome idea.

We also support additional guidance and support being provided to council members, staff and election candidates on use of social media. As noted in the discussion paper, the prevalence of "keyboard warriors" and potential abuse of the opportunities that social media provides by the vocal minority can create real risk of worthy projects and initiatives by both public and private sectors being derailed or corrupted to meet only marginal interests. Any policy that can assist in ameliorating this situation would be welcomed by the Property Council and its members.

Integrated planning and reporting

The only way to measure local government effectiveness is to ensure that all activities undertaken have been appropriately planned and are then monitored and measured against established performance criteria. This is the way the private sector and State Government operates, and local government should be no different.

The Property Council supports the suggestion for a centralised and standardised local government reporting framework to be established at State-level, as exists in Victoria. We have been calling for centralised reporting on local government planning performance through the planning portfolio reform process, and we extend this advocacy across all local government business. It is important that local government business is properly monitored and reported so that outcomes can be measured and relevant action taken in response to any deficiencies. This is the only way to ensure ratepayers and stakeholders are getting the value for money and service levels they are due.

We acknowledge the comments in the discussion paper around the costs of implementing a centralised reporting framework, however it is our view that any initial outlay will be justified

and at least partly recouped over time through the increased efficiency and effectiveness of local government activity that will result.

We support the suggestion that local government CEOs should be held accountable against relevant IPR performance criteria and targets.

Complaints management

The Property Council supports any initiative that will improve stakeholder and public confidence in local government performance and that will visibly ensure review of local government actions with performance improvement where relevant.

As per other topics covered in the review discussion papers, we support introduction of better State level guidance around complaints management, and the introduction of a centralised model complaints handling approach. This should be supported by adoption of a Customer Service Charter by all local governments. As previously stated, policies may be able to be tailored for local circumstances but only where justified and as the exception rather than the rule.

Members of the Property Council have experience of the issue flagged in the discussion paper, where some local governments have tended to focus on the way in which a complaint is made instead of dealing with the subject of the complaint itself. While not condoning any inappropriate behaviour on the part of complainants, or suggesting that all complaints are justified, we do agree that complaints should not be dismissed until their substance has been properly investigated. In many instances a local authority will gain the trust of its community more easily if it fully addresses and reports on any complaints made, to prove that due process is being followed, instead of giving complainants more to complain about.

As per the topic 'interventions', we support the introduction of an independent reviewer to handle complaints, where possible in the context of local government resources. For smaller local authorities this service could perhaps be shared across Councils or provided on an as needs basis by the State Government.

Elections

As noted in the discussion paper, local government legitimacy comes from the process and outcomes of its elections. If local government is to be properly representative of the community it serves, and on whose behalf it delivers services and makes decisions, the elected members should be true representatives of the relevant electorate.

The Property Council agree with the observation made in the discussion paper that poor voter turnout in local government elections is a real concern. While electors with strong views on specific issues being handled by their local authority may turn out to vote, the vast majority of potential voters appear not to be motivated to express their views at local government elections. When Australia was considering introducing compulsory voting in Federal elections in the early twentieth century it was to address exactly this issue, and a growing concern that marginal interests were being heard but the "sensible centre" was not.

Of the options identified in the discussion paper to address the issue of low voter turnout, we most strongly support the introduction of compulsory voting for local government elections, noting that WA is in the minority of Australian states by not having it. We believe that much more balanced and representative local election outcomes would result, which would in turn ensure that local Council decision-makers are more likely to represent a cross-section of their community rather than minority interests.

As stated in the discussion paper, integrity in the local government election process is critical for public confidence in the outcome, and therefore for stakeholder confidence in any decisions and activities by the elected Council over time. The Property Council therefore supports any other initiatives aimed at improving the integrity and ensuring appropriate conduct of candidates through the election process.

The Property Council appreciates the progress already made by the McGowan Labor Government on reforming the local government sector, and we are grateful for the opportunity to provide industry feedback on this next phase of reform. Should you wish to discuss our comments, please don't hesitate to contact me on [REDACTED] or by email to [REDACTED]

Yours sincerely,

A handwritten signature in cursive script that reads "Sandra Brewer".

Sandra Brewer
WA Executive Director