

# Northern Country Zone

## Minutes

### April 2018

### Flying Minute Meeting



# Northern Country Zone

## Agenda

### (Flying Minute – Responses by COB 23 April 2018)

#### **MEMBERS**

**One Voting Delegates from each Member Council**

Shire of Carnamah

Shire of Chapman Valley

Shire of Coorow

City of Greater Geraldton

Shire of Irwin

Shire of Mingenew

Shire of Morawa

Shire of Northampton

Shire of Perenjori

Shire of Three Springs

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## ANNOUNCEMENTS

Zone Delegates are requested to provide written notice, on amendments to recommendations within the State Council agenda ASAP to the Zone Chair and Secretariat.

## ATTACHMENTS CIRCULATED

1. State Council Agenda
2. State Council Agenda Attachments
3. State Presidents' Report
4. Zone Status Report (attached to the Minutes)

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### 1. DECLARATION OF INTEREST

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Pursuant to our Code of Conduct, Councillors must declare to the Chairman any potential conflict of interest they have in a matter before the Zone as soon as they become aware of it. Councillors and deputies may be directly or indirectly associated with some recommendations of the Zone and State Council. If you are affected by these recommendations, please excuse yourself from the meeting and do not participate in deliberations.

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### 2. BUSINESS ARISING

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A Status Report outlining the actions taken on the Zone's resolutions is circulated with the Minutes.

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### 3. REPORT FROM THE CHAIR / STATE COUNCILLOR – April 2018

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Nil

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### 4. STATE COUNCIL AGENDA - MATTERS FOR DECISION

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*(Zone delegates to consider the Matters for Decision contained in the WA Local Government Association State Council Agenda and put forward resolutions to Zone Representatives on State Council)*

Please refer to the State Council Agenda.

## 4. MATTERS FOR DECISION

<b>4.1 Submission to ERA – Inquiry into Business Licensing (05-100-04-0001 DM)</b>
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*By Dana Mason, Policy Manager - Economics*

**Moved Shire of Coorow**

**Seconded Shire of Northampton**

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

**Carried**

## **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

- 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;
- 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;

## **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.

### **4.2 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*

#### **Moved Shire of Coorow Seconded Shire of Northampton**

**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.**

**Carried**

#### **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

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

#### Enhanced Reputation and Relationships

- 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;

## 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.

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

*Christopher Hossen, Senior Planner – People & Place*

**Moved Shire of Coorow  
Seconded Shire of Northampton**

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

**Carried**

### **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

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

##### Enhanced Reputation and Relationships

- 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;

### **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.

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

*Vanessa Jackson, Policy Manager Planning and Improvement*

### **Moved Shire of Chapman Valley Seconded Shire of Irwin**

#### **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. Maintain its current policy position to not support the introduction of Third Party Appeal Rights.**

**Carried**

#### **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

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

##### Enhanced Reputation and Relationships

- 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;

## 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"> <li>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;</li> <li>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;</li> <li>3. Public confidence in the accountability of the DAP system would be enhanced through the introduction of third party appeal rights; and</li> <li>4. If introduced, third party appeal rights should only extend to consideration of valid planning grounds.</li> </ol>
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"> <li>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</li> <li>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.</li> </ol>
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	<ul style="list-style-type: none"> <li>• 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:               <ol style="list-style-type: none"> <li>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;</li> <li>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</li> <li>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.</li> </ol> </li> <li>•</li> <li>• A third party appeal rights system should address the following considerations:               <ol style="list-style-type: none"> <li>(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.</li> <li>(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.</li> <li>(c) Criteria should be included to address vexatious or frivolous appeals that are not based on accepted planning grounds.</li> <li>(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.</li> </ol> </li> </ul>
2	City of Busselton	<ol style="list-style-type: none"> <li>1. Recommends further investigation into the opportunities for Third Party Appeal Rights in Planning;</li> <li>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.</li> </ol>

**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	<ol style="list-style-type: none"> <li>(a) Views of third parties are sufficiently represented in the planning process under existing legislation and policies;</li> <li>(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;</li> <li>(c) The concept has the potential to increase administrative and legal costs for local governments;</li> </ol> <p>Further resolved to advise WALGA that it recommends WALGA investigate increasing local government membership in Development</p>

		Assessment Panels, rather than advocate for the introduction of Third Party Appeal Rights.
2	Shire of Murray	<ul style="list-style-type: none"> <li>Shire of Murray</li> </ul> <ol style="list-style-type: none"> <li>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</li> <li>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.</li> </ol>
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> <ol style="list-style-type: none"> <li>The potential for required increased staff resources;</li> <li>The potential to further introduce delays to the decision making process;</li> <li>Reduced certainty in the decision making process; and</li> <li>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 TPAR.</li> </ol> <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> <ol style="list-style-type: none"> <li>Increased costs in terms of both staff resources and financial requirements;</li> <li>The additional time required for a development to receive planning approval in order to allow third party appeals;</li> <li>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;</li> <li>The potential removal of decision making powers from Local Government;</li> <li>The potential to raise community expectations that may not be realised in practice;</li> <li>Introducing TPARs would likely not provide additional improvements to equity or community engagement from that currently provided for within the current planning framework;</li> <li>The potential to create an adversarial and litigious environment around planning decisions; and</li> <li>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 TPARs.</li> </ol>
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 Laverton	....as 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	.....as it is considered that this will create a precedent for the state government to introduce Third Party Appeal rights for all development decisions. 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.
11	Shire of Chapman Valley	...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. 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 (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.

#### **4.5 Community Resource Centre Funding Cuts (05-018-03-0004 KD)**

*Kirstie Davis, Policy Manager Community*

**Moved Shire of Coorow  
Seconded Shire of Northampton**

**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.

**Carried**

**Footnote**

Notwithstanding the clear and broad level benefits of CRC's across the rural areas of WA, the State Government is prepared to see every community with an existing CRC being heavily and adversely affected by these proposed cuts. The Zone and in particular the Shire of Mingenew would appreciate being consulted as the review progresses.

**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

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

### Sustainable Local Government

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

### Enhanced Reputation and Relationships

- 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 community<sup>1</sup>*

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 centre's, 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 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**

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

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

- 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 Associations Incorporation Act 1987 (WA)	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*<sup>2</sup>

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:

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<sup>2</sup> 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](http://www.drd.wa.gov.au/Publications/Documents/WARDT_Review_of_WACRN_report.pdf)  
Northern Country Zone April 2018

*small, widely-dispersed populations in many areas mean that there are few economies 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<sup>3</sup>*

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**

### **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.

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<sup>3</sup> CESA (2016) Regional Development in Western Australia Report. Available here: <https://www.ceda.com.au/Publications/Regional-Development-in-Western-Australia>  
Northern Country Zone April 2018

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.

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

*By Marissa MacDonald, Policy Officer-Transport and Roads*

### Moved Shire of Coorow Seconded Shire of Northampton

**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.**

**Carried**

### 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

- 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;
- 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.

#### **4.7 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*

**Moved Shire of Coorow  
Seconded Shire of Northampton**

**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.**

**Carried**

#### **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

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

##### 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.

### Enhanced Reputation and Relationships

- 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.

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

*By Laura Simes, Environment Policy Advisor*

**Moved Shire of Coorow  
Seconded Shire of Northampton**

**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.**

**Carried**

#### **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

- 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;
- 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;

## **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.

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

*By Lyn Fogg, Governance Advisor*

**Moved Shire of Coorow  
Seconded Shire of Northampton**

**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)*.**

**Carried**

### **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

- 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;

##### 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;

##### Enhanced Reputation and Relationships

- 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;

## 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.

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

By Lyn Fogg, Governance Advisor

Moved Shire of Coorow  
Seconded Shire of Northampton

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.

Carried

## 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

- 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;

#### 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;

#### Enhanced Reputation and Relationships

- 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;

## 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:

Northern Country Zone April 2018



*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.

#### **4.11 Social Media – Cyber Bullying (07-003-003-0004 - LF)**

*By Lyn Fogg, Governance Advisor*

**Moved Shire of Coorow  
Seconded Shire of Northampton**

**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

- 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;

#### 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;

#### Enhanced Reputation and Relationships

- 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;

## 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.

#### **4.12 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*

##### **Moved Shire of Coorow Seconded Shire of Northampton**

#### **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)(e) 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”.

Carried

## 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 48 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 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)

## 5. MATTERS FOR NOTING / INFORMATION

### 5.1 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](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

- 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;

#### 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;

## **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.

## 5.2 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

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

#### Enhanced Reputation and Relationships

- 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.

### 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:

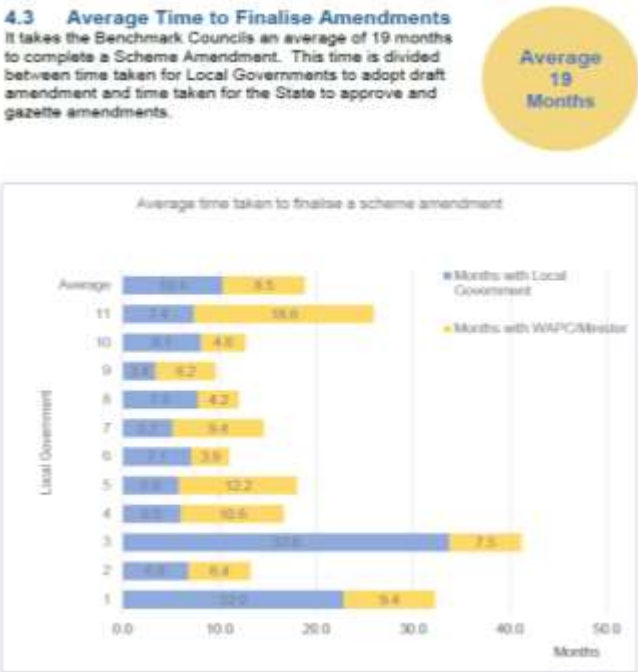
- Three Local Governments have a current Local Planning Strategy with seven currently reviewing their strategies
- Although a current local planning strategy may not have been adopted, on average the group had eight Strategic documents that supported land use planning functions, either a Strategic Community 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](mailto:planning@walga.asn.au) or call one of the Planning team on 9213 2000.



**5.3 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

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

#### Enhanced Reputation and Relationships

- 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;

## 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	
<b>Total</b>	<b>182</b>	<b>46</b>

TABLE 2 – Collation of data and preliminary assessment of Buildings within the ‘Regional areas’ to determine whether the risk is ‘low’, ‘medium’ or ‘high’.

<b>Permit authority</b>	<b># of Buildings</b>
South West	22
Pilbara	16
Kimberley	5
Great Southern	1
Other	3
<b>Total</b>	<b>64</b>

## **5.4 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

- 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;

## 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.

## **5.5 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

- Provide ongoing professional development and interactive opportunities for Elected members to contribute to debate on sector issues

#### 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' aspiration in the further development of Local Government in Western Australia

#### Enhanced Reputation and Relationships

- 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

## 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:

➤ One	Phase	➤ Release of a Consultation Paper to seek public comment on aspects of the Act as it operates now
➤ Two	Phase	➤ Release of Discussion Paper outlining proposals for public comment
➤ Three	Phase	➤ 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.

### 5.6 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

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

### Sustainable Local Government

- Continue to build capacity to deliver sustainable Local Government;
- Represent the diversity of members' aspirations in the further development of Local Government in Western Australia;

### Enhanced Reputation and Relationships

- 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;

## 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.

## **5.7 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

- 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
- 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

- 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](http://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.

## 5.8 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

- 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.

## **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**

**Moved Shire of Coorow  
Seconded Shire of Northampton**

**That Items 5.1 – 5.7 of the Zone Agenda be noted.**

**Carried**

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**6.      WALGA President's Report to the Zone**

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**Moved Shire of Coorow  
Seconded Shire of Northampton**

**That the President's report be received and noted.**

**Carried**

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**7.      DATE, TIME AND PLACE OF NEXT MEETING**

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**That the next ordinary meeting of the Northern Country Zone will be on the 25 June 2018 at 10am at the Mingenew Sports Pavilion.**