State Council

Full Minutes

Wednesday

8 May 2019

NOTICE OF MEETING

Meeting No. 4 of 2019 of the Western Australian Local Government Association State Council was held at the City of Perth on Wednesday 8 May 2019. The meeting commenced at 4pm.

1. ATTENDANCE, APOLOGIES & ANNOUNCEMENTS

1.1 Attendance

Chair	Deputy President of WALGA, North Metropolitan Zone	Mayor Tracey Roberts JP
Members	Avon-Midland Country Zone	Cr Jan Court JP
	Central Country Zone	President Cr Philip Blight
	Central Metropolitan Zone	Cr Jenna Ledgerwood
	Central Metropolitan Zone	Cr Paul Kelly
	East Metropolitan Zone	Cr Giorgia Johnson (Deputy)
	East Metropolitan Zone	Cr Kate Driver
	Goldfields Esperance Country Zone	President Cr Malcolm Cullen
	Great Eastern Country Zone	President Cr Stephen Strange
	Great Southern Country Zone	President Cr Ronnie Fleay (Deputy)
	Kimberley Country Zone	Cr Chris Mitchell JP
	Murchison Country Zone	Cr Les Price
	North Metropolitan Zone	Cr Russ Fishwick JP
	North Metropolitan Zone	Cr Giovanni Italiano JP
	Northern Country Zone	President Cr Karen Chappel JP
	Peel Country Zone	President Cr Michelle Rich
	Pilbara Country Zone	President Cr Kerry White
	South East Metropolitan Zone	Cr Julie Brown
	South East Metropolitan Zone	Cr Brian Oliver
	South Metropolitan Zone	Mayor Carol Adams
	South Metropolitan Zone	Cr Doug Thompson
	South Metropolitan Zone	Mayor Logan Howlett
	South West Country Zone	President Cr Tony Dean
	South Metropolitan Zone	Cr Deb Hamblin (Deputy)
Ex-Officio	Local Government Professionals WA	Mr Ian Cowie
Observer	Great Southern Country Zone	President Cr Chris Pavlovich (Observer)
Secretariat	Chief Executive Officer	Mr Nick Sloan
	Deputy Chief Executive Officer	Mr Wayne Scheggia
	EM Environment & Waste	Mr Mark Batty
	EM Governance & Organisational Services	Mr Tony Brown
	EM Finance & Marketing	Mr Zac Donovan
	EM People and Place	Ms Joanne Burges
	EM Infrastructure	Mr Ian Duncan
	EM Business Solutions	Mr John Filippone
	Manager Strategy & Association Governance	Mr Tim Lane
	Executive Officer Governance	Ms Margaret Degebrodt
	Governance Advisor, Sector Support & Advice	Ms Lyn Fogg
	Governance Advisor, Legislation & Member Resources	Ms Amy Lin
	Strategic Sourcing Manager	Ms Alison Maggs

1.2 Apologies

President of WALGA	President Cr Lynne Craigie OAM
East Metropolitan Zone	Cr Brooke O'Donnell
South Metropolitan Zone	Cr Doug Thompson
South Metropolitan Zone	Cr Michael McPhail (Deputy)
South Metropolitan Zone	Cr Jon Strachan (Deputy)
Great Southern Country Zone	President Cr Keith House JP
Gascoyne Country Zone	President Cr Cheryl Cowell
Gascoyne Country Zone	President Cr Karl Brandenburg (Deputy)
Chair of Commissioners City of Perth	Mr Eric Lumsden

ORDER OF PROCEEDINGS

OPEN and WELCOME by Deputy President, Mayor Tracey Roberts
The Chair declared the meeting open at 4pm.

- Acknowledgement of Country
- Welcome to Cr Deb Hamblin – Deputy South Metropolitan Zone
- Welcome to President Cr Ronnie Fleay – Deputy Great Southern Country Zone
- Welcome to Cr Giorgia Johnson – Deputy East Metropolitan Zone
- Welcome to President Cr Chris Pavlovich – Shire of Plantagenet (observer)
- Welcome to State Councillors and WALGA secretariat

MEETING ASSESSMENT

The Chair invited Cr Russ Fishwick to undertake a meeting assessment at the conclusion of the meeting.

2 MINUTES OF THE PREVIOUS MEETINGS

2.1 Minutes of 27 March 2019 State Council Meeting.

Moved: **Cr Julie Brown**
Seconded: **President Cr Karen Chappel**

That the Minutes of the Western Australian Local Government Association (WALGA) State Council Meeting held on 27 March 2019 be confirmed as a true and correct record of proceedings.

RESOLUTION 41.4/2019 **CARRIED**

2.1.1 Business Arising from the Minutes of 27 March 2019.

Nil

3 DECLARATION OF INTEREST

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

I note that there are several State Councillors and deputies that may be directly or indirectly associated with the recommendations of the Selection Committee. I ask that if you are affected by these recommendations, that you excuse yourself from the meeting and do not participate in deliberations.

President Cr Ronnie Fleay declared an interest in Items 5.2 and 5.3.

PAPERS

State Councillors have been distributed the following papers under separate cover:

- Program State Council 8 May
- Strategic Forum Agenda
- Item 5.6 Executive Committee Meeting Minutes, Financials and High Level Plans; 15 April 2019
- Item 5.6A Executive Committee Business Arising – Preferred Supplier Program Performance Update May 2019
- Item 5.6B Confidential Special Executive Committee Meeting Minutes 1 May 2019
- Item 5.7 Selection Committee Minutes
- Item 5.8 Use of Common Seal
- CEO's report to State Council
- President's Report (previously emailed to your Zone meeting)

Agenda Items

4. EMERGING ISSUES

4.1 Confidential Emerging Issue – Proposed Amendment to the Building Regulations 2012 – Owners of Existing Buildings to Register Details of Combustible Cladding (05-015-02-0010 VJ)

By Vanessa Jackson, Policy Manager Planning and Improvement

Moved: **Cr Chris Mitchell**
Seconded: **Cr Paul Kelly**

That:

1. **The Minister for Commerce be advised that the Local Government sector will not accept the shifting of responsibility to undertake a State-wide Audit of combustible cladding on privately owned buildings;**
2. **WALGA formally advises the State Government that the proposed Amendment to the *Building Regulations 2012*, received on the 25 March 2019, is not supported; and**
3. **At the proposed meeting on 29 May 2019, the Hon Minister for Commerce be advised of the concerns and issues from the sector on this proposal and the legal advice received.**
4. **WALGA advocate for the Minister for Commerce to initiate Building Act 2011 amendments that ensure building owners are made responsible for identifying if a known building safety risk exists relevant to their building and if so, requires the building owner to provide inspection reports to State Government as an evidentiary basis for any necessary enforcement action.**

RESOLUTION 42.4/2019 **CARRIED**

In Brief

- The current WA State Government State-wide Audit for combustible cladding on buildings does not include privately owned buildings within BCA Class 5, 6, 7 and 8 (commercial buildings).
- A possible amendment to the *Building Regulations 2012* was circulated to Local Government officers to require owners of existing buildings with external combustible wall cladding to report certain information to the Building Commissioner.
- Feedback from Local Government officers and legal advice was provided to the Department of Mines, Industry Regulation and Safety on 1 May 2019.
- WALGA is meeting with the Minister for Commerce on 29 May 2019, to discuss this proposal and other issues under the *Building Act 2011*.

Attachments

1. Proposal to amend the *Building Regulation 2012 (WA)* - Owners of existing buildings to register details of combustible cladding
2. Feedback received from Local Government Building Surveyors

3. Legal Advice from McLeod's Barristers and Solicitors

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 policy position is that the Local Government sector supports the modernisation of the Building Act to create a better framework for the consideration and approval of building permits in WA.

Budgetary Implications

Nil.

Background

The WA State Government State-wide Audit for combustible cladding on buildings does not include privately owned buildings within BCA Class 5, 6, 7 and 8 (commercial buildings). The State Government has however conducted an audit of all public (commercial type) buildings owned by State Government.

The Local Government sector, WALGA and LGIS are concerned the absence of a regulatory process to identify combustible cladding risk in privately owned commercial buildings may present an unknown, unquantified risk to public safety.

In November 2018, WALGA sought views from the Department of Mines, Industry Regulation and Safety (DMIRS) and the office of the then Minister for Commerce, on among other things:

- Expanding the scope of the State-wide Building Audit to building classes and risks not yet addressed within the current State-wide Building Audit scope, and/or

- Amending the Building Regulations to implement a requirement for owners of existing buildings with external combustible cladding to report certain information and take action, similar to recent requirements imposed in New South Wales (NSW) and Queensland.

The then Minister for Commerce and DMIRS agreed to consider the feasibility of the proposal to amend the Building Regulations in a similar manner to the requirements imposed in New South Wales and Queensland.

On 25 March 2019, the Building & Energy division of DMIRS sent through a proposal to amend the *Building Regulations 2012* to require owners of existing buildings with external combustible wall cladding to report certain information to the Building Commissioner. The information reported to the Building Commissioner, whether a building does or does not have cladding, will then be provided to Local Government. The proposed Regulation would then require Local Government to undertake a risk assessment to determine whether a building order may be required under the *Building Act 2011*.

The Building Commissioner is seeking support from Local Government and WALGA before DMIRS would seek the Minister's approval to make the regulatory amendment.

Comment

The proposal was circulated only to Local Governments to comment on until 1 May 2019, with feedback submitted from Local Government Building Surveyors and specific advice sought and provided by WALGA's legal counsel.

WALGA and LGIS have been advocating to the State to continue with the State Wide Audit, as the serious risk of harm similarly applies to privately-owned commercial, office and other residential buildings not currently included in the State-wide Audit. As the State is aware of this risk and, in the absence of legislative amendments, which assigned a duty to the building owner, the State has a common law duty to address the known risk of serious harm through continuation of the State-wide Cladding Audit to remaining building classes 5, 6, 7 and 8.

The State has, through its execution of the State-wide Cladding Audit, developed skills, expertise and procedures that enable delivery of a consistent and reliable risk assessment for remaining privately owned building classes. Legislation does not compel Permit Authorities to undertake any retrospective auditing, which is why the State-wide Audit was initiated. Further, Local Government does not have the technical expertise, financial capability and resources to deliver a consistent and sustainable risk assessment across the State.

Of primary concern within the DMIRS commentary regarding the proposed amendment to the *Building Regulations 2012*, are the following statements: -

- The information provided by the building owner is unlikely to be sufficient for the Local Government permit authority to form a reasonable belief that a building is dangerous and to issue a building order on that basis. Rather, the Local Government permit authority will need to carry out a risk assessment to determine whether a building order should be issued.

- DMIRS will provide assistance to affected permit authorities through the provision of a risk assessment tool and through ongoing training and support in the use of the tool.

WALGA suggested a model to DMIRS that required a two-stage approach. The owner to confirm to the Building Commissioner whether their building does or doesn't have combustible cladding. If the building has combustible cladding, then the owner/s would be required to engage the services of a fire engineer to determine whether the cladding poses a risk, and what the level of risk is (i.e. Low, Moderate or High) and provide the resulting technical report to the Building Commissioner.

Where the technical report indicated a risk classified as Moderate or High, then DMIRS could provide the information to Local Government, thus providing a legal basis for the Local Government to initiate enforcement actions under the *Building Act 2011*. This replicates the current process under the existing State Wide Cladding audit that initiates Local Government involvement.

As part of WALGA and LGIS's consideration of the proposed amendment to the regulations, legal advice has been sought, specifically regarding: -

> *What head of power under the Building Act 2011, will enable a regulation specific to buildings within BCA Class 5, 6, 7 and 8 that:*
>
> - *Obligates a building owner to arrange for an inspection of their building to identify if a combustible cladding product has been used in the construction of the building façade, and obligates the building owner to notify the Building Commissioner if it is combustible.*
> - *Where a building owner has identified and reported the existence of a combustible cladding product on the façade of their building, obligates the building owner to arrange for a suitably qualified person to undertake a risk assessment (i.e. a modified version of the risk assessment used in the State-wide Audit) and to notify the Building Commissioner of the risk assessment outcome.*
>
> *Context: If the above process is capable of regulation, then the Building Commissioner may then provide the risk assessment outcome to the relevant Local Government, providing the basis for the Local Government to form a reasonable belief that the building is in a dangerous state so that a building order may be issued under s.110(g)(i), with the building order requiring the owner to obtain a Fire Engineering report in accordance with the Department of Mines, Industry Regulation and Safety "Fire engineering assessment of external cladding – Guidance Note'.*
>
> *If the regulation is capable of being made, what risks may arise from such a regulation?*

The advice from McLeod's (Page 4) indicates that Regulations could be made under section 93 of the Building Act to require owners of existing buildings to not only provide information to the Building Commissioner as to whether combustible cladding has been used in the construction of the building, but to also require the owner of an existing building to arrange for a suitably qualified fire engineer to inspect the building and carry out a fire risk assessment.

The advice also outlines concerns with the State Governments approach in shifting the responsibility of this issue to the Local Government sector, specifically the potential liability in undertaking the fire assessments and in undertaking enforcement, or not, based on a Local Government using DMIRS risk assessment tool.

Feedback from members on this possible amendment was met with opposition, citing numerous issues, including:

- Cost shifting to Local Government
- Lack of skills in Local Government to undertake fire assessments
- Abrogation of responsibility in the building process
- Impact on owners and ratepayers
- impact of future product failures and setting a precedent for Local Government to be involved in enforcement actions
- liability and cost implications for Local Government
- enforcement concerns if remediation isn't undertaken
- conflicts of interest in respect to Local Government having to undertake a risk assessment against their own approvals

- The administration, auditing, investigation, record keeping and enforcement should remain at a state level (i.e. DMIRS). This will ensure consistency in the assessment and enforcement action about resourcing, skills and knowledge.

The feedback and advice (Attachments 2 and 3) have been sent to DMIRS, however, it would be appropriate to formally resolve to advise the State Government that the Local Government sector will not accept the shifting of responsibility to undertake any State-wide Audit of combustible cladding on privately owned buildings. The proposed amendment to the Building Regulations is also not supported, as it doesn't require the building owner to undertake the fire risk assessment, but instead places this responsibility on Local Government to determine the level of risk.

WALGA has obtained a meeting on 29 May 2019 with the Hon Minister for Commerce, which will outline the following:

1. Legal advice received and the feedback from members on this State Wide Cladding Audit, and the use of Section 93 to seek owners confirmation of the level of risk posed by any cladding,
2. Changes to the *Building Act 2011* to ensure that future building product failures are dealt with in a centralised and consistent manner and provide the list of the TOP TEN improvements to the Building Act that the sector has been seeking for several years, and
3. DMIRS currently undertakes an auditing role, investigating compliance with BAL ratings, Roof tie downs, wind ratings of buildings etc. The Act currently enables DMIRS to undertake the enforcement actions, rather than passing these systemic failures of the building system to the Local Government to initiate any compliance actions.
4. That WALGA advocate for the Minister for Commerce to initiate Building Act 2011 amendments that ensure building owners are made responsible for identifying if a known building safety risk exists relevant to their building and if so, requires the building owner to provide inspection reports to State Government as an evidentiary basis for any necessary enforcement action.

It is proposed that WALGA's advocacy be in two parts:

1. <u>To immediately address risks associated with Combustible Cladding</u>

   WALGA to advocate for the Minister for Commerce to <u>prioritise initiating a Building Act 2011 regulatory amendment specific to combustible cladding</u> that requires BCA Class 5, 6, 7 and 8 (commercial) building owners to provide State Government with information about if a combustible cladding product has been installed on their building façade and if so, further requires the building owner to provide State Government with a fire risk assessment report, prepared by a suitably qualified fire engineer, as an evidentiary basis for any necessary enforcement action.

2. <u>To address risks arising from any future Building / Building Product safety issues</u>

   WALGA to advocate for the Minister for Commerce to <u>initiate a Building Act 2011 amendment that implements a statutory process</u> enabling a Ministerial Order to be implemented where a building or building product safety issues is identified in future; and requires any affected building owner to provide State Government with information about if that safety issue is relevant to their building and if so, further requires the building owner to provide technical reports (that quantify the risk and determine risk mitigation actions required) as an evidentiary basis for any necessary enforcement action.

ATTACHMENT 1

Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

PROPOSAL TO AMEND THE *BUILDING REGULATION 2012 (WA)*

Owners of existing buildings to register details of combustible cladding

March 2019

Purpose

The purpose of this document is to formally outline a proposal to amend the *Building Regulations 2012* (WA) (Building Regulations) to require owners of existing buildings with external combustible wall cladding to report certain information to the Building Commissioner. The information reported to the Building Commissioner will be provided to Local Government permit authorities for any compliance purposes under the *Building Act 2011* (Building Act).

Support from members of the Western Australia Local Government Association (WALGA) is sought before the Department of Mines, Industry Regulation and Safety (DMIRS) proceeds with the proposal contained herein.

Background

On 4 July 2017, the then Building Commissioner announced that in response to the Grenfell Tower fire in London the scope of an initial audit into the use of combustible cladding on some high rise buildings in Western Australia would be broadened into a state-wide cladding audit that would include Building Code of Australia (BCA) class 2, 3, 4 and 9 buildings over two stories. 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.

The state-wide cladding audit is now well progressed and DMIRS expects to conclude its role to determine the level of risk posed by combustible cladding on buildings by mid-2019.

In November 2018, WALGA sought the views from DMIRS and the office of the then Minister for Commerce, on among other things:

- Expanding the scope of the statewide cladding audit to include BCA class 5 and 6 (office and retail buildings); and/or
- Amending the Building Regulations to implement a requirement for owners of existing buildings with external combustible cladding to report certain information and take action, similar to recent requirements imposed in New South Wales (NSW) and Queensland.

The then Minister for Commerce and DMIRS agreed to consider the feasibility of the proposal to amend the Building Regulations in a similar manner to the requirements imposed in New South Wales and Queensland.

NSW requirements

In 2018, amendments[1] were made to the *Environmental Planning and Assessment Regulation 2000* (NSW) to introduce a scheme (NSW scheme) that requires owners of existing class 2, 3, 4 and 9 buildings of 2 or more storeys to which external combustible cladding has been applied to provide

[1] *Environmental Planning and Assessment Amendment (Identification of Buildings with External Combustible Cladding) Regulation 2018* (NSW).

the NSW Secretary of the Department of Planning and Environment (the Secretary) with details of the building and the external combustible cladding.

Under the NSW scheme, building owners are required to provide the details through an online portal which are then maintained on a register by the Secretary.[2]

Outside of determining and reporting that the building has external combustible cladding applied, no further obligations are imposed on the building owner under the NSW scheme. The Secretary may provide the details on the register to the relevant local council for any enforcement action and to NSW Fire & Safety.[3]

Queensland requirements

In 2018, a new Part 4 was inserted into the *Building Regulations 2006* (Qld) to require owners of class 2-9 buildings which were given building approval after 1 January 1994 but before 1 October 2018 to complete various parts of an online cladding checklist by a specific date (Queensland scheme).[4]

The reporting obligations under the Queensland scheme are more onerous than those under the NSW scheme. Initially, a building owner is required to provide details through an online system about the general construction of the building, with a particular focus on the external walls and any combustible cladding.[5] Depending on the initial assessment, the building owner may be required to complete a risk assessment of combustible cladding[6], and obtain a fire engineering report if the outcome of the assessment requires one.[7]

If the fire engineering report indicates that the building has combustible cladding, then the building owner must display a notice on the building within 60 days of the assessment. The notice must be displayed until the combustible cladding is removed from the building or a private building surveyor gives the owner a notice stating that the combustible cladding complies with the BCA.[8]

Proposal for consideration

After reviewing both the Queensland and NSW schemes and relevant provisions in the Building Act, DMIRS proposes that the Building Regulations could be amended to require owners of class 5, 6, 7 and 8 existing buildings of three or more storeys, occupied on or after 1 July 1997, that have combustible cladding forming part of or attached to an external wall, to provide certain information to the Building Commissioner, including:

- the name and address of each owner of the land on which the building is located'
- the address of the building(s);

[2] *Environmental Planning and Assessment Regulation 2000* (NSW), r.186T.
[3] *Environmental Planning and Assessment Regulation 2000* (NSW), r.186U.
[4] *Building and Other Legislation (Cladding) Amendment Regulation 2018* (Qld), which came into force on 1 October 2018.
[5] *Building Regulation 2006*, r. 16Q.
[6] *Building Regulation 2006*, r. 16T
[7] *Building Regulation 2006*, r. 16W.
[8] *Building Regulation 2006*, r. 16ZA.

- the classification of the building under the BCA;
- the number of storeys in the building, above and below ground;
- a description of any external combustible cladding applied to the building, including the materials comprising the cladding; and
- a description of the extent of application of external combustible cladding to the building and the parts of the building to which it is applied.

This proposal would be similar to the NSW scheme, in that the Building Commissioner will establish an online register for building owners to provide the required information by a specified date (e.g. 6-to-12 months after proclamation of the amendment regulation).

The Building Commissioner would then have an express power to provide the information on the register to the Fire and Emergency Services (FES) Commissioner and the Local Government permit authority in whose district the building is located.

It is also proposed that the Building Regulations be amended to provide:

- an express power for the Building Commissioner or the Local Government permit authority in whose district the building is located to direct the owner in writing to provide the Building Commissioner with the details about the building and any external combustible cladding that has been applied; and

- that is an offence for a building owner, without a reasonable excuse, to fail to provide the requirement information by the specified date, or comply with a written notice issued by the Building Commissioner or the Local Government permit authority.

If enacted, this proposal will place certain obligations on building owners, the Building Commissioner and Local Government permit authorities. These obligations are broadly described below.

Building owners

To comply with the reporting obligations building owners will need to satisfy themselves that the building has combustible cladding forming part of an external wall or another external part of the building. Combustible cladding in this sense will likely be defined by reference to the BCA or cladding deemed to be combustible under Australian Standards *AS1530-1994 – Methods for fire tests on building materials, components and structures*.

In some cases it may be easy for the building owner to satisfy themselves that the combustible cladding meets the relevant definition (e.g. they have access to appropriate records), but in most cases it is assumed owners will not be able to easily satisfy themselves of the type of cladding, or indeed if cladding is attached to the building.

Building owners will therefore need to engage an agent to carry out appropriate testing of the cladding to determine if it meets the definition of 'combustible cladding' for the purposes of complying with their reporting obligations. Carrying out the testing will impose a cost on building owners, but this is not expected to be significant (i.e. at or below $1,000).

However, it may transpire that some building owners are not aware that cladding has been attached to the building. In such cases, the reporting obligation will not be 'triggered' unless the Local Government permit authority forms a belief by reference to the building permit or Certificate of Construction Compliance that the cladding is combustible cladding, and issues a notice to the owner to comply with the reporting obligation.

Building Commissioner

Under the proposal the Building Commissioner will be responsible for establishing and maintaining the register and providing the information provided by building owners to the relevant Local Government permit authority and the FES Commissioner.

Both the Building Commissioner and Local Government permit authority will have the power to commence a prosecution (or issue an infringement notice) against an owner who fails to comply with the reporting obligations by the specified date.

Local Government permit authorities

Once a building owner has provided information through the online register to the Building Commissioner this will be referred to the Local Government permit authority in whose district the building is located. It will then be a matter for the Local Government permit authority to determine what, if any, enforcement action should be taken under the Building Act.

The information provided by the building owner is unlikely to be sufficient for the Local Government permit authority to form a reasonable belief that a building is dangerous and to issue a building order on that basis. Rather, the Local Government permit authority will need to carry out a risk assessment to determine whether a building order should be issued.

DMIRS will provide assistance to affected permit authorities through the provision of a risk assessment tool and through ongoing training and support in the use of the tool.

Given the costs imposed on building owners to carry out testing of cladding, it would be expected that once the information is provided to the Local Government permit authority by the Building Commissioner, a preliminary assessment will then be undertaken. DMIRS will need some assurances from WALGA members/Local Government permit authorities to this effect, before progressing the amendment to the Building Regulations.

Questions for consideration

The following questions are posed to determine the support for this proposed reform to the Building Regulations.

1. Do you/your members support the proposal as outlined?

2. What concerns (if any) do you/you members have with the proposal, or any aspects of the proposal?

Immediate next steps

Subject to receiving 'in-principle' support for the proposal, DMIRS will seek the Minister's approval to commence the processes necessary to make the regulatory amendment.

ATTACHMENT 2

Feedback on the Consultation Paper - Local Government Officer comments:

Comments on the above paper dated March 2019 are as follows:

1. It is considered important that any risk assessments that are undertaken for which to base any further legal action are undertaken by one source to ensure the assessing person(s) are properly trained and consistent in their approach. The proposal to require a broader group of Local Government Building surveyors is not considered suitable as they would not have the appropriate resources or training and may only need to apply it to a few instances and to jobs they may have actually assessed in the first instance.
2. This assessment is best left with State Government so that this risk assessment can be centrally controlled and consistently applied.
3. We have already seen a change to the risk assessment early in 2019 where buildings with cladding that had been removed from the audit had to be reassessed.
4. Taking a thoroughly considered and controlled approach to this issue was also considered an important step mentioned in a seminar by LGIS Lawyers McDonald Jackson and a representative from the English Local Government authority at a WALGA organised seminar in 2018.
5. The first investigation of class 2,3,4 and 9 buildings was undertaken by DMIRS. A large number of buildings were removed from the assessment using the risk assessment adopted by the DMIRS. Without any legislation to support variations to the Building Code that the Risk assessment tool may consider suitable would likely cause a further unacceptable risk for Local Government.
6. It is likely that the buildings that may require these risk assessments have been approved by the Local Government Building Surveyors. Regardless of whether the proposed risk assessment is carried out by the Building Surveyor or other person nominated by the Local Government, there will be an impartiality problem for the Local Government in performing any assessment.

In summary, it is considered that we do not support the proposal as written, and recommend that the proposal to amend Building Regulations 2012 be amended to:

a. Withdraw Local Governments involvement in any risk assessment, and
b. That we believe it would be best practice that the whole process dealt with by one central state government department to ensure it is dealt with in a consistent manner by appropriately trained and qualified persons.
c. We raise concerns with impartiality in respect to Local Government having to undertake a risk assessment against their own approvals.

After reviewing the attached it seems like the auditing process proposal is left at Local Governments door again. In my opinion the responsibility and ownership of this issue should be completed by the owner. LGs are not equipped with the resources and the recommendation of a using a tool (risk assessment) which will or is supposed to assists I don't thinks is acceptable. It seems that the onus or partial risk is left with Local Governments which should not be the case.

We regulate not provide advise on design for owners of buildings. What I have suggested

1. Owner of the building initiates the inspection and test and provides them to Local Government
2. LGs check this information and depending on the outcome, issue a building order to remove and reinstate cladding
3. Owner is responsible to comply and provide LGs with a revised CDC certifying the new cladding
4. LGs –provide the required Building permit on this basis

The City does not support the proposal as outlined.

The concerns include:

There needs to be a proper strategy developed in relation to combustible cladding and use of similar material in general. DMIRS - Building and Energy should not be tackling one area then propose how to address the remainder of the issue without considering the whole picture including the full implications being legal, insurance etc.

There would appear to be a case of cost shifting from state government to Local Government to implement, monitor and review. This would have long term implications to the current resourcing issues faced by Local Governments with various tiers of government delegating roles to Local Governments. The Department (Building and Energy) recently sourced costs analysis information from a number of Local Government and acknowledged Local Governments are not recovering anywhere near the cost to issue permits.

The City is concerned this will set a precedent of how DMIRS will address issues in the future and that is delegate to Local Governments with no additional funding, resources and legislation to support them. Again a strategic paper needs to be developed by DMIRS.

There needs to be independent legal advice on the implications DMIRS are proposing if it does get off the ground. I believe it is unfair that Local Governments, who all operate differently as there are no minimum standards, are expected to clean up an issue as a result of poor planning by DMIRS who have not implemented their role as a regulator.

It would appear appropriate that DMIRS continue with the process they developed for Class 2, 3 & 4's until such time an overall strategy is developed of how to deal with such issues. That way there would be the assurance that the information that building owners provide to DMIRS can be followed up to ensure is correctness, accuracy and so on.

The proposed amendment aimed at addressing problems associated with the use of composite cladding materials by the building industry have potential implications for Local Government authorities, these being;

- Proposed changes to the regulations are seen as a cost shift by the regulator (Building Commission) on to Local Government authorities;

- Proposed changes to the regulations put in to effect a process that sets a precedent with respect to the potential need for future Local Government authority involvement in dealing with other building related issues (not just those related to the problem currently at hand i.e. composite cladding panels).

- Liability and associated cost implications with respect to Local Government authority involvement in requiring the removal/remediation of relevant materials, involvement in enforcement, potential appeal and court challenge processes, requirement for action in default of the owner of the building etc.
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I would suggest that there is a need for considerable consultation and consideration of all implications of any proposed changes before such changes are enacted. Legal opinion should be obtained with respect to potential liability associated with the involvement of Local Government authorities in enforcement provisions relating to buildings that contain composite cladding material but which have received the necessary CDC, CCC and occupancy permit certificates.

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- Is there an indication on how wide spread this issue is in WA at this stage?
- I note that the proposal makes comments regarding the costs to owners. What about the costs to permit authorities in undertaking the risk assessment as proposed? Is it intended to be cost recovery? Is it intended that the assessment will be required to be undertaken by a prescribed type of person (e.g. Registered Building Surveyor or authorised person)? Could it be undertaken by a private building surveyor?
- If the building commission has the power to enforce, is it necessary for the permit authority to also be authorised i.e. could the commission follow through with the audit currently being undertaken (with a widened scope) and therefore undertake the enforcement role themselves?

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(1) The proposed changes as I see them are a cost shift of responsibility and liability from the State Government to Local Government. Both Federal and State Governments are dancing around the real issues regarding flammable cladding. That is builders are ultimately responsible for purchasing cladding materials for buildings under their supervision during construction. They are required to construct buildings in compliance with the Building Code of Australia. If they have purposely purchased an inferior cladding product they should be held solely accountable. If the builder has purchased an inferior cladding product that has been falsely certified as being non flammable should he be held accountable or the manufacturer of that inferior product or the Federal Government for allowing the inferior falsely certified product to be imported and sold in Australia as compliant with the Building Code of Australia. I believe the Federal Government followed by State Governments are falling over themselves to shift liability while not resolving the real issue of builders cheating through using cheaper claddings and the failure of the Federal Government to protect taxpayers from inferior and falsely certified building products entering this country in the first place.

(2) The proposed changes to the Regulations will in effect put in place a process that sets up a precedent with respect to the potential need for future local authority involvement (ultimately legal costs) in dealing with other building related issues (not just those related to the current problem). The recent withdrawal of nine certificates for composite cladding panels previously issued by Certmark International (the agency that the Australian Building Coded Board ABCB relies upon to determine whether building products are compliant) could also be cost shifted to Local Government through this proposed regulatory precedent.

(3) Liability and associated cost implications with respect to Local Government authority involvement in dealing with the requirement for removal/remediation of noncompliant claddings, involvement in enforcement, potential appeal and court challenge processes and requirement for action in default of the building owners noncompliance really are unanswered currently. Where do these changes leave local authorities relating to potential liability where

building permits have been issued after receiving the necessary CDC, CCC and issuing Occupancy Certificates.

I would recommend that there needs to be careful consideration and a very prolonged consultation process carried out to determine all implications including Legal Opinions to determine potential liability associated with involvement of local authorities in enforcement provisions relating to noncompliant composite cladding (flammable) and also the nine recent cladding types that have had their certifications withdrawn.

While this will undoubtedly create an impost on the community at large, and in LGs case the burden and responsibility for Notices, inspections etc, what price do you place on public safety? The Government cannot solely fund this proposal so the cost is being shared by all major stakeholders. Whether I support or not I think this proposal will go ahead regardless!

How will this affect Strata bodies such as a typical high rise Class 2 building? The building owner now is many people who had no control over what was built and have bought in good faith. Is this proposal paving the way to increase the audit scope to include all buildings other than Class 1 & 10 and of an undetermined age and size? If this is the intention then who will be paying for all this extra work. The owners if they know they have cladding, LG if the owners don't know as LG will then need to do a search of their records, or do we just say, 'it's your building you do the investigation'.

Is there a statute of limitations – how far back is far enough?

I have read through the document and have a few concerns as follows;

1. Page 4 of 5 bottom paragraph; how is this method to be completed? It would seem that L.G. may need to check every notification which would place significant strain on staff resources.
2. Page 5 of 5 second paragraph under 'Local Government permit authorities' my concern here is, who pays for the risk assessment the L.G. does to determine if a Building Order is required?
   - Perhaps L.G. issues a Building Order for the owner to arrange a risk assessment report?

I do not support some of the recommendations outlined in the DMIRS proposal. If the information provided by the owner is insufficient I think LGs forming a reasonable belief that the building is dangerous is an incorrect approach. The very fact that DMIR will provide a tool and assistance with this matter, to provide Local Governments to complete risk assessments would not be sufficient to determine if a building order should be produced (This can only be verified on competition of a material test (cladding) which is the current process. I prefer the Queensland's approach which is based on the building owner / fire consultancy engineer / and the private certifier providing all the information and this should then be provided to both the Building commission & LGs to enforce action or not.

Concerns: Given the current level of resources in LGs the Building commission / State Government should be providing funding for LGs/ Consultants to achieve compliance with such buildings in the future. I am aware that they are trying to financially assist owners with replacement materials. One of the main queries relate to a non-conforming building, does the city's insurance and enforcement allow for occupiers to vacate the building by building order if the building is found to be unsafe until the remedial works to the non-conforming cladding has been are undertaken ?

Questions should be also be asked as to how this was allowed to happen and whether the existing regulatory arrangements which rely heavily on either self-certification or certification by service providers that are close to developers/builders, as well as a lack of onsite inspections by Local Government Building Surveyors have contributed to this problem.

I find it impossible to support any proposal that places extra financial and human resources burden on the Shires I service as Building Surveyor. While in the "bush" this may not be as large a burden as would be encountered by the metropolitan and larger Shires, all the same it leaves Shires exposed to possible litigation costs into the future.
This is another clear abrogation of responsibility by others onto Local Government and cannot be supported. The State Government Departments and the other Department supported with funding from the State Government need to step up and start doing what they are supposed to do.

There is no information as to how Local Authorities are to fund the undertaking of risk assessments. It is also unknown how great a resource drain will occur in relation to staffing hours, and what skills will be required to carry out risk assessments on buildings and then to determine whether a building order should be issued.

There is no information regarding what happens if / when the property owner/s will not engage an agent to carry out appropriate testing at or below $1000 per building or per material?

Further it is unclear what will happen if non-compliant cladding is identified and the owner does not undertake remediation, regardless of whether a building order has been served. It is conceivable that Local Authorities may end up in court in a lengthy legal case, with the bill footed by the rate payers.

Local Authorities should be cautious when issuing building orders, as it may fall to the Local Authority to undertake remediation of the non-compliant aspects of a building, this could run into millions.
Neither the NSW or Queensland requirements delegate responsibility to the Local Authorities, legal advice should be sought.

Considering recent events relating to the use of combustible cladding, Council supports the in-principle the amendment of the Regulations to address the use of combustible cladding on existing structures and mitigate further risk.
The following comments are provided to WALGA to seek clarification in their formal submissions:

- Clarification is requested regarding the role of the Building Commissioner and Local Government. The proposed amendments empower both agencies to undertake a number of the proposed activities, however it is not indicted how it will be determined which organisation is to undertake the activity.
- It is the Councils preference that the proposed amendments empower the Building Commissioner to issue directions regarding potential combustible classing directly to the relevant owners or occupiers, with a notification to the Town to advise of the direction requirements.
    -

The City has reviewed the proposed amendment, and offers the following comments in response to the questions raised in the discussion paper.

The City is not supportive of the proposal given the high risk of the spread of fire, damage to buildings, injury and personal loss of life that could result from combustible cladding. The City sees it as being essential that the administration, auditing, investigation, record keeping and enforcement remain at a state level (ie Department of Mines, Industry Regulation and safety).
This will ensure consistency in the assessment and enforcement action that will be required, as well as reduce the potential cost to local authorities in having to resource the staffing and specialist agency testing that will be required.
The City is supportive of the Department of Mines, Industry Regulation and safety providing local authorities (as the record keeper) a copy of the register of buildings and enforcement action taken against property owners.

ATTACHMENT 3 – LEGAL ADVICE

McLEODS
BARRISTERS & SOLICITORS

Stirling Law Chambers
220 Stirling Highway
Claremont WA 6010
Tel (08) 9383 3133
Fax (08) 9383 4935
Email: mcleods@mcleods.com.au

PG:HK:WALG:44118

2 May 2019

Ms Vanessa Jackson
WALGA
Level 1, 170 Railway Parade
West Leederville WA 6007

Dear Ms Jackson

Combustible Cladding - Proposal to Amend the Building Regulations 2012

We refer to your email dated 5 April 2019 and your subsequent telephone conversation with Peter Gillett of this office in relation to the above matter.

WALGA has requested advice as to what head of power is available under the Building Act 2011 (**Act**) to enable regulations to be made requiring the owners of Class 5, 6, 7 and 8 buildings as defined by the Building Code of Australia to –

(a) arrange for an inspection of their building; and

(b) if combustible cladding has been used, arrange for a suitably qualified person to undertake a fire risk assessment and to notify the Building Commissioner of the results of that fire risk assessment.

WALGA has requested the above advice in light of a proposal by the Department of Mines, Industry Regulation and Safety (**DMIRS**) to amend the Building Regulations 2012 (**Regulations**) to require building owners to identify whether combustible cladding has been used in the construction of their building and, if combustible cladding has been used, to require the relevant local government to undertake the risk assessment to determine whether the building is in a dangerous state.

WALGA has advised tha: most local governments are unlikely to employ suitably qualified persons to undertake the required fire risk assessment to properly ascertain whether or not a building is in a dangerous state. Based on our experience, we agree with WALGA's advice in that regard.

Relevant heads of power

In our view, the most suitable provisions for making regulations requiring the inspection and assessment of combustible cladding used in the construction of existing buildings are contained in sections 45 and 93 of the Act. Of those, section 93 appears to be the most suitable as the power in section 45 is likely to be limited to buildings constructed since the

commencement of the Act whereas section 93 applies to all existing buildings. The provisions are discussed in more detail below.

Section 93

Section 93(1) of the Act provides:

"The regulations may provide for matters relating to –

(a) the safety or health of users of existing buildings whether or not an occupancy permit is required for the building; and

(b) amenity or sustainability of existing buildings whether or not an occupancy permit is required for the building".

The '*Building Regulations 2012 Explanatory Memorandum Current as at 1 October 2015*' published by DMIRS (**Memorandum**) identifies a number of existing regulations purported to have been made under section 93 of the Act. For example, the Memorandum identifies that all regulations contained in Part 8 of the Regulations were made either under section 93 generally or one of the sub-sections thereunder. Those regulations (in Part 8) provide for matters such as notification of change of classification of certain buildings, maintenance of buildings, private swimming pools and smoke alarms

The nature and extent of regulations already purportedly made pursuant to section 93 of the Act, particularly (for example) those in relation to the maintenance of existing buildings, appear to indicate that regulations could be made under section 93 requiring owners of buildings with combustible cladding to obtain and provide fire risk assessments of those buildings. However, we note that many of the current regulations purported to have been made under section 93 may contain requirements not provided for by section 93.

Pursuant to section 93(2) of the Act, regulations made pursuant to the power contained in section 93(1) may –

(a) provide for a specified building standard to apply to an existing building from a specified day or when a specified event occurs; and

(b) provide for an owner or occupier of an existing building to comply with a specified requirement, including the provision of information to specify persons, in relation to the building from a specified day or when a specified event occurs; and

(c) require an owner or occupier of an existing building to arrange for a person belonging to a prescribed class of persons to inspect or test, on a specified day, at specified intervals, or when a specified event occurs, the building for the purpose of monitoring whether provision of the regulations is being complied with; and

(d) require a permit authority to arrange for an authorised person to inspect or test or a specified day at specified intervals, or when an specified event occurs, an existing

building for the purpose of monitoring whether a provision of the regulations is being complied with; and

(e) provide for a person who buys, or takes on lease or hire, an existing building that does not comply with the specified building standard or requirement, to recover from an owner of the building the cost of making the building comply; and

(f) provide for the keeping of records in relation to inspections mentioned in paragraph (c) or (d); and

(g) provide for the reporting of information obtained from inspections mentioned in paragraph (c) or (d); and

(h) provide for charges to be imposed on an owner of land in respect of costs of inspections mentioned in paragraph (d).

Pursuant to section 92 of the Act, an 'event' is defined to mean, in relation to an existing building, the sale, lease or hire of the building; 'existing building' is defined to mean a completed building or incidental structure whether its construction was commenced or completed before or after the commencement of the Act; and 'specified' means specified in the regulations.

In our view, regulations made under section 93 of the Act are likely to be limited to those matters specified in section 93(2). That is, section 93(2) effectively limits the matters for which regulations can be made under section 93(1) to the specific matters mentioned in section 93(2).

Other sections of the Act which provide for the making of regulations all provide a head of power for making regulations and then provide examples of the matters for which regulations may be made while expressly providing that the primary head of power is not limited by the examples provided. For example, sections 36, 45 and 66 all provide a head of power for the making of regulations in subsection (1) of those sections. Subsection (2) of those sections then provides examples of the types of matters for which regulations may be made under that section prefaced with the words "*without limiting subsection (1)*". Section 93(2) is not prefaced by those words. As a result, the matters for which regulations under section 93(1) of the Act can be made is likely to be limited to those matters specifically mentioned in section 93(2).

If the power to make regulations under section 93 is limited as suggested above, then a number of regulations contained in Part 8 of the Regulations may be beyond power and invalid.

For example, regulation 50(1), which requires owners and occupiers of premises to ensure barriers are installed around private swimming pools, may be considered invalid because it does not provide that the requirement to provide a barrier applies from a specified day or when a specified event occurs or that an owner or occupier must comply from a specified day or when a specified event occurs. Similarly, regulation 48A, which requires the owner of an existing Class 2 to Class 9 building to ensure certain standards are maintained, does not specify a day or event to trigger that requirement.

It could be argued that the specified day from which a person must comply with regulations 48A and 50(1) is the day on which those regulations came into operation. However, if that were the case then the words 'from a specified day' contained in section 93(2) would have no work to do because any regulations made under that section would come into effect when the rest of the Regulations became effective in any event. Furthermore, it appears it was the intent of Parliament when enacting section 93 that section 93 would require a 'triggering event' for regulations made under that section to have effect.

The Explanatory Memorandum for the Act (the 'Explanatory Memorandum Building Bill 2010') stated that the purpose of section 93 was to provide "*a framework for regulations to prescribe standards for existing buildings, and to define events, such as sale or lease, that trigger the need for compliance*." In relation to the section 93(2), the Explanatory Memorandum stated that section 93(2) "*clarifies that the regulations may provide for a standard to apply to an existing building when a triggering event occurs*." Given those statements and the fact that section 93(2) operates to limit the broad power contained in section 93(1), it would appear it was the intent of Parliament that any regulations made under section 93 would need to specify the day or event from which those regulations (as opposed to the Regulations generally) would apply.

While regulation 47 relating to the change of classification of certain buildings could be said to provide a triggering event in that written notice must be given at least 10 business days before the proposed change of classification of the building, that is not a 'specified event' for the purposes of section 93(2). Pursuant to the definitions contained in section 92 and set out above, a specified event for the purposes of section 93(2) can only be the sale, lease or hire of the building. As a result, regulation 47 would again appear to be outside the scope of what is provided for by the power contained in section 93(2) of the Act unless it is said to apply from the commencement of the Regulations generally.

Despite the above, it appears DMIRS has proceeded either on an assumption that the power to make regulations provided by section 93(1) of the Act is a standalone power which is not limited by the matters contained in section 93(2) or on the basis that the specified day from which those regulations apply is the day upon which the Regulations as a whole come into effect. For the reasons set out above, there is certainly some doubt as to whether either of those approaches are correct.

In any event, leaving aside whether or not some of the existing regulations have been made within the power contained in section 93 of the Act, we are of the view that regulations could be made under section 93 requiring owners of existing buildings to not only provide information to the Building Commissioner as to whether combustible cladding has been used in the construction of the building but to also require the owner of an existing building to arrange for a suitably qualified fire engineer to inspect the building and carry out a fire risk assessment.

In our view, the power to require an owner of an existing building to provide information to the Building Commissioner as to whether combustible cladding has been used in the construction of the building is contained in section 93(2)(b) of the Act. As foreshadowed by DMIRS in its proposal, that requirement could be triggered by a specified event such as the

Building Commissioner directing owners of buildings by way of some form of state wide public notice to provide the Building Commissioner with that information.

Pursuant to the power contained in section 93(2)(c) of the Act, where the Building Commissioner receives information confirming that combustible cladding has been used in the construction of a building, the owner of that building could then be required to arrange for a suitably qualified fire engineer or some other person belonging to a prescribed class, to inspect and carry out a fire risk assessment of the building. Once again, that requirement could be triggered by a specified event such as the Building Commissioner directing the owner in writing to arrange for that inspection to be carried out.

Section 93(2)(d) contains an almost identical power to that contained in section 93(2)(c) except that it provides a power to require a local government to arrange for an authorised person to carry out the inspection as opposed to the owner of the building being required to arrange for the inspection to be carried out. However, given the fact that local governments are unlikely to employ persons with sufficient qualifications to properly carry out a fire risk assessment of a building incorporating combustible cladding, then it would seem preferable in our view for owners to be required to engage suitably qualified persons to carry out those assessments. As an almost identical power to that contained in section 93(2)(d) is contained in section 93(2)(c), there is nothing to prevent regulations being made requiring an owner of an existing building to engage a suitably qualified person to inspect the building and carry out a fire risk assessment.

Section 45

Section 45(1) of the Act provides:

"*The regulations may provide for matters relating to –*

(a) the safety or health of occupiers or other users of buildings requiring occupancy permits; and

(b) *amenity or sustainability of buildings requiring occupancy permits.*"

In our view, because Class 5, 6, 7 and 8 buildings require occupancy permits, regulations could be made under section 45 requiring the owners of those buildings to obtain and provide fire risk assessments where combustible cladding has been used in the construction of the building.

While the power contained in section 45(1) is not limited by section 45(2) in the same way the power contained in section 93(1) is limited, section 45(3) contains a significant restriction on the application of section 45(1). Pursuant to section 45(3), regulations cannot be made under section 45(1) which, in effect, would impact upon buildings for which there is an existing certificate of classification or occupancy permit for a building erected prior to the commencement of the Act or erected pursuant to a building licence issued prior to the commencement of the Act. As a result, regulations made under section 45 would only apply to buildings requiring an occupancy permit *and* erected pursuant to a building permit issued since the commencement of the Act.

In view of the above, while the power to make regulations contained in section 45 is not limited in the same way as in section 93, which requires a triggering event for regulations made under that section to apply, it contains perhaps a more significant limitation as it cannot be used to make regulations which apply to buildings erected prior to the commencement of the Act. Accordingly, in our view, section 93 provides the better head of power for making regulations in relation to combustible cladding.

Potential liability

In my view, local governments are likely to be exposed to potential liability for loss or damage arising from dealing with buildings containing combustible cladding if local governments are required to carry out the fire risk assessment of those buildings. That is because local governments are unlikely to employ suitably qualified persons to carry out those assessments.

The most likely scenario for exposure to liability is if a building assessed by the local government as being of low risk is subsequently the subject of a fire event in which combustible cladding on the building causes additional loss or damage which may have been avoided had the building been assessed at a higher risk level. In those circumstances, the local government may be considered liable for that loss by reason of it having failed to properly exercise its duty of care. Using unqualified personnel to carry out technical and specialised fire risk assessment can only increase that risk of potential liability.

The exposure to potential liability as a result of having unqualified persons undertaking fire risk assessments of buildings is a further reason why the legislation, if amended, should require owners of affected buildings to engage suitably qualified fire engineers to carry out the fire risk assessment. That will ensure that any liability in relation to assessment lies with the appropriately qualified engineer and not the local government.

Enforcement

While WALGA has not asked for specific advice in relation to enforcement, our primary concern with fire risk assessments being carried out by anyone other than a properly qualified and experienced fire engineer relates to enforcement.

If fire risk assessments are conducted by local government officers without relevant fire engineering experience, then any building order issued by a local government as a result of that assessment may be open to challenge. For example, where a person is given a building order on the basis that the building the subject of the order is in a dangerous state by reason of it incorporating combustible cladding and that person that fails to comply with the order, the local government will be required to commence prosecution proceedings to enforce the order.

As part of the prosecution proceedings, the local government will have to prove beyond reasonable doubt there was sufficient basis for the officer issuing the order to reasonably believe the building was in a dangerous state. Where the officer has no formal training in relation to fire engineering or fire risk assessment, the 'reasonableness' of the officer's belief may be open to challenge, particularly if an expert gives evidence on behalf of the person

given the building order that the building was not in a dangerous state despite the fact that combustible cladding may have been used in the construction of the building.

Given the potential costs involved in remedying the effects of combustible cladding used in the construction of a building, it can be anticipated that owners of affected buildings may not willingly accept assessments made by unqualified local government officers. Accordingly, it would be preferable if fire risk assessments were carried out by properly qualified persons so as to ensure any findings or reports are more likely to be accepted and able to withstand challenge. For those reasons, any regulations requiring assessments to be carried out should in our view require the owners of those buildings to engage suitably qualified persons to carry out those assessments. Not only will that ensure that assessments are properly carried out and enforceable but will also result in the assessment having been, in effect, carried out by the owner of the building and, therefore, much less likely to be challenged by the owner.

We trust the above advice is sufficient to enable WALGA to progress this matter. If, however, you have any questions or require something further, please contact Peter Gillett of this office.

Yours faithfully

Peter Gillett
Partner

Contact: Peter Gillett
Direct line: 08 9424 6217
Email: pgillett@mcleods.com.au

5. MATTERS FOR DECISION

5.1 Road Safety Audit Local Government Policy Template (05-001-03-0048 MS)

By Mal Shervill, Policy Officer Road Safety

Moved: **President Cr Karen Chappel**
Seconded: **President Cr Malcolm Cullen**

That the Road Safety Audit Local Government Policy Template be endorsed.

RESOLUTION 43.4/2019 **CARRIED**

Comment

It was noted that the definition of Corrective Action Report (CAR) in the Policy template is not required as it is not referenced in the document.

The WALGA staff will correct the template.

In Brief

- Austroads is the peak organisation of Australasian road transport and traffic agencies. Its purpose is to deliver an improved road transport system to meet current and future needs by undertaking research; and providing guidance on the design, construction and management of the road network and associated infrastructure.
- In February 2019 Austroads released an updated version of the *Guide to Road Safety Part 6: Managing Road Safety Audits*.
- The guide includes a road safety audit Local Government policy template, which provides a foundation for Local Governments as road managers to develop their own road safety audit policy should they elect.
- The road safety audit Local Government policy template is adapted from the City of Melville's policy.

Attachment

Road Safety Audit Local Government Policy Template

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

Policy Implications

Nil.

Budgetary Implications

Nil.

Background

A road safety audit as a concept and technique has existed since the mid-1980s. Over time, Austroads has provided guidance to road managers on conducting audits and its previous guide for road safety audits was published in 2009.

In February 2019 Austroads released a revised and updated version of the *Guide to Road Safety Part 6: Managing Road Safety Audits*. The revised guide provides a comprehensive overview and application of the road safety audit process. For the first time, the guide contains a Local Government policy template for road safety audits at Appendix G.2, which provides a foundation for Local Governments as road managers to develop their own road safety audit policy should they elect.

Comment

Compelling evidence exists that conducting road safety audits remains a highly effective way for road managers to identify safety-related risks and hazards so they can be mitigated with the ultimate intention of preventing fatal and serious injury crashes from occurring. Conducting road safety audits and implementing audit recommendations has saved many lives and remains fundamental to a road manager's network safety strategies.

A road safety audit is a formal technical assessment of road safety risks conducted by an independent qualified audit team, which reports on the crash potential and safety performance of a road project.

A road safety audit has the greatest potential for improving safety and is most cost-effective when applied to a road or traffic design before the road is built or permanently changed. It can be conducted on any design proposal that involves changes to the ways road users interact either with each other or with their physical environment.

There are typically four opportunities when a road safety audit can be conducted within the design and development process for a road or traffic project:

- At the feasibility stage.
- When the preliminary design stage is complete.
- When the detailed design stage is complete.
- At the pre-opening stage (or soon after the project is complete).

The benefits of road safety audits or road safety inspections include:

- Risk of crash occurrence is reduced.
- Severity of crashes can be reduced.
- Road safety is given greater prominence in the minds of road designers, traffic engineers and road funders.
- Need for costly remedial work is reduced.
- Total cost of a project to the community, including crashes, disruption and trauma, is reduced.

To assist Local Governments to manage their road network, Austroads has released a revised *Guide to Road Safety Part 6: Managing Road Safety Audits* (2019). It aims to:

- Inform practitioners about road safety audit principles and concepts; and encourage the conduct of audits and other assessment to maximize their benefits.
- Ensure practitioners are aware of up-to-date operating environments and contexts e.g. Safe System approach to road safety, and recent developments in predictive risk assessments.

The guide now contains a road safety audit policy template adapted from the City of Melville's road safety audit policy. In accordance with the Australian National and WA State Road Safety Strategies, the Austroads policy template adopts a Safe System approach to the delivery of a road safety audit service by placing emphasis on fatal and serious crashes.

While some Local Governments have a policy for road safety audits, the Austroads road safety audit Local Government policy template provides a solid foundation for other Local Governments to consider developing their own road safety audit policy.

The policy template provides for the identification of objectives, scope and a policy statement. Relevant definitions are contained within the template along with the composition of an audit team. The template also provides a framework as to when to audit i.e. road projects within certain value ranges; land developments; and existing roads.

Attachment Item 5.1

ROAD SAFETY AUDIT
LOCAL GOVERNMENT POLICY TEMPLATE

POLICY OBJECTIVES

To set out the requirements for conducting Road Safety Audits in [insert organisation].

To improve the safety of the road network and developments in the [insert organisation] and ensure measures to eliminate or reduce road environment risks for all road users are fully considered with emphasis placed on fatal and serious crash risk.

To promote the development, design and implementation of a safe road system through the adoption of formal road safety auditing principles and practices.

POLICY SCOPE

This policy applies to [insert organisation] road infrastructure projects and to qualifying projects that are subject to the [Development Application processes].

The policy applies to all District Distributor, Local distributor and Local Access Roads within the [insert organisation].

DEFINITIONS / ABBREVIATIONS USED IN POLICY

Audit Team means a team that shall comprise of at least two people, independent of the design team, including members appropriately experienced and trained in road safety engineering or crash investigation with knowledge of current practice in road design or traffic engineering principles who undertake the road safety audit.

Audit Team Leader means the person with appropriate training and experience with overall responsibility for carrying out the audit and certifying the report. An Audit Team Leader practicing in Western Australia must be an IPWEA/Main Roads Accredited Senior Road Safety Auditor.

Audit Team Member means an appropriately experienced and trained person who is appointed to the Audit Team and who reports to the Audit Team Leader. An Audit Team Member practicing in Western Australia must be an IPWEA/Main Roads Accredited Road Safety Auditor.

Corrective Action Report (CAR) means a tabular summary report prepared by the Audit Team to be completed by the Asset Owner, Project Owner, Project Coordinator or delegated representative to respond to identified findings and recommendations detailed in the audit report.

Crash investigation means an examination of crashes to identify patterns and common trends that may have contributed to crash causation or crash severity. This can include the detailed investigation of a single crash.

Permanent change means any permanent change to the road network, excluding like for like maintenance replacement works and temporary works.

Public road means a road either under the control of [insert organisation], or any other road accessible by the public (excludes private roads).

Road Safety Audit means a formal, systematic, assessment of the potential road safety risks associated with a new road project or road improvement project conducted by an independent qualified audit team. The assessment considers all road users and suggests measures to eliminate or mitigate those risks.

Road safety engineering means the design and implementation of physical changes to the road network intended to reduce the number and severity of crashes involving road users, drawing on the results of crash investigations.

Road Safety Inspection means a formal examination of an existing road or road related area in which a qualified team report on the crash potential and likely safety performance of the location, (formerly known as an 'Existing Road Safety Audit').

Safe System means a road safety approach adopted by National and State Government to generate improvements in road safety. The Safe System approach is underpinned by three guiding principles: people will always make mistakes on our roads but should not be killed or seriously injured as a consequence; there are known limits to the forces the human body can tolerate without being seriously injured; and the road transport system should be designed and maintained so that people are not exposed to crash forces beyond the limits of their physical tolerance.

Specialist Advisor means a person approved by the client who provides independent specialist advice to the audit team, such as, road maintenance advisors, traffic signal specialists, police advisors, WALGA RoadWise road safety advisors, and individuals with specialist local knowledge.

POLICY STATEMENT

This policy requires the following commitments be adopted as part of a strategic framework for the implementation of road safety audit principles and practices in the planning and development of infrastructure within the [insert organisation].

Include road safety audit goals and objectives in our Corporate Plan and Business Management Systems.

Background

In accordance with the Australian National and the Western Australia State Road Safety Strategies this policy adopts a Safe System approach to the delivery of a road safety audit service by placing emphasis on fatal and serious crash risk.

The road safety audit process is an assessment of road engineering projects and as such the Safe System sphere of influence is limited to two of the four cornerstones of the Safe System approach, namely, Safe Roads and Roadsides, and Safe Speeds.

This is to be achieved by focusing the audit process on considering safe speeds and by providing forgiving roads and roadsides. This is to be delivered through the road safety audit process by accepting that people will always make mistakes and by considering the known limits to crash forces the human body can tolerate with the aim to reduce the risk of fatal and serious injury crashes.

A road safety audit is a formal examination of a future road or traffic project in which an independent qualified team reports on potential crash occurrence and severity which may result from the introduction of the project.

Road safety audits are a proactive process to prevent the occurrence of road crashes. The road safety audit process provides project managers with a mechanism to identify potential crash risk in the delivery of infrastructure projects and aims to reduce the risk of trauma and crashes on the road network.

In the implementation of this policy the road safety audit approach to be taken is: that it is not acceptable that any human should die or be seriously injured on the [insert organisation] road network, and specific road safety audit findings shall be highlighted in this regard.

Application

Road safety audits and road safety inspections must be conducted in accordance with the *Austroads Guide to Road Safety Part 6 Managing Road Safety Audits*, and [insert organisation] complimentary checklists and procedures.

The road safety audit process must be completed using the [insert organisation] provided on the [insert organisation] website.

All road safety audits must be repeated if the project design materially changes, if there are many minor changes which together could impact on road user safety, or if the previous road safety audit for the relevant stage is more than three years old. Should a project not begin the next stage in its development within three years of the completion of the previous audit, the project must be re-audited. This is to ensure that due consideration is given to the project's interface with the existing road network.

Relevant staff shall be trained to fulfil the training and experience requirements to achieve and maintain road safety auditor accreditation.

Where appropriate, a reciprocal partnership agreement will be arranged with other Local Governments to create opportunities for road safety audit teams to include qualified independent team members from those partnering Local Governments.

Road Safety Audit Team

- All road safety audit teams must comprise a minimum of two members.
- All audit teams must be led by a suitably qualified and experienced [Western Australia IPWEA/Main Roads] Accredited Senior Road Safety Auditor and shall be listed on the Road Safety Audit Portal so that the maximum emphasis is placed on road safety engineering and Safe System principles.
- All audit team members must be [Western Australia IPWEA/Main Roads] Accredited Road Safety Auditors and shall be listed on the Road Safety Audit Portal.
- Specialist advisors, such as, police advisors or technical experts can assist the audit team by providing independent specialist advice on particular aspects of a project. There is no requirement for a specialist advisor to be an Accredited Road Safety Auditor. Specialist advisors shall be listed as an "Advisor" in the audit report and shall not be listed as a team member.

- The audit team shall include a Local Government officer (they can be a specialist advisor).
- Team leaders/members shall excuse themselves from participation in the audit if:
  - They have had any involvement in planning, design, construction or maintenance activities for road infrastructure for the project.
  - They perceive any possibility of duress or coercion by their employer or employer's staff in relation to the audit.
- Persons not accredited as a road safety auditor or do not have relevant specialist skills may still participate as an observer if invited to do so by the team leader.

When to Audit

- Black Spot Projects

  Road safety audits shall be conducted on all Black Spot funded projects as per State Black Spot Program Development and Management Guidelines.

- Road projects with a project value [≥ $1 million]

  All road infrastructure projects that involve a permanent change to the [insert organisation] road network with an estimated project value [≥ $1 million] shall have a road safety audit undertaken at the following 3 stages as a minimum:
  - Stage 2 - Preliminary design
  - Stage 3 - Detailed design
  - Stage 4 - Pre-opening (when the project is substantially complete and prior to opening to the public)

- Road projects with a project value [≥ $150,000 and < $1 million]

  All road infrastructure projects that involve a permanent change to the [insert organisation] road network with an estimated project value [≥ $150,000 and < $1 million] shall have a road safety audit undertaken at the following two stages as a minimum:
  - Stage 3 - Detailed design
  - Stage 4 - Pre-opening (when the project is substantially complete and prior to opening to the public)

- A detailed design road safety audit shall be carried out on a road project that involves a permanent change to the [insert organisation] road network with a project value [< $150,000] if it is considered complex and/or high risk at the discretion of the [insert Policy Owner].

Land Developments

Road safety audits shall be conducted on land use developments that intersect the [insert organisation] road network in accordance with the requirements of this policy. The road project value warrants above shall be used to determine audit requirements, with the exception of projects with an estimated project value [< $150,000] that meet any of the following warrants:

- Subdivisions of more than [20] lots;
- Car parks providing access for more than [50] vehicles;

- Developments that are likely to generate traffic movements in excess of [100] movements per day;
- Projects that are likely to generate increased pedestrian or cycle movements, or where significant numbers of pedestrians or cyclists are nearby; or
- Project locations where potential road safety risks are identified by the [insert organisation].

Land use developments that involve a permanent change to the public road network with an estimated project value [< $150,000] that meet any of the above warrants shall have a road safety audit undertaken at the following two stages as a minimum:

- Stage 3 - Detailed design
- Stage 4 - Pre-opening (when the project is substantially complete and prior to opening to the public)

The road safety audit shall include the internal road network and parking area within the development.

Existing Roads

Road safety inspections shall be undertaken for existing intersections or road sections where there is a traffic management or road safety concern, at the discretion of the [insert Policy Owner].

Close out

The Asset Owner, Project Owner, Project Coordinator, or the delegated representative shall complete the Corrective Action Report within [one calendar month] and arrange for the completed and signed report to be recorded on the [insert organisation] records system and a copy forwarded to the audit team leader.

The [Asset Owner, Project Owner, Project Coordinator, or the delegated representative] shall be responsible for the proposed actions and comments resulting from the Corrective Action Report.

5.2 'Preferred Model' for Third Party Appeal Rights for Decisions Made by Development Assessment Panels (05-073-01-0002 VJ)

By Vanessa Jackson, Policy Manager Planning and Improvement

President Cr Ronnie Fleay declared an interest in Items 5.2 and 5.3 and left the room at 4:26pm.

Moved: **President Cr Michelle Rich**
Seconded: **President Cr Malcolm Cullen**

That WALGA:

1. **Continues to advocate for the State Government to introduce Third Party Appeal Rights for decisions made by Development Assessment Panels; and**
2. **Endorses the 'Preferred Model' as presented in the May 2019 Agenda, as the third party appeals process for decisions made by Development Assessment Panels.**

AMENDMENT

Moved: **Cr Paul Kelly**
Seconded: **Cr Jenna Ledgerwood**

2 **Endorses the 'Preferred Model' as presented in the May 2019 Agenda, as the third party appeals process for decisions made by Development Assessment Panels and in future give consideration to broadening Third Party Appeal Rights to other parties relating to Development Assessment Panel decisions**

CARRIED

MOTION AS AMENDED

That WALGA:

1. **Continues to advocate for the State Government to introduce Third Party Appeal Rights for decisions made by Development Assessment Panels; and**

2. **Endorses the 'Preferred Model' as presented in the May 2019 Agenda, as the third party appeals process for decisions made by Development Assessment Panels and in future give consideration to broadening Third Party Appeal Rights to other parties relating to Development Assessment Panel decisions.**

RESOLUTION 44.4/2019 **THE MOTION AS AMENDED WAS PUT AND CARRIED**

In Brief

- At the May 2018 WALGA State Council meeting, it was resolved to amend the policy position to support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels (DAPs).
- State Council also resolved to further consult with members to provide more clarity on the exact details of the criteria that need to be established, before any system is implemented by the State Government. A preferred model was prepared at a workshop with members, then circulated for members to provide comment on the specific details before the 29 March 2019.
- A wide range of comments have been received from members, therefore, the 'Preferred Model' has now been refined and is attached for State Council's endorsement.

Attachment

Attachment 1 – Summary of Members Submissions
Attachment 2 – 'Preferred Model' circulated for comment

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;
- Promote WALGA's supplier agreements to assist Local Governments.

Policy Implications

The Local Government sector supports the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels (DAPs)

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 during 2017.

At the May 2018 WALGA State Council meeting, it was resolved to amend the policy position to support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels (DAPs) (Resolution 37.2/2018). The following resolutions were made: -

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

Comment

The new policy position was submitted to the State Government and also included in the submission of the Independent Review of the Planning System in July 2018 (the Green paper).

The Hon Minister for Planning has provided a response, indicating that Third Party Appeal Rights are not included in the Green paper, as they would *"add unnecessary complexity and red tape to the planning framework, contrary to the intent of the review".* This statement could perhaps be challenged as the objectives of the Review were also about providing a modern and accountable planning system.

As State Council resolved to further consult with members to provide more clarity on the exact details of the criteria that need to be established, before any system is implemented by the State Government, a preferred model was prepared following discussions with members at a workshop in November 2018. The preferred model was then circulated in December 2018, for members to provide comment on the specific details before the 29 March 2019.

Attachment 1 provides all of the comments received on the Preferred Model from the 18 Local Governments who provided comments.

In summary,

- Support for the model was provided from 3 Local Governments
- Support for the model, with amendments, was provided from 7 Local Governments
- Support for third party appeals to be expanded to other decisions from 2 Local Governments.
- Do not support the introduction of the preferred model of third party appeals or any model of third party appeals from 6 Local Governments

In regard to the comments for Third Party Appeal Rights to be broader than the preferred model, suggestions included: -

- Support for widening of Third Party Appeal Rights to other decisions, not just DAPs
- Support for the issue to be included in the State's Planning Reform process.
- Support for the Preferred Model but not further expansion without further consultation.

The following comments or queries were provided on the specific details of the Preferred Model: -

- Supportive of Local Governments being able to lodge an application for review to the SAT of DAP decisions, to include submissioners and other interested parties in their process raises other planning considerations
- Recommends that the scope of those who can appeal is broadened so it does not have the effect of excluding appeals lodged for valid planning reasons
- Third party appeal rights only being provided to a public authority where DAP has made a decision contrary to their advice; and Third party appeal rights not being provided to any other interested party which previously made a submission

- Third party appeal rights only be extended to a responsible authority for applications determined by the Development Assessment Panel in a manner inconsistent with a recommendation prepared by those parties
- Support for the principle of Local Governments being able to challenge and seek review of DAP decisions that are made contrary to the recommendations of the Responsible Authority Report (RAR) or Council position
- Support for the principle of other third parties being able to challenge and seek review of DAP decisions only when decisions are made contrary to the recommendations of a RAR or Council decision
- Support for the principle of generally improving the accountability and transparency of Development Assessment Panel decisions
- The model does not however outline if there is a further legal process against the outcome of any third party appeal. Currently any SAT decision can be appealed to the Supreme Court. It is believed to limit ongoing delays this should be excluded from this process
- How to manage multiple appeals?
- Is there to be a limit on the number of Third Party Appeals that may be lodged in regard to a particular application?
- How would simultaneous Third Party Appeals, from different applicants be managed?
- Why are Form 2 DAP applications for extensions of time exempt from Third Party Appeals? Recommends that the draft preferred model also be modified to allow for third party appeal rights to apply to all Form 2 decisions
- Support for a 28 day appeal submission process
- Support for a 42 day appeal submission timeline
- Support for a 60 day appeal submission timeline
- This Preliminary Hearing needs to be undertaken in a simple and efficient way, and the City therefore recommends that the practicalities of this be given more consideration by WALGA
- The draft preferred model provides little detail with respect to the cost implications of third party appeal rights for DAP decisions
- The Preliminary Hearing should be integrated into the existing Directions Hearing process
- The preferred model lacks specific detail regarding the following matters:
  - Limiting Third Party Appeal applicants to those who made a submission may exclude adjoining/nearby owners and residents who are legitimately adversely affected by a development from lodging an application
  - What specifically is defined as “valid planning grounds” i.e. definitions are required
  - What specific process is followed during a Preliminary Hearing where applicants may be required to submit evidence to justify whether they have sufficient grounds to lodge an appeal
  - What process Local Government should follow to determine whether they should lodge an appeal or not
  - Why multiple parties can’t lodge Third Party Appeals (e.g. respondent, community members and the local government),
  - What qualifications are required by a “Planning Assessor” who will be assessing whether a Third Party has reasonable grounds for appeal?

Other comments received on Third Party Appeal Rights more generally:

- Considers that it would inconsistent with principles of natural justice for a third party to be able to lodge an appeal against a decision made by a DAP but not be able to lodge an appeal against the same decision made by a Local Government on an identical development proposal.

- Considers that alternative planning reform measures associated with DAP function and processes, would be a more appropriate method of addressing issues associated with DAP decision making.
- WALGA should undertake a detailed analysis of other planning systems which have third party appeal rights therefore requested that WALGA undertake this analysis before committing only to third party appeal rights for DAP decisions.
- The scope of a Third Party Appeal Rights system should be limited to a review of decisions on development proposals that involve matters of substantial public interest to the local community and/or involve the exercise of significant discretionary assessment by the decision-maker under the relevant statutory and policy framework.
- Suggest that WALGA is extremely cautious about advocating in favour of Third Party Appeal Rights. The topic could easily be introduced with the support of WALGA and then morphed to a model that would provide for Third Party Appeal Rights against Council decisions. Such a system would provide for additional manipulation of Local Government planning processes and would reduce surety for applicants.

Concluding comment

The purpose of this round of member consultation was to consider the exact details of the draft 'Preferred Model'. Having a preferred model would assist in advocacy with the State Government in outlining how the introduction of Third Party Appeal Rights for decisions made by DAPs could occur.

In reviewing the comments received, the following amendments to the preferred model have been incorporated: -

- Only a Local Government will be able to challenge and seek review of DAP decisions that is made contrary to the recommendations of the Responsible Authority Report (RAR) or Council position.
- Third Party Appeals not to be extended to decisions made by any other Authorities, just decisions made by DAPs
- Other submissioners and other interested parties would not be included in this model, removing any multiple appeals being lodged for the same application
- Allow for third party appeal rights to apply to all Form 2 decisions including extensions of time
- Proposed preliminary hearing to be aligned/combined with the existing Directions Hearing process
- Include within the model the existing right of appeal of the SAT decisions to Supreme Court
- Discuss with SAT the definition of 'valid planning grounds' to determine whether the submission has reasonable grounds for appeal

It is therefore recommended that the Association continues to advocate for the State Government to introduce Third Party Appeal Rights for decisions made by Development Assessment Panels, with a Preferred Model, with the modifications as suggested by members.

Attachment 1 – Members Submissions on the specific details of the preferred model

#	Local Government	Comments
1	City of Joondalup	In response to the Western Australian Local Government Association's preferred model for third party appeal rights for decisions made by Development Assessment Panels, ADVISES the preferred model is supported subject to: 1. consideration being given to how multiple appeals on a single decision would be managed; 2. consideration being given to an increase in the period for a local government to lodge an appeal, to 42 days; 3. consideration being given to limiting appeals on decisions on amended applications to the extent of the amendment, and not permitting the amended approval in its entirety to be the subject of an appeal.
2	City of Cockburn	(1) support the draft Preferred Model prepared by the Western Australian Local Government Association (WALGA) for Third Party Appeal Rights for decisions made by Development Assessment Panels (DAPs) subject to the following modifications being undertaken: 1. Third party appeal rights only being provided to a public authority where DAP has made a decision contrary to their advice; and 2. Third party appeal rights not being provided to any other interested party which previously made a submission.
3	Shire of Northampton	That Council notify the Western Australian Local Government Association that it supports the preferred model of Third Party Appeals to the decisions made by a Development Assessment Panel, but does not support further expansion of Third Party Appeals without further consultation.
4	Shire of Cunderdin	That Council advises WALGA that it supports the introduction of third party appeal rights for decisions made by Development Assessment Panels.
5	City of South Perth	That Council endorses, the proposed WALGA Third Party Appeal Rights in Planning model for decisions made by the Development Assessment Panels, subject to clarification being provided on the following matters prior to presentation to the WALGA Zones and State Council for endorsement and with the following changes: 1. a. Is there to be a limit on the number of Third Party Appeals that may be lodged in regard to a particular application? b. How would simultaneous Third Party Appeals, from different applicants be managed? c. Why are Form 2 DAP applications for extensions of time exempt from Third Party Appeals? 2. That Council support Third Party Appeal Rights being extended to State Administrative Tribunal and Western Australian Planning Commission decisions; and 3. 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
6	Town of Victoria Park	That Council: 1. Advises the Western Australian Local Government Association of its support for the proposed model for the introduction of 'Third Party Appeal Rights for decisions made by Development Assessment Panels', as included in Appendix 1. 2. Proposes to the Western Australia Local Government Association that further consultation regarding specific details, and operation, of the model be undertaken with local government and the community, should it be considered for introduction into legislation.
7	Shire of Toodyay	That Council, in relation to the Western Australian Local Governments Preferred Model for Third Party Appeal Rights for decisions made by Development Assessment Panels, advises it supports this proposal.

8	City of Subiaco	That Council 1. Supports WALA's preferred model for Third Party Appeal Rights for decisions made by Development Assessment Panels other than in respect of the proposal that appeal rights not be available for DAP decisions relating to applications for extensions of time; 2. Directs the Chief Executive Officer to amend the comments in Table 2 of this report to convey that the City of Subiaco considers that appeal rights should be available, against DAP decisions relating to applications for extension of time, and authorises the Chief Executive Officer to then forward the comments in Table 2 of this report (as amended) to WALGA with the Council resolution. 3. 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 refinements and review of the appeals process can be undertaken.
9	City of Rockingham	In August 2016, the Council adopted an advocacy position to support the abolition of Development Assessment Panels. In the event that they remained, the Council adopted a secondary position to advocate for a number of reforms to DAPS, which included enabling local government to seek review of DAP decisions by the State Administrative Tribunal (SAT). This and other reforms were supported to ensure greater accountability, transparency and procedural fairness of DAP decisions. The City's understanding of the preferred model for third party appeal rights, is to allow local governments to be able to consider lodging an application for review to SAT, to defend the merits of their policies and enforceability of their conditions, when aggrieved by a determination of DAP. The WALGA preferred model also provides for '*other interested parties'* community members and public authorities, who made a submission, to lodge an application for review. While the Council is supporting of local governments being able to lodge an application for review to the SAT of DAP decisions, to include submissioners and other interested parties in their process raises other planning considerations. The following comments are provided by City officers, given the timing for submissions to WALGA. <u>Other interested parties</u> With respect to the ability of other interested parties being able to lodge a third party appeal, Councils and Local Governments may have a different view on the relevance of submissioners concerns and how they could be managed through the imposition of conditions for development approval. Submissioner intervention in the SAT review process does not appear to be warranted, given the following: - - Community consultation is already provided for in accordance with the Local Planning Scheme, which affords an opportunity for submissions to be lodged and considered before an application for development approval is considered by Council and determined by a DAP. - - The City is cognisant of the need for applicants seeking certainty in the application of planning laws and requirements. The establishment of third party appeal rights for aggrieved submissioners on DAP decisions could increase uncertainty and create further delays in the over development approval process. The WA Planning system is already criticised for being slow, unresponsive and complex. - The City of Concerned that submissioner applications for SAT review are more likely to originate from well-organised, well-connected and well-resourced individuals that no not necessarily represent wide community views. Some individuals may have access to more resources but would be motivated by self-interests which do not necessarily represent a broader community interest. - DAP applications, when advertised for public comment, can generate a significant number of submissions. This potentially means that multiple applications for SAT review may be lodged on the same DAP decision by competing parties with differing interests. It is unclear from WALGA's preferred model how this is intended to be considered.

		The City supports the ability for third party appeals on DAP applications for Councils, but it does not support the process being broadened to include aggrieved submissioners for the above reasons.
10	City of Fremantle	Thank you for providing the opportunity for WALGA members to comment on the draft preferred model for Third Party Appeal Rights for decisions made by Development Assessment Panels which has been developed following a resolution passed at the May 2018 WALGA State Council meeting. The following comments are submitted on behalf of the City of Fremantle, and are based on a position of the City of Fremantle Council as resolved at the Ordinary Meeting of Council on 26 July 2017 and subsequently submitted to WALGA at that time. ▪ 1. The City of Fremantle does not support a model which restricts Third Party Appeal Rights (TPAR) to decisions made by Development Assessment Panels only. The City considers that any TPAR system should apply on the basis of the type of decision, irrespective of which decision-making body made the decision to be reviewed by appeal. In other words, decisions on development approvals made by local governments and the WA Planning Commission as well as decisions made by Development Assessment Panels should be open to appeal. ▪ 2. The right to appeal should be limited to third parties who are demonstrably interested in and affected by a decision, e.g. parties who made a submission on an application prior to its determination and who reside or own property in the same local government district. ▪ 3. Any TPAR system should include safeguards to prevent appeals being lodged for vexatious or other reasons not based on legitimate planning considerations, e.g. commercial competition interests. The inclusion of a provision to this effect in the draft referred model under the heading 'If any appellant makes a submission' is supported. ▪ 4. The City supports the proposal that the timeframe for lodging a third party appeal should be the same 28 day period from the date of the decision as already applies to applications for review by the SAT which may be submitted by applicants for development approval. ▪ 5. The scope of a TPAR system should be limited to a review of decisions on development proposals that involve matters of substantial public interest to the local community and/or involve the exercise of significant discretionary assessment by the decision-maker under the relevant statutory and policy framework. The City of Fremantle does not support the proposal in the draft preferred model to limit appealable decisions to those made on proposals which are mandatory or optional DAP determinations or amendments to previous DAP applications ('Form 2' applications). Particularly in the case of applications which fall within the threshold for applicants to exercise the option for local government or DAP determination, the City considers it would inconsistent with principles of natural justice for a third party to be able to lodge an appeal against a decision made by a DAP but not be able to lodge an appeal against the same decision made by a local government on an identical development proposal.
11	City of Wanneroo	I wish to advise that the City of Wanneroo's Council considered the preferred model at its 5 February 2019 Ordinary Council Meeting, and resolved the following: That Council:- 1. REAFFIRMS its previous resolution made at the 22 August 2017 Ordinary Council Meeting (PS04-08/17), which was as follows: "That Council:- 1. ADVISES WALGA that it does not support a comprehensive introduction of Third Party Appeals into the Western Australian 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 the Development Assessment Panels (DAPS); and 2. NOTES that public confidence in the DAPs decision making process is likely to be enhanced by introducing Third Party Appeal Rights in limited circumstances, particularly when transparency and accountability is clearly demonstrated in the determination process."; and

		2. ADVISES the Western Australian Local Government Association that 'limited circumstances' in the context of the previous resolution relates to extending Third Party Appeal Rights to a responsible authority for applications determined by the Development Assessment Panel in a manner inconsistent with a recommendation prepared by those parties.
12	City of Stirling	The City of Stirling Council previously considered the broader matter of Third Party Appeal Rights in Planning (in response to the WALGA discussion paper) at its meeting on 4 July 2017, where it was resolved that they support, in principle, the introduction of third party appeal rights in Western Australia. In response to a request from WALGA as to whether there would be any support for the introduction of third party appeal rights for decisions made by Development Assessment Panel decisions, Council on 20 February 2018 resolved as follows: 1. That Council REAFFIRMS to the Western Australian Local Government Association its previous position of in-principle support for third party planning appeal rights. 2. That Council RECOMMENDS to the Western Australian Local Government Association that third party planning appeal rights be referred to the State Government for incorporation into the current review of the planning system. 3. That Council RECOMMENDS to the Western Australian Local Government Association that third party planning should apply also to Structure Plans, Activity Centre Plans and Local Development Plans. As a preliminary comment, the City wishes to advise that it does not support the draft preferred model because it only allows for third party appeal rights for DAP decisions. The City wishes to reinforce its previous position that if third party appeal rights are to be introduced, they should be introduced universally, and also include for Structure Plans, Activity Centre Plans and Local Development Plans. The introduction of third party appeal rights for Development Assessment Panel (DAP) decisions only may contribute to the further marginalisation of local communities and their local representatives as it is an inequitable arrangement which only benefits a minority of third parties. Notwithstanding, the City is pleased to provide the following feedback on the draft preferred model prepared by WALGA. <u>Benefits of Third Party Appeal Rights for DAP Decisions</u> The City believes that other benefits that could be explored for inclusion, such as: - Resultant improvements on the quality of decision making and accountability to the local planning framework; - The removal of real or perceived influence of lobbyists; and - It would address a perceived failure in the existing DAP process to properly consider third parties. The draft preferred model identifies one of the benefits is the ability to appeal in cases where the DAP is over utilising the deferral process. The rationale of this is accepted, given that this results in decisions on applications that have been assessed and ready to be determined being instead deferred and repeatedly modified without further public consultation before finally being determined. However the practicalities of appeals in such circumstances needs to be given further consideration, given it would essentially amount to a third party appealing a deemed refusal. A more appropriate solution to this issue may instead be to advocate for changes to the DAP Regulations and/or Standing Orders to limit the number of deferrals able to be granted for the same application. The City is otherwise supportive of the benefits identified in the draft model. However, in order to present the document in a more balanced light, it is recommended that the disadvantages to the introduction of such third party appeal rights also be explored. The City believes one of the major disadvantages to the draft model is that it is an inequitable solution as it only provides third party appeal rights to applications determined by a DAP. The effect of this is that many other types of applications, including non-DAP development applications, activity centre plans, structure plans and local development plans are excluded from having third party appeal rights. In the case of the City of Stirling, over the past three years only 0.7% of development applications were determined by Development Assessment Panel; the notion that 99.3% of applications will not have access to third party appeal rights under the

		proposed draft model is arguably unfair. The City reiterates its previous position that third party appeal rights should apply regardless of the decision maker. A further disadvantage to the draft model is that by only introducing third party appeal rights for DAP decisions, it fails to pursue the wider reform necessary to fix the planning system in Western Australia. As identified in the City's 10 July 2017 submission on WALGA's Third Party Appeal Rights in Planning Discussion Paper (and reinforced by resolution number 4 of the WALGA State Council on 8 September 2017), the wider issue is how the planning system can be reformed in a way which puts a stop to the ongoing erosion of local government planning authority. It is this erosion which is compromising the ability for local governments to plan for the needs of their communities, which is what has led to calls for third party appeal rights to be introduced. If the planning system were more responsive to local needs and the exercise of discretion were more clearly defined, then the need for third party appeal rights may well fall away. Further consideration of this by the WALGA State Council is considered necessary, particularly given the Government of Western Australia has since released the Green Paper on Modernising Western Australia's Planning System in May 2018. Appellants in a Third Party Appeal The rights of a person or authority to lodge a third party appeal should be related to the merits of the grounds of appeal. As identified in the draft preferred model, consideration of whether there are grounds for review should be undertaken by a SAT Member as part of a Preliminary Hearing. Consequently there is no benefit to limiting third party appeals to those who have previously made a submission on a DAP application, as whether or not somebody lodges a submission has no relevance to whether or not that third party appeal is based on proper planning grounds. The City therefore recommends that the scope of those who can appeal is broadened so it does not have the effect of excluding appeals lodged for valid planning reasons. What can be Appealed? As already identified, the City is of the opinion that third party appeal rights should apply equitably to all planning decisions, not just DAP decisions. It is therefore recommended that the draft preferred model be modified to consider third party appeals for all planning decisions. Additionally, in the case of Form 2 applications (typically made in cases where amendments or extensions to the term of planning approval are being sought), the City recommends that the draft preferred model also be modified to allow for third party appeal rights to apply to all Form 2 decisions. Timeframe to Lodge an Appeal A 28 day timeframe in which to lodge an appeal is in many cases unlikely to be sufficient. Additionally it is the City's experience that the SAT routinely allow (within reason) appeals lodged after the current 28 day deadline. It is therefore recommended that the appeal timeframe for third party appellants be 60 days to provide them with sufficient time, which may need to include taking instructions from Elected Members, obtaining legal advice, appointing consultants (in cases where the Council's position is different to the officer's recommendation) and/or consulting with the community. The additional administrative burden to local governments in deciding whether to appeal a DAP decision, let alone the resources required to manage that appeal, is something which the City feels requires further consideration by WALGA within the draft preferred model. For example, could WALGA not explore the following: • Whether WALGA would recommend that each local government obtain legal advice on the merits of a potential third party appeal prior to lodging such an application; and • Whether WALGA would be prepared to draft a Guidance Paper for local governments (informed by legal advice) to assist them in determining whether or not a third party appeal should be lodged. WALGA represent the majority of local governments in Western Australia. Should this proposal be progressed by the State Government it is reasonable to expect that member local governments be provided with some general guidance on when it may be appropriate to lodge a third party appeal against a DAP decision. Parties to be Involved The City recommends that this section be modified to make it clear that local governments should be involved in all third party appeals,

		regardless of who is the responsible authority or the appellant. Even if the local government is not a party to the appeal, the City's experience in being involved in SAT appeals of DAP decisions is that local government staff do contribute to the process, in particular by way of providing important background information on local strategic and statutory planning matters. The Preliminary Hearing Process The draft preferred model identifies the need for a Preliminary Hearing in order to determine the validity of a third party appeal i.e. that it has been made on proper planning grounds. While the City supports the notion of such a Preliminary Hearing, further consideration of the practicalities and resourcing implications of such a process is considered necessary. Holding a separate Preliminary Hearing has the potential to become a time-consuming and expensive process which could risk the successful implementation of third party appeal rights for DAP decisions. Instead the City would recommend that this Preliminary Hearing be aligned with the normal SAT process by integrating it with the current initial Directions Hearing held for all new appeals. Appellants and respondents are typically present at Directions Hearings and would have the opportunity to address the SAT member on the matter. Similarly, SAT Members who run the 'Directions Hearing would be qualified to make a decision on the preliminary matter of whether or not the third party appeal is valid or not. This Preliminary Hearing needs to be undertaken in a simple and efficient way, and the City therefore recommends that the practicalities of this be given more consideration by WALGA. Costs The draft preferred model provides little detail with respect to the cost implications of third party appeal rights for DAP decisions. It acknowledges that the appellants' costs in making a third party appeal will need to be borne by them, and that they open themselves up to costs being awarded against them in the case of an unsuccessful appeal. However the cost implications for all other parties need to at least be acknowledged. It is therefore recommended that the draft model provide further detail on cost implications for others — for local governments, for the State government in administering the SAT process, and for respondents who will have to spend money on defending a third party appeal which may cause project delays as a result of having to defend a third party appeal. This will at least allow the final preferred model to address the inevitable concerns regarding costs. However in acknowledging the potential cost implications, it is also appropriate to identify that it would only be a very small proportion of applications that are likely to end up at the SAT as a result of a third party appeal of a DAP decision. In this context, cost implications are likely to be minimal. Appeals Process As suggested earlier in this submission, it is recommended that under the Preliminary Hearing bubble, the text be modified to identify that the Preliminary Hearing should be integrated into the existing Directions Hearing process. It is also recommended that the term "Planning Assessor" is deleted and replaced with "SAT Member". It is expected that it will be a SAT Member who undertakes the Preliminary Hearing, as they already perform the role of planning assessor. Appointing a separate planning assessor would only add to the bureaucracy of the proposed third party appeals process. Other Issues The City's 10 July 2017 submission on the Third Party Appeal Rights in Planning Discussion Paper of April 2017 recommended that if third party appeal rights were to be pursued, WALGA should undertake a detailed analysis of other planning systems which have third party appeal rights. In reviewing the Minutes from the relevant State Council meetings, it is unclear whether this further analysis has occurred. In the context of only investigating third party appeal rights for DAP decisions, it would be useful to know whether any other jurisdictions have taken such a narrow approach to third party appeal rights, and whether such rights have led to an improvement in the planning system. It is therefore requested that WALGA undertake this analysis before committing only to third party appeal rights for DAP decisions. Conclusion The City has reviewed the draft preferred model and, if WALGA are to pursue the model as proposed (i.e. to apply to DAP decisions only), then modifications as identified in this submission should be considered. However, the City reiterates its previous position that

		third party appeal rights should be introduced so that they are able to be exercised for all planning decisions, not just those made by DAPs. To do otherwise would appear inequitable.
13	Shire of Cuballing	Council considered WALGA's preferred Model at its meeting on the 20 February 2019, where it was resolved not to support Third Party Appeals for decisions made by Development Assessment Panels. While noting the benefits set out by WALGA, the Shire of Cuballing raises several concerns with the Preferred Model. It is highlighted that there are various issues and implications, that are expected to have far reaching consequences, if the preferred model is adopted and implemented. Some of the Shire's concerns with the preferred model include - it is expected to make the planning system even more complex, increase red tape and reduce efficient which is contrary to the current efforts to streamline the planning process. - It is resource intensive and will require increase local government staff and resources. - Limited local government resources will be redirected from strategic planning and project development initiatives - It will pass to local government and development sector costs. Local Government costs include initiating the appeal, attending SAT directions, mediation and hearings and obtaining expert advice - It provides less certainty to the decision making process and less certainty to the development industry - It will add to time delays with costs passed onto consumers - It will generally work against investment, job creation and economic development - It creates an adversarial/litigious environment around planning decisions - It raised community expectations, which may not be met in practice, further frustrating sections of the community and raising issues within the planning systems and - It appears that the push for third party appeal rights is being driven by some Metropolitan local governments that have a very different context, community and economics profile and resourcing than most non metropolitan local governments. The Shire is also concerned that the Preferred model could be the start of the expansion of Third Party Appeal rights in Western Australia, noting your statement that 'the model provides a good test for the introduction of Third Party Appeal tights , which could possibly be expended later if it process to be beneficial'. This will exasperate concerns and take Western Australia down the path of planning jurisdictions such as Victoria. Any more to widen Third Party Appeal rights could potentially overburden the planning systems. Subject to how far Third Party Appeal rights were taken, it may further limit the role of local government through challenging local government decisions. Given non metropolitan local government resources (financial, staff and specialist/experienced planners) are limited, it is suggested that other methods be explored to increase the effectiveness, efficiency and transparency of the planning system. It is recommended that scare local government funds and planning resources be focused at the strategic/policy and planning 'rule' stages (local planning schemes) in providing an increasingly sound, balanced and transparent planning framework that contributed to desired community, economic development and environmental outcomes. Proactive community engagement at the strategic/policy and local planning scheme stages, is expected to be more collaborative and provide greater certainty in process and outcomes compared to challenging individual decisions through Third Party Appeals. It is considered far more beneficial if local governments throughout WA and the WAPC increasingly undertook a more strategic approach to assist in enhancing the effectiveness and efficiency of the WA Planning system. This includes assistance in developing and assessing Local Planning Strategies, Local Planning Schemes, town site/housing strategies and infrastructure planning, It would be helpful is the WAPC provided additional planning guidance for various matters including sustainable economic development, tourism, prompting good urban design and natural resource management.
14	Town of East Fremantle	At its meeting on the 19 March 2019, Council resolved to advise that the Town of East Fremantle: 1. Does not support Third Party Appeal Rights for planning and therefore does not support the WALGA Preferred Model "Third

		Party Appeal Rights for decision made by Development Assessment Panels" received on the 12 December 2018; 2. Supports the principle of Local Governments being able to challenge and seek review of DAP decisions that are made contrary to the recommendations of the Responsible Authority Report (RAR) or Council position. 3. Supports the principle of other third parties being able to challenge and seek review of DAP decisions only when decisions are made contrary to the recommendations of a RAR or Council decision; 4. Supports the principle of generally improving the accountability and transparency of Development Assessment Panel decisions; and 5. Considers that alternative planning reform measures associated with DAP function and processes, would be a more appropriate method of addressing issues associated with DAP decision making.
15	City of Albany	The City of Albany is of the view that the introduction of third party appeals in general should be subject to an overall review, and that the introduction of third party appeals to the Joint Development Assessment Panel (JDAP) process would be somewhat ad hoc and is currently not supported. The City of Albany submits the following points in respect to the matter; • It would appear that a number of the points within the WALGA preferred model relate to the JDAP model itself rather than introducing third party appeals to address the matters. • The ability for a local government to appeal a JDAP decision would appear to be somewhat paradoxical when considering the reasoning for the introduction of development assessment panels. Furthermore, it is often the case that shortcomings or a lack of understanding of the development rights conferred within a Local Governments Planning Scheme are the cause of the issue. • In a number of instances, increased community engagement when planning schemes and structure plans are being developed will reduce circumstances where the community or local government are aggrieved by a decisions made by JDAP. • The City of Albany had the last third party appeal to be heard in Western Australia under the now rescinded Town Planning Scheme No.3. This appeal made it clear that third party appeals can cause significant delays to projects and add an additional level of uncertainty to applicants who have followed due process. . • Referral agencies need to be aware of the weight a referral holds in the planning process. They must understand that information received in a referral must be given due consideration against the test for planning conditions and will not automatically be applied. • It is considered that third party appeal rights that apply to JDAP decisions only would further create a divide between the regular development application process and that of JDAPs. For example, why would an applicant opt in to the JDAP process when it would open their proposal to third party representation? The City of Albany is of the view that if there is at any stage in the future an impetus to introduce third party appeals, it should be instigated by Department of Planning Lands and Heritage subject to the following; • A clear and defined scope of application; • Undertaken in conjunction with a review of the planning appeals process in general; • Subject to significant public consultation; • In conjunction with a review of Joint Development Assessment Panels; and • A review of the input of State Government Departments into the development application process, especially in areas where they are providing 'advice' in a planning referral which is essentially determinative. The City of Albany continues to appreciate the work WALGA has undertaken to advocate for the improvement of the Western Australian Planning system and providing the opportunity to comment on the matter of third party appeals.
16	City of Gosnells	This submission summarises the viewpoint of the City of Gosnells relating to WALGA's Third Party Appeal Rights Preferred Model. The City has previously registered its views with WALGA relating to the potential for success of a third party appeals model. By way of context, the State introduced Development Assessment Panels (DAP's) with the aim of;

		• Reducing timeframes for decision making • Providing more technical knowledge and less local knowledge at a decision making level • Streamlining processes, and • Providing a suggested line of sight through processes (as a principle of reform) Regardless of its success with those objectives, the State's intent was to diminish local representation in decision making through the introduction of the DAP process. The introduction of a third party appeal model that would target the DAP process is directly contradictory to those principles. The preferred model would reduce surety for applicants, extend time periods until decisions are absolute, and would provide for the involvement of random factors that are outside the planning process. The City's recommended method of working with the JDAP process is to maintain a relevant and up to date suite of planning controls including the Local Planning Scheme and Policies that would assist good decision making. **The Preferred WALGA Model** The model presented in the WALGA flowchart provides a generally logical sequence of events to facilitate third party review of DAP decisions. However, even with the model, an applicant would be required to wait an additional 28 days after a decision has been made before proceeding to enact a planning approval. There are some refinements that could be made which would improve transparency or guarantee early awareness by parties to the appeal. Firstly, it is recommended that "parties to the appeal" are defined, and that the parties include; 1. The local government within which the appeal site is located 2. The responsible authority 3. The appellant. Further, when an appeal is lodged, all parties to the appeal should be notified (rather than the applicant only as suggested in the draft flowchart). This change would facilitate early awareness of issues by all parties. In terms of a preliminary hearing between the State administrative Tribunal (SAT) and the appellant, it is suggested that the parties to the appeal are invited to attend as observers. This change would provide an opportunity for the SAT to make orders and seek clarification on a more informed basis if parties to the appeal are all present at the preliminary hearing. The above measures may provide for reduced timeframes and shared communication at the start of the process, all of which may expedite the consideration of issues at hand. In addition to the comments listed above, it is suggested that WALGA is extremely cautious about advocating in favour of third party appeal rights. The topic could easily be introduced with the support of WALGA and then morphed to a model that would provide for third party appeal rights against Council decisions. Such a system would provide for additional manipulation of local government planning processes and would reduce surety for applicants. A third party appeal system that targeted the local government sector would reduce its efficiency and objectivity to a significant extent. This is a common area of concern for, and in, local governments. Advocacy for changes to the planning system should improve areas of concern, and not widen the risk of adverse outcomes.
17	Town of Port Hedland	On further consideration of the preferred model of Third Party Appeal rights, is not supported for the following reasons: - - third party appeals would contradict streamlining of the development process, contrary to the Green paper for Planning reform objectives.

		- The system would burden local government planners and would only serve to benefit consultants and legal representatives. - Issues relating to the Development Assessment Panel process would be better addressed through investigating reform to that process, focusing on addressing development issues upfront prior to a decision rather than introducing appeal processes post decision.
18	Shire of Plantagenet	The WALGA be advised that the introduction of third party appeal rights in the planning legislation is not supported.

Attachment 2 - Preferred Model

Third Party Appeal Rights for decisions made by Development Assessment Panels

(circulated to members in December 2018 – Amendments in BOLD and ITALIC)

Benefits of Third Party Appeal Right for decisions made by Development Assessment Panels

- ~~The model provides a good test for the introduction of Third Party Appeal Rights, which could possibly be expanded later if it proves to be beneficial.~~
- ***Only Local Governments will be able to challenge and seek review of DAP decisions that are made contrary to the recommendations of the Responsible Authority Report (RAR) or Council position***
- Local Government would be able to appeal a DAP decision and defend the merits of their policies and defend the enforceability of their conditions.
- ~~Other interested parties and community members would be able to appeal a DAP decision.~~
- ~~Addresses community concerns that decisions are being made by those 'removed' from the local community, leading to improved community confidence in the system.~~
- More transparent process in both decision making and condition setting, resulting in more accountable DAP members.

- Would allow for an appeal to be made on the conditions of approval or refusal
  - i) that may have been removed from a RAR; or
  - ii) added to the decision, particularly where no liaison has occurred with the ***Local Government*** ~~authority responsible~~ for clearing or enforcing the condition; or
  - iii) applied inappropriately i.e. the condition would change the intent or design of the development and therefore a new application should have been lodged.
  - Limits appeal rights to larger, more complex applications and would filter out 'smaller' impact applications which could potentially overburden the system.
  - Provides the opportunity for additional information to be included in the appeal process, particularly if information was not received before the DAP meeting.
  - Provides the ability to challenge any new information being presented at the DAP meeting without the ***Local Government*** ~~responsible authority~~ being able to undertake any assessment of the new information (unassessed revised plans are currently being lodged and approved at meetings).
  - Able to appeal the 'Deferral' process being over utilised, i.e. DAPs are tending to defer applications multiple times rather than making a decision to approve or refuse the proposal.
  - Can give the Local Government more confidence that the developer will provide a fully complete application and discuss the application with the Local Government first, rather than relying on the DAP to condition the proposal requiring additional critical information.

Appellants in a Third Party Appeal

Should ~~not be open to any interested party but~~ be limited to ~~those parties which previously made a submission.~~

- ~~Should be available for a Responsible Authority where DAP has gone against the RAR; or~~
- ~~Should be available for~~ A Local Government where DAP has gone against the position of Council itself; or
- ***A Local Government where DAP has gone against the Responsible Authority Report (RAR)***
- ~~Should be available to a public authority (e.g. Main Roads WA, Department of Transport) where DAP has made a decision contrary to their advice.~~

If *Local Government* ~~any appellant~~ makes a submission

- SAT would need to ensure that appeals are made on valid planning grounds and are not made for commercial or vexatious reasons.
- ***The existing Directions Hearing process*** ~~A Preliminary Hearing~~ could be used to see if the appeal has reasonable planning merit, which would assist in providing clarity ~~for an appellant~~ on what constitutes a valid planning consideration and what would be an invalid planning consideration. The ***Directions*** ~~Preliminary~~ Hearing could consider the appellant's justification for submitting the appeal, in particular, whether the grounds of appeal are supported by documentary evidence or other material (a similar process for justifying the lodgement of an appeal already exists through Section 76 of the *Planning and Development Act 2005)*.
    - ***** Will need to discuss with SAT the definition of 'valid planning grounds' to determine whether the submission has reasonable grounds for appeal*****
    -

What can be appealed?

- DAP applications that are compulsory over $10 million for JDAPs and $20 million for City of Perth DAP; or
- DAP applications in the optional threshold $2m – 10m for JDAPs and in the City of Perth $2 million - $20 million; or
- DAP applications seeking amendments to approvals ***i.e.*** Form 2 applications proposing a change to the development application~~, but should not include~~ ***and including*** applications for an extension of time

Timeframe to lodge an appeal

- As per the existing timeframe, an appeal on a decision made by a Development Assessment Panel should be lodged within 28 days of the decision being made public, ie publishing of the DAP minutes.
- Local Governments would need to determine within their own organisation what process to follow in order to decide whether or not to lodge an appeal against a DAP decision. In many cases this may require a Special Council meeting to determine this.

~~**For procedural fairness reasons all parties should be involved.**~~

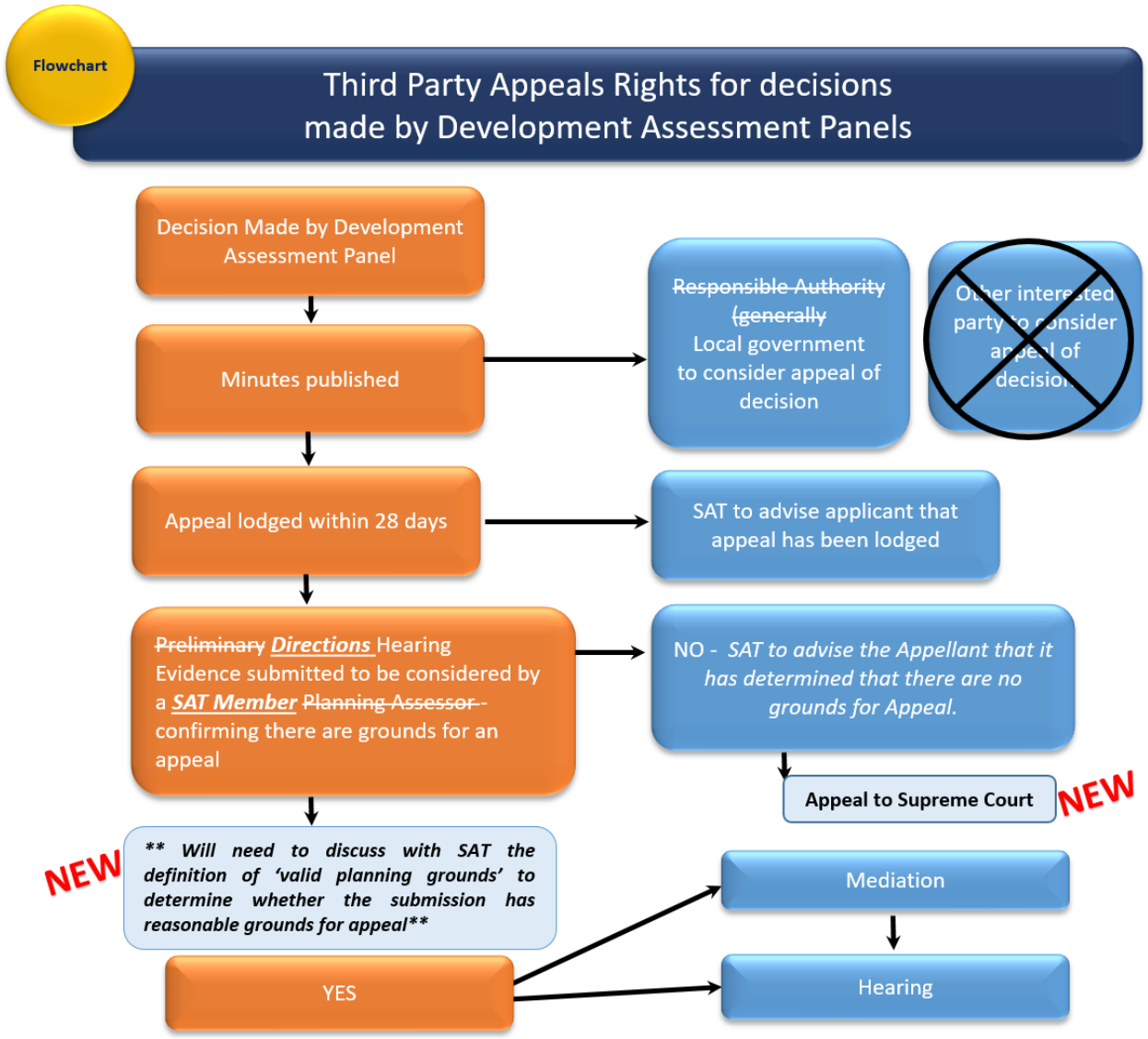
- ~~The third party - Local Government **or**~~
- ~~The third party - another interested party~~
- ~~The respondent (DAP)~~
- ~~The applicant~~

~~If the appellant is another interested party, then the Local Government should be invited as an observer.~~

Costs

- Any ~~appellant~~ ***Local Government*** would need to cover their costs of initiating the appeal, attending SAT directions, mediation and hearings, and costs could also include obtaining expert advice.
- ~~A third party appellant should be counselled as part of the Preliminary Hearing in relation to the potential for costs being awarded against them in the case of an unsuccessful appeal.~~

Appeals Process



5.3 Interim Submission – Draft Position Statement: Tourism Land Uses within Bushfire Prone Areas (05-024-02-0056 CH)

By Christopher Hossen, Senior Planner – People & Place

Moved: **Cr Julie Brown**
Seconded: **President Cr Phillip Blight**

That the interim submission to the Western Australian Planning Commission on Draft Position Statement: Tourism land uses within bushfire prone areas, be endorsed.

RESOLUTION 45.4./2019 **CARRIED**

In Brief

- On 20 December 2018, the Western Australian Planning Commission (WAPC) released the draft position statement for tourism land uses within bushfire prone areas for public comment.
- The position statement aims to provide policy positions for short stay tourism land uses and tourism land uses limited to day/night use with no overnight stay, located within bushfire prone areas.
- The public comment period closed on 20 March 2019, therefore an interim submission was prepared.

Attachment

Interim submission - Draft Position Statement: Tourism land uses within bushfire prone areas.

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

In December 2012, the then Department of Planning released State Planning Policy 3.7 Planning in Bushfire Prone Areas (SPP 3.7) and the Guidelines for Planning in Bushfire Prone Area (Guidelines) directs how land use should address bushfire risk management in Western Australia. It applies to all land which has been designated as bushfire prone as highlighted on the Map of Bush Fire Prone Areas. Since that time the Department of Planning, Lands and Heritage (DPLH) has

been committed to a staged review of the bushfire planning framework, with updates to the Guidelines proposed on a periodic basis.

On 20 December 2018, WAPC released draft position statement for tourism land uses within bushfire prone areas. The document aims to provide policy positions for short stay tourism land uses and tourism land uses limited to day/night use with no overnight stay, located within bushfire prone areas.

The position statement seeks to achieve the following objectives:

- minimise vulnerability of tourism land uses in bushfire prone areas;
- provide bushfire protection relevant to the characteristics of the tourism land use;
- identify and understand the risks in order to anticipate and provide suitable bushfire risk management measures; and
- achieve a balance between bushfire risk management measures, environmental protection and biodiversity management and landscape amenity.

Comment

The Association welcomes the release of the draft Position Statement. Tourism plays an important role in the economic development of Western Australia, a fact recognised by many Local Governments through their planning frameworks. However, as many tourism proposals are inherently tied to the natural landscape there is often a conflict with the provisions of the bushfire planning framework. This is further exacerbated by the lack of bushfire construction requirements for common tourism uses, such as tents and caravans. The clarification of these discrepancies will aid Local Governments in the orderly planning of their communities, and allow a more diverse range of tourism land uses to be contemplated within bush fire prone areas.

The interim submission includes 16 recommendations, specifically to cover the following aspects: -

- Need to incorporate the role of 'residential built-out area' definitions into SPP 3.7 at the earliest opportunity, as well as the need to provide Local Government with guidance on how such a designation should be identified.
- Detailed comments on the proposed conditions of development. Changes made to better reflect the manner in which Local Governments write conditions, utilising the Association's Standard Development Guide to frame the recommendations.
- Five (5) minor recommendations that go to spelling, grammatical changes, and matters of clarification.

The public comment period closed on 20 March 2019, therefore, an interim submission was prepared. In accordance with State Council policy, the interim submission was referred to the Executive Committee for consideration. The interim submission was then submitted to the WAPC to meet the public comment period deadline.

President Cr Ronnie Fleay returned to the meeting at 4:49pm.

Attachment Item 5.3

INTERIM SUBMISSION TO THE DEPARTMENT OF PLANNING, LANDS AND HERITAGE

Position Statement:
Tourism land uses within bushfire prone areas

INTRODUCTION

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

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

GENERAL COMMENTS

The Association welcomes the release of the draft Position Statement on tourism land uses within bushfire prone areas (draft Position Statement), and acknowledges the contribution of, and collaboration between members of the various bushfire working groups. The Association strongly supports similar collaborative approaches to government policy changes now and into the future.

Tourism plays an important role in the economic development of Western Australia a fact recognised by many Local Governments through their planning frameworks. However, as many tourism proposals are inherently tied to the natural landscape there is often a conflict with the provisions of the State bushfire planning framework. This is further exacerbated by the lack of bushfire construction requirements for common tourism uses, such as tents and caravans. The clarification of these discrepancies will aid Local Governments in the orderly planning of their communities, and allow a more diverse range of tourism land uses to be contemplated.

It is for these reasons that the Association welcomes the publication of the draft Position Statement, and commends the Western Australian Planning Commission (WAPC) for moving forward with this innovative approach. The WAPC has shown a desire to make continued improvement to the bushfire planning framework have been constant, allowing this new area of planning to develop in a robust fashion, with constant engagement of stakeholders. That being said, whilst welcoming the publication the Association has a number of reservations to certain aspects of the draft Position Statement, which shall be outlined below.

Recommendation:

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

SPECIFIC COMMENT AND RECOMMENDATIONS

1.0 Policy Intent

For the purposes of readability and understanding, a number of recommendations are proposed to this section.

The Association has concerns around the ambiguity of the draft wording of this section, which may lead to a misunderstanding of where and how the draft Position Statement should be applied. The grammar of the current wording could conceivably imply that the limitation of 'day/night use with no overnight stay' applies to both 'tourism' land uses and 'short stay tourism' land uses. This is clearly incorrect and illogical, however clarification is warranted. Recommendation 2 also makes use of the term 'stay-term' instead of 'short stay' to ensure consistency with the *Planning and Development (Local Planning Scheme) Regulations 2015.*

Further to the above there is a need to rename this section of the Draft Positon Statement to better reflect the role of Position Statements within the planning framework. The current name of the section 'Policy Intent' is inappropriate as a position statement is not a policy. The role of a position statement is to provide 'interim guidance' on a particular matter to ensure a more consistent application prior to formal incorporation into the planning framework. On review of recent position statements released by the WAPC, the term 'Purpose' has been used in relation to 'housing on lots less than 100m2' and also 'container deposit schemes'. This is arguably a more appropriate term to use in a position statement and ensures that the various position statements have consistency in terminology. This is reflected in the recommendation below.

Recommendation:

2. That section **'1.0 Policy Intent'** be renamed to **'1.0 Purpose'** to better reflect the Draft Position Statements function in the planning framework;

3. The text of this part be reworded as follows:

   To provide interim guidance for short-term accommodation land uses, and tourism land uses limited to day/night use with no overnight stay, located within bushfire prone areas

4.0 Policy Objectives

As per our commentary above, the current wording of this section is inconsistent with the manner in which other recently advertised position statements have been worded. The proposed wording below is consistent with those documents, and arguably is more appropriate considering the status of position statements in the planning framework.

Recommendation:

4. Part 4 be reworded as follows:

   This position statement seeks to achieve the following objectives.

5.1 Land use specific bushfire protection measures

As is outlined in part 2 of the draft Position Statement, the intrinsic link between many tourism proposals and the natural environment, the nature of developments, and their remoteness make compliance with SPP 3.7 and the Guidelines difficult. Local Governments in their consideration of proposals are currently constrained in their assessments and arguably lack the appropriate tools to consider proposals in a holistic fashion.

The Association supports the approach provided in the draft Position Statement as it offers a realist and risk based approach to decision making for tourism uses that are in bushfire prone areas.

With regard to the use of the 'residential built-out area' definition in relation to proposals for 'bed and breakfast' and 'holiday house' land uses. It is proposed that where a proposal for such a use is proposed within a 'residential built-out area' that a Local Government may utilise its discretion to determine that a proposal meets the definition of 'minor development' as per SPP 3.7. This approach is supported.

However, it should be noted that the definition, 'residential built-out area', while being referenced in both SPP 3.7 and the Guidelines has not been previously defined in the planning framework. The draft Position Statement corrects this omission. The Association makes two points in relation to this definition and the use of it to make discretionary decisions:

1. That the definition provided for in the draft Positon Statement be incorporated into SPP 3.7 at the earliest opportunity, and
2. That the WAPC and DPLH provide guidance to Local Governments on the preferred mechanism to formally declare areas as 'residential built-out area' for the purposes of exercising discretion under the bushfire planning framework.

The current definition of 'residential built-out area' provided is supported, however considering that it utilises 'loose' language around where it would apply, there is a risk that the exact extent would be open to interpretation and challenge. It may be appropriate for the WAPC to consider a preferred mechanism for Local Government to identify areas they deem to be a 'residential built-out area'. For example, Local Government, following consultation with the communities, determine to identify their 'residential built-out area' through a position statement or a Local Planning Policy.

Further to part of this section that relates to proposals for 'bed and breakfast' and 'holiday house' land uses, proposals that meet the definition of 'minor development' are expected to provide a Bushfire Management Plan (BMP) and an Emergency Evacuation Plan (EEP), while those proposals that are not within a 'residential built-out area' are expected to provide a BMP and simplified EEP. The rational for why a proposal in a non-built up and arguably area of higher risk than a built-up area would only require a 'simplified' EEP, is not articulated.

Lastly, the following text appear within the section that relates to proposals for 'bed and breakfast' and 'holiday house' land uses:

"Improvements to the site may include provision of an APZ, improved internal vehicular access and provision of 10, 000 litres of water designated for firefighting purposes. Two way vehicular access to two different destinations should be provided."

This text is a duplication of the general policy measures that all tourism land uses must address outlined in Part 5 of the draft Position Statement. As all applications for tourism proposals within bushfire prone areas will be required to address the general policy measures, the duplication of this information is unnecessary and does not improve the readability of the document.

Recommendation:

5. That the definition given in the draft Position Statement for 'Residential built-out area' be incorporated into State Planning Policy 3.7 – Planning in Bushfire Areas at the earliest opportunity;
6. That the WAPC and DPLH work constructively with the Local Government sector to develop a preferred approach for formally declaring areas as a 'residential built-out area';
7. Review the use of the terms EEP and simplified EEP with regard to bed and breakfast' and 'holiday house' land uses;
8. Remove the following text from Part 5.1:

"Improvements to the site may include provision of an APZ, improved internal vehicular access and provision of 10, 000 litres of water designated for firefighting purposes. Two way vehicular access to two different destinations should be provided."

5.3 Contingency measures

The draft Position Statement provides for a number of recommended conditions of development approval that would be imposed on a proposal where a contingency measure is contemplated. These relate predominantly to bushfire refuges and ensuring the design, construction and maintenance of these is done in a manner consistent with industry standards. The intent of the conditions is supported by the Association, however the Association has concerns regarding the implementation and use of these conditions.

The State Administrative Tribunal (SAT) and other appeal bodies in Australia have generally adopted the approach taken in Newbury DC v Secretary of State for the Environment (1981) AC578 when considering the validity of conditions. This decision holds that in order to be valid, a condition must:

- Be imposed for a planning purpose;
- Fairly and reasonably relate to the development considered; and,
- Be reasonable, i.e. the condition is not so unreasonable that no reasonable planning authority could have imposed it.

Additionally, conditions should also:

- Be enforceable;
- Be precisely and consistently worded with no ambiguity or uncertainty;
- Represent the end of the relevant approval process; and,
- Not duplicate other legislation or obligations.

The Association has concerns around whether the proposed conditions, as they are currently written, are both enforceable and precise enough to pass the Newbury Test. The Association has provided in the recommendations below conditions that have been recently endorsed in the Association's *Standard Development Condition Guide.* The Guide has been subject to legal review and extensive consultation with the Local Government sector.

Further, when providing guidance on development conditions there should be consideration for when the EEP has been lodged. Local Governments on receiving a proposal will consider whether it is appropriate to require an EEP as part of the development application (as opposed to requiring an EEP as a condition of development) having regard to all the circumstances of the case, State Planning Policy 3.7, and advice from DFES. The conditions as advertised in this position statement do not allow for this.

Recommendation:

9. Where an EEP has been provided with the development application the following conditions be incorporated into the section 5.3:

    a. The applicant must implement all of the recommendations contained in the Bushfire Management Plan prepared by (insert name of BAL Assessor or Bushfire Planning Practitioner) dated (insert date) and approved by the Local Government for the duration of the development;
    b. The applicant must implement all of the recommendations contained in the Emergency Evacuation Plan prepared by (insert name of BAL Assessor or Bushfire Planning Practitioner) dated (insert date) and approved by the Local Government for the duration of the development.

10. Where an EEP has not been provided with the development application the following conditions be incorporated into the section 5.3:

    a. The applicant must implement all of the recommendations contained in the Bushfire Management Plan prepared by (insert name of BAL Assessor or Bushfire Planning Practitioner) dated (insert date) and approved by the Local Government for the duration of the development;
    b. An Emergency Evacuation Plan must be submitted to and approved by the Local Government prior to lodging an application for a building permit/use and occupation of the development *(choose one)*. The plan must include the following details to the satisfaction and specification of the Local Government:
        i. Evidence that the bushfire refuge has been designed by a suitably qualified fire engineer in accordance with the ABCB Design and Construction of Community Bushfire Refuges Handbook (2014);
        ii. Details of the management of the bushfire refuge, including annual test requirements for operational compliance;
    c. The Emergency Evacuation Plan must be implemented at all times to the satisfaction of the Local Government.

11. That DPLH and DFES seek advice from the State Solicitors Office on the validity of the proposed conditions prior to final endorsement of the draft Position Statement.

Minor Recommendations

12. Point 1 of section 5 Policy measures – correct spelling of 'minimi**z**e'.
13. Correct references in section 5.1 of 'holiday home' to 'holiday house' to ensure consistency with the definition provided in the *Planning and Development (Local Planning Scheme) Regulations 2015.*
14. The definition of 'short term accommodation' be modified to read 'short-term accommodation' to deliver consistency with the definition provided in the *Planning and Development (Local Planning Scheme) Regulations 2015.*
15. That all references to 'Residential built out areas' in the draft Position Statement be modified to 'Residential built-out areas' to ensure consistency with the Guidelines and State Planning Policy 3.7.
16. With regard to Part 5.1, clarify if the following reference to 'building' (bolded) should read 'dwelling',

    'Where the **building** is existing, the **building** should be modified to achieve a BAL-19 construction standard in accordance with AS 3959, regardless of whether an APZ can be provided.'

5.4 Public Library Tiered Service Framework (05-012-03-0001KD)

By Kirstie Davis, Policy Manager Community

Moved: **Cr Chris Mitchell**
Seconded: **President Cr Karen Chappel**

That the new-tiered model to support public library service delivery in WA be endorsed.

RESOLUTION 46.4/2019 **CARRIED**

In Brief

- The Western Australian Public Libraries Strategy Consultation Report was endorsed by WALGA State Council and the Library Board of WA in July 2018.
- The Public Libraries Working Group (PLWG), with representatives from State and Local Governments, was established to guide the implementation of the Strategy.
- The PLWG identified the development of a new tiered model for public library service delivery across WA with support for regional and remote public library services as the initial priority.

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.

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,
- Develop simple and consistent messages that are effectively articulated.

Policy Implications

Nil.

Budgetary Implications

Nil.

Background

In December 2017, the *WA Public Libraries Strategy* (Strategy) was released as a consultation tool to establish strategic priorities for public library development in Western Australia. Extensive consultation demonstrated strong support for the Strategy and the Consultation Report was endorsed by the Library Board of Western Australia (LBWA) and WALGA State Council.

At its meeting of 18 May 2018, the Public Libraries Working Group (PLWG), formed to consider the outcomes of the consultation and to provide advice to the State Library of Western Australia (SLWA) on implementation of the Strategy, resolved that this would be prioritised according to available resources and that the initial focus would be to progress work to develop a tiered model to support public library service delivery in Western Australia that includes key features to support regional and remote libraries.

A Reference Group including representatives from the LBWA, WALGA, Public Libraries Western Australia (PLWA), Local Government and SLWA was established in October 2018 to draft a proposed model for the consideration of the PLWG including:

- The number of tiers required
- Criteria and requirements for each
- A grants based allocation model and reporting framework including possible future innovation funding
- Requirements to support regional and remote public libraries, and
- Recommendations on the proposed realignment of regional boundaries and strategies to strengthen collaboration with the Community Resources Centre network (CRC's) and other regional initiatives and government and not-for-profit organisations.

The Reference Group has continued to work collaboratively to provide the proposed model.

Proposed Tiered Model

It is proposed that Local Government public library services in Western Australia will fall into one of three tiers primarily dependent on their population and capacity.

The number of library service points varies across Local Governments depending on population size, geography, remoteness barriers to access and other individual community factors therefore the tiers apply to a Local Government not a library itself, i.e. all libraries within a Local Government will fall into the tier selected by that Local Government.

Local Governments will be able to choose what tier they go into based on the requirements for each tier and will be offered the opportunity to move between tiers on an annual basis if local circumstances change. Further, SLWA will work with all Local Governments to identify which tier the Local Government wants to opt in to.

Where a Local Government has an agreement with the Library Board to provide a library service in partnership with another Local Government, all participating Local Governments will fall into one tier, e.g. Cottesloe, Mosman Park and Peppermint Grove all contribute to delivering 'The Grove Library' and will potentially fall into Tier One.

The proposed framework for the model including tier, population guide, criteria and each tiers key features is outlined below:

Tier	Guide Population	Criteria	Key Features
Tier One	Generally, local governments with a population of over 10,000	• Offers an advanced library service that operates independently of support from SLWA. • Governance, community engagement and service practices that meet or exceed minimum standards for Tier One libraries. • Minimum of one library qualified	• Receives an annual cash grant allocated by SLWA for the purchase of materials (at least 80% of the grant must be spent on library materials) and/or identified library priorities (up to 20% may be spent on identified priorities). • Develops own profile for Supplier Assisted Selection. • Stock remains the property of the local

		FTE with staff level sufficient to deliver services. • Offers a full range of library services and programs that support reading, literacy, learning, wellbeing, cultural and creative pursuits.	government • Does not participate in a system to rotate stock, i.e. Exchange System • May apply for (proposed future) innovation grants for Tier One libraries.
Tier Two	Generally, local governments with a population of between 1,000 and 10,000	• Offers a mature contemporary library service that provides at least some of the services and programs provided by Tier 1 libraries, e.g. weekly storytime, digital literacy support, etc., with support from SLWA. • Governance, community engagement and service practices that meet or exceed minimum standards for Tier 2. • Staffed by employees of the local government or contracted service, e.g. CRC, as per minimum standards for Tier 2.	• Receives a notional annual grant allocated by SLWA for the purchase of library materials. • May apply for (future) grant funding for Tier Two libraries to advance promising practices for regional and remote public library services. • Materials provided via SLWA supplier selection process via a generic profile • Participates in system to rotate stock (currently the Exchange System) • Has access to additional SLWA facilitated services for regional and remote public library services (this does not apply to metropolitan local governments in Tier 2)
Tier Three	Generally, local governments with a population of fewer than 1,000	• Offers a lending service of physical and on-line materials and distributes resources for state-wide programs with SLWA support. • Governance, community engagement and service practices that meet or exceed minimum standards for Tier 3. • Library service is managed and overseen by paid staff but access during opening hours may be facilitated by volunteers.	• Receives a notional annual grant allocated by SLWA for the purchase of library materials. • Materials provided via SLWA supplier selection process via a generic profile. • Participates in system to rotate stock (currently the Exchange System). • Is not eligible to apply for innovation or grant funding. • Has access to additional SLWA facilitated services for regional and remote public library services.

The current allocation model for the distribution of funding from State to Local Government for public library services remains unchanged.

Within the Terms of Reference for the Reference Group an objective is to recommend a new grants based allocation model. Given the complexity of the allocation model, further work and consultation is required on the repurposing of existing capital State Government funding and its accounting treatment to enable a transition of stock ownership and the introduction of grants.

Initiatives to Support Regional and Remote Public Library Services

Members of both PLWG and the Reference Group agreed that support for regional and remote libraries should be incorporated into the tiered model.

Following the formal Public Libraries Strategy consultation process, SLWA undertook further work with regional and remote Local Governments to identify their requirements. The wide ranging consultation reflected the requirement for consistent delivery of flexible support for regional and remote public library services in small and mid-sized Local Governments that caters for the diversity of these communities.

The proposed new model covers support across five areas in response to the consultation feedback received from both current regional libraries and those in smaller regional and remote centres. These include supply and circulation of library materials, enhanced communication, networking and

support, training and professional development, advocacy and establishing new programs and services utilising technology as an enabler. It recognises the importance of place based services and provides an opportunity to support regional and remote public library services in more effective and efficient ways.

In the new model, all regional and remote public library services in Local Governments in all tiers will be eligible to apply for grant funding for travel bursaries and regional conferences and training.

The proposed new initiatives endeavour to provide more proactive communication with regional and remote Local Government staff so that they are aware of the services available to them to assist in the provision of the most appropriate library service to their community

It is proposed that SLWA will facilitate additional support to libraries in tier two and three Local Governments and in response to consultation feedback, it is proposed that public library regional boundaries will be aligned with the WA Regional Development Commission boundaries.

Pending endorsement, the intention is to move to the new Tiered Service Framework from 1 July 2019.

5.5 Community Technical Reference Group (05-018-02-0010 KD)

By Kirstie Davis, Policy Manager Community

Moved: **Cr Les Price**
Seconded: **Cr Brian Oliver**

That the establishment of a Community Industry Reference Group be endorsed.

RESOLUTION 47.4/2019 **CARRIED**

In Brief

- At its 27 March 2019 meeting, State Council received the Community Reform Report and requested further information to clarify the costs, membership, objectives and timeframes of the proposed Community Industry Reference Group.
- Clarity around the process is now being provided to State Council for final endorsement.

Attachment

Community Industry Reference Group Terms of Reference.

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
- 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

Nil.

Budgetary Implications

Nil. Will be incorporated into the People and Place budget as business as usual.

Background

At the March 2019 meeting, State Council considered Item 5.8 'Community Policy Reform Project' and determined that further information about the establishment of a Community Industry Reference Group to inform its decision making processes.

The Secretariat was requested to provide further information outlining any intended costs associated with the Group, the membership, objectives and proposed timeframes.

Comment

To assist State Council a Community Industry Reference Group Terms of Reference has been developed and is attached.

These Terms of Reference are consistent with those guiding the work of other Reference Groups in the Association e.g. The Economic Development Framework Project Industry Reference Group.

There are no additional costs required to support this sector Reference Group as this is considered normal Association consultation activity and contained within the current operating budget.

Mr Wayne Scheggia left the room at 4:57pm.

Attachment Item 5.5

Community Development Reform Project

COMMUNITY INDUSTRY REFERENCE GROUP

TERMS OF REFERENCE

Background

WALGA has initiated a project to develop a Framework to inform the community development activities of WALGA.

The Community Industry Reference Group (IRG) will be key advocates for Local Government and inform WALGA where there is:

- Increasing legislation and compliance
- Increasing expectations on the scope of role and responsibility
- Increasing cost to deliver services with unmatched provision of suitable resources.

Purpose

The purpose of the Community IRG is to:

1. Improve coordination and oversight of key issues relating to communities
2. Increase understanding of roles and responsibilities of Local Government in regard to the delivery of services to community that reflect legislation and compliance together with social responsibilities to meet the needs of community
3. Strengthen relationships and partnerships between State and Local Government
4. Achieve greater consistency of information being provided that further defines best practice for implementation of State and Local Government resources, reduces duplication and minimises service gaps
5. Influence the review of programs and related grants and budgets to ensure they reflect and incorporate Local Government
6. Assist and support WALGA State Councillors and WALGA Policy Team members with prioritisation of workflow and the increasing workload of submissions and other agenda items.

Outcomes

- Guide the development of a Local Government Outcomes Measurement Framework
- Guide the development of Local Government Health and Wellbeing Indicators
- Guide the development of Discussion Papers capturing the research and detailing opportunities for Community Development in Local Government as required
- Guide the development of two forums/networking events to be held annually
- Guide the development of training packages for Elected Members as required.

Membership

The members of the Community IRG will represent the diversity of Local Government community development practitioners and aim to ensure equity of representation from metropolitan and non-metropolitan Local Governments. The membership will be comprised of:

- Executive Manager, People and Place, WALGA
- Policy Manager Community, WALGA
- Senior Policy Officer, WALGA
- Executive Managers, as required, WALGA
- At least four (4) representatives from metropolitan Local Governments including Regional Councils

- At least four (4) representatives from non-metropolitan Local Governments, including Regional Councils, with at least one (1) representative from either a band 3 or 4 Local Government
- Directors, as required, State Government Agencies

Members may provide a proxy member if they are unable to attend a meeting.

Chair

The Community Industry Reference Group will be chaired by WALGA's Policy Manager Community.

Project Support

WALGA will provide administrative project support to the Community IRG.

Conduct of Meetings

It is expected the Community IRG will meet on at least six (6) occasions, including at key decision points when required.

All decisions will be made by consensus decision-making, but will not be bind the Association to any course of action.

WALGA will be responsible for recording and distributing the meeting outcomes.

All meetings will be held at WALGA's offices at 170 Railway Parade, West Leederville.

All meetings will include an Agenda issued at least one week prior to the meeting.

All members of the Project Team will be sent an electronic diary appointment at least one week prior to the meeting.

A record of the outcome of all meetings will be issued to members of the Community IRG within one week of the meeting.

Reporting

An annual review of the Community IRG outcomes will be conducted by WALGA with a Status Report provided to the Community IRG and WALGA State Council.

Term

An annual review will be conducted to determine the ongoing operational and strategic effectiveness of the Community IRG.

MATTERS FOR CONSIDERATION BY STATE COUNCILLORS (UNDER SEPARATE COVER)

5.6 Executive Committee Minutes – 15 April (01-006-03-0006 TB)

Moved: Cr Julie Brown
Seconded: President Cr Karen Chappel

That The Minutes of the Executive Committee Meeting held Monday 15 April 2019 be endorsed.

RESOLUTION 48.4/2019 **CARRIED**

5.6A Executive Committee Meeting Business Arising – Preferred Supplier Program Performance Update May 2019 (JF)

Moved: Cr Julie Brown
Seconded: President Cr Karen Chappel

That the Preferred Supplier Program Performance Update May 2019 be noted.

RESOLUTION 49.4/2019 **CARRIED**

5.6B Confidential Special Executive Committee Minutes – 1 May (01-006-03-0006 TB)

Moved: Cr Julie Brown
Seconded: President Cr Karen Chappel

That The Minutes of the Special Executive Committee Meeting held Wednesday 1 May 2019 be endorsed.

RESOLUTION 50.4/2019 **CARRIED**

5.7 Selection Committee Minutes (01-006-03-0011 CO)

Moved: Mayor Carol Adams
Seconded: Cr Brian Oliver

That:

1. **The recommendations contained in the 30 April 2019 Selection Committee Minutes be endorsed; and**
2. **The resolution contained in the 30 April 2019 Selection Committee Minutes be noted.**

RESOLUTION 51.4/2019 **CARRIED**

5.8 Use of the Association's Common Seal (01-004-07-0001 NS)

Moved: **Cr Julie Brown**
Seconded: **Mayor Carol Adams**

That the use of the Association's common seal for the following purpose be noted:

Document	Document Description	Signatories	State Council prior approval
Confidentiality Agreement	Confidentiality agreement between Nick Sloan & WALGA/LGIS	Cr Lynne Craigie Mayor Tracey Roberts Nick Sloan	No

RESOLUTION 52.4/2019 **CARRIED**

6. MATTERS FOR NOTING / INFORMATION

6.1 Report Municipal Waste Advisory Council (MWAC) (01-006-03-0008 RNB)

By Rebecca Brown, (Manager, Waste & Recycling)

Moved: **President Cr Ronnie Fleay**
Seconded: **Cr Paul Kelly**

That State Council note the resolutions of the Municipal Waste Advisory Council at its 27 February 2019 meeting.

RESOLUTION 53.4/2019 **CARRIED**

In Brief

- This item summaries the outcomes of the MWAC meeting held on 27 February 2019.

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 **27 February 2019** 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 issues considered at the meetings held on **27 February 2019** included:

Draft Discussion Paper: Sharing the Benefits of the CDS
The implementation of the Container Deposit Scheme in early 2020 will bring a range of benefits to Western Australia. A key consideration for Local Government, is how benefits will be shared between Local Government and MRF operators.

In NSW and QLD, there have been challenges in reaching agreement as to how the benefits from the Scheme should be shared between Local Governments and MRF operators. The negotiations have been complicated by the impact of China's National Sword Program on traditional end markets for recyclable material. In WA, there is the opportunity for Local Governments and MRF operators to agree how the benefits of the Scheme will be shared prior to its implementation, by considering likely costs and revenue.

To receive a refund on eligible containers placed in the kerbside recycling bin, MRF operators must enter into a Material Recovery Agreement with the Scheme Coordinator. The Regulations will outline how payments under this agreement are to be calculated, including the means for estimating the number of containers processed by a MRF operator.

MRF operators must also reach an agreement with the Local Governments, from where the material originated, as to how benefits from the Scheme will be shared. The Regulations will outline the period in which an agreement must be reached, the consequences of failing to reach an agreement and how payments are to be shared in the absence of any agreement.

WALGA has developed a Draft Discussion Paper that outlines a proposed approach to sharing the benefits of the Scheme. As there will be costs associated with claiming benefits, WALGA has sought feedback from Material Recovery Facility operators on the type of cost related information that could be provided to Local Government.

Comments on the Paper will be sought from the sector, with the final Paper presented to MWAC out of session for consideration.

MUNICIPAL WASTE ADVISORY COUNCIL MOTION
That the Municipal Waste Advisory Council note the Draft Discussion Paper: Sharing the Benefits of the CDS.

Moved: Cr Price Seconded: Cr Norman
CARRIED

Development of State/Local Government Waste Management Partnership Agreement
The MWAC Chair has indicated that there is an opportunity, under the auspices of the general State / Local Government Partnership Agreement, to develop a waste management specific agreement. This Agreement could be similar to the Road Funding Agreement and include a State Government commitment to fund:

- Infrastructure – for example Better Bins Program and Drop off site upgrades
- Communications and community engagement – for example waste avoidance and bin tagging
- Research and development of new Programs.

The Agreement would be for a minimum of 5 years, with funding of approximately 1/3 of the available Levy and align with the Waste Strategy. The benefit of such an agreement would be efficient and effective program delivery that minimises administration costs. It would also provide, through a group/board structure, a more collaborative decision making process whereby State and Local Government agree on future priorities.

Following the release of the Waste Strategy, further analysis of the Strategy is necessary to produce the Partnership Agreement. A focused Working Group, reporting back to the April MWAC meeting, is suggested as the mechanism to progress the development of the Agreement.

MUNICIPAL WASTE ADVISORY COUNCIL MOTION
That the Municipal Waste Advisory Council appoint a Working Group to progress the development of the Partnership Agreement, including the following representatives:

- Cr Doug Thompson (MWAC Chair)
- Tim Youé (OAG Chair)
- Stefan Frodsham (WMRC)
- Morné Hattingh (Karratha)

Moved: Cr Price Seconded: Cr Norman
CARRIED

7. ORGANISATIONAL REPORTS

7.1 Key Activity Reports

7.1.1 Report on Key Activities, Environment and Waste Policy Unit (01-006-03-0017 MJB)

By Mark Batty, Executive Manager Environment & Waste

Moved: **Mayor Logan Howlett**
Seconded: **Cr Julie Brown**

That the Key Activities Report from the Environment and Waste Unit to the May 2019 State Council meeting be noted.

RESOLUTION 54.4/2019 **CARRIED**

The following report outlines key activities for the Environment Policy Team since the last State Council meeting:

That the report from the Environment Unit to the May 2019 State Council meeting be noted.
The following report outlines key activities for the Environment Policy Unit since the March 2019 State Council meeting:

Policy and Advocacy

Local Government Coastal Hazard Planning Issues Paper

WALGA Environment and Planning Units are working together to prepare a Local Government Coastal Hazard Planning Issues Paper. The purpose of the Paper is to identify:

- issues being experienced by Local Governments in meeting coastal hazard planning responsibilities established by *State Planning Policy 2.6: Coastal Planning Policy*; and
- options for resolving these issues, which may include; further research, legal advice, peer reviewed guidance, and/or, advocacy.

The paper is being drafted in consultation with the Local Government Coastal Hazard Risk Management and Adaptation Planning (CHRMAP) Forum. It is intended that it will be released for comment by the sector in the coming months, and used as a basis for advocacy with the State Government to improve guidance to Local Government.

State Government Climate Change Policy and Partnership Agreement

The Environment Unit has been meeting regularly with the Department of Water and Environmental Regulation (DWER) Climate Change Unit regarding the process and scope of the State's Climate Change Policy currently under development. DWER officials made a presentation to the State Council Environment Policy Team at its meeting on 27 March where it outlined the WA context for the development of the Climate Change Policy (Western Australia and the Northern Territory are the only jurisdictions where the emissions profile continues to grow) and the timeframe for the Policy's development. A broad-based discussion paper is expected to be released in June for a 12 week public comment period, with the Policy to be finalised by February 2020. WALGA will be seeking input from the Sector to inform its submission and also encourages Local Governments to make their own submissions on the Paper.

The development of a State / Local Climate Change Agreement, under the auspices of the overarching State/Local Government Partnership Agreement, is also progressing in parallel with the

development of the State's Policy. It is envisaged that the Agreement could act as a conduit for the delivery of elements of the Climate Change Policy relevant to Local Government.

Best practice guidelines to minimise the spread of dieback during the extraction and use of bulk raw materials (BRM)

WALGA, the City of Joondalup and the Shire of Mundaring are part of a committee developing best practice guidelines to minimise the spread of Phytophthora dieback during the extraction of bulk raw materials (BRM) and use of the end product. Other committee members include the Department of Biodiversity, Conservation and Attractions (DBCA), Main Roads WA, Hanson and Curtin University.

The BRM industry and its extractive activities pose a significant risk in the spread of Phytophthora dieback. Basic Raw Materials are materials used in the construction industry, particularly road building, and consist of materials such as sand, gravel, limestone and hard rock.

The committee is developing two best practice guidelines for extractive industries and users of the end product:

1. Management of Phytophthora dieback in extractive industries.
    - These will cover BRM exploration, operations, loading and transport, and site rehabilitation.
2. Management of Phytophthora dieback in road construction.
    - These may potentially include a system or risk matrix for matching the disease status of the BRM with its end use, and focusing on other risk mitigation factors such as appropriate drainage, road surface (sealed/unsealed) etc.

The committee met in February and again in April to progress development of the guidelines. It is anticipated that a draft of both documents will be developed by mid-2019. WALGA will ensure that consultation with members is undertaken during the documents' development.

Environmental Planning Tool (EPT)

The EPT platform has been updated to make it compatible with the newest version of Windows, resulting in further enhancements of EPT performance and enabling larger amounts of data to be handled. The EPT desktop reporting function has been extended with a new checklist of environmental regulatory requirements, following testing with the City of Wanneroo.

In-house EPT training was delivered at the City of Cockburn.

On April 4, WALGA joined DWER on a visit to Shire of Cuballing to progress the Shire's strategic permit for road projects. Demonstrations on how EPT can assist with delivery of road projects were delivered at the WALGA Roadside Vegetation Maintenance Events in Margaret River and Northam.

Events and Newsletters

Local Government Coastal Hazard Risk Management and Adaptation Planning (CHRMAP) Forum Meeting

WALGA facilitated the Local Government CHRMAP Forum meeting on 25 March. The meeting was attended by 12 Local Government officers representing 10 Local Governments. LGIS and Perth Region NRM were also in attendance.

Professor Chari Pattiaratchi from the University of Western Australia presented to the group on sea level rise projections and implications for Local Government. The review of the Department of Planning, Lands and Heritage (DPLH) CHRMAP Guidelines and WALGA's draft Coastal Hazard Planning Issues Paper was also discussed. The meeting also included site visits to Mosman, Leighton and Port Beaches, where Town of Mosman Park and City of Fremantle officers discussed coastal issues they are facing and their recently completed CHRMAP reports.

The next CHRMAP meeting will be held in July.

WALGA Management of Roadside Vegetation Event

WALGA hosted two events on the Management of Roadside Vegetation in Margaret River on 12 April and Northam on 3 May. Speakers included representatives from DWER, the Roadside Conservation Committee, Wheatbelt NRM, WALGA, and the Local Governments of the Wheatbelt (Wongan-Ballidu, Toodyay) and South-West regions (Busselton, Jerramungup, Kojonup and Manjimup).

The events began by acknowledging the complex legislative and policy context that provides for the protection of vegetation, whilst delivering an efficient and safe road network. Case studies in each region provided information on the different ways Local Governments are now approaching road planning and maintenance works to better value conservation within roadsides.

Many of the case studies demonstrated that the management of roadsides varies significantly in each region and land managers need to be adaptive to their own conditions and work with various stakeholders in order to deliver the best outcomes.

Living Smart 'Taster' Course for Local Government

Living Smart is a not-for-profit sustainability program for adults, which aims to equip participants with the knowledge, skills and confidence to live smarter, healthier and more sustainability. Since the program was first piloted in WA 15 years ago, it has been delivered over 280 times and won State Government education awards. The course covers ten main sustainability topics over 6 to 8 weeks, and includes hands-on activities and field trips. The course is based on behaviour change principles and in-class goal setting to encourage lasting sustainable changes and to build local community. Many Local Governments have chosen to deliver the course to their local community, through a trained facilitator.

WALGA is hosting a free short 'taster' course to Local Government over two weeks in May, with staff from environment, sustainability, health and community development roles invited to attend. The aim of the course is to provide Local Government officers with an understanding of the course content and an opportunity to participate in activities, so that they can consider if the program is suitable for their community needs.

EnviroNews

The March and April editions of EnviroNews can be accessed electronically on the WALGA website here. The next edition is scheduled for release on 22 May.

7.1.2 Report on Key Activities, Governance and Organisational Services (01-006-03-0007 TB)

By Tony Brown, Executive Manager Governance & Organisational Services

Moved: **Mayor Logan Howlett**
Seconded: **Cr Julie Brown**

That the Key Activities Report from the Governance and Organisational Services Unit to the May 2019 State Council meeting be noted.

RESOLUTION 55.4/2019 **CARRIED**

Governance and Organisational Services comprises of the following WALGA work units:

- Governance Support for Members
- Employee Relations
- Training
- Regional Capacity Building
- Recruitment
- Strategy & Association Governance

The following provides an outline of the key activities of Governance and Organisational Services since the last State Council meeting.

Sector Governance Support

Local Government Act Review – Phase 1

The Local Government Amendment Bill was introduced in the Legislative Assembly by the Minister for Local Government on 14 March 2019.

This Bill will include amendments to the Local Government Act that align with WALGA's advocacy on the following matters:

- Gifts
- Universal Training
- Standards of Behaviour
- CEO Recruitment and Performance Review
- Public Notices and Access to Information
- Administrative Efficiencies

Debate on the bill commenced on 4 April 2019. Update on the progress of the passage of the bill will be provided to the sector.

Local Government Act Review – Phase 2

The advocacy positions for the Local Government Act review were considered by all Zones at the March 2019 round of meetings and endorsed at the 27 March 2019 State Council meeting.

The Local Government Act review was submitted to the Department prior to the 31 March 2019 deadline.

The Department will now collate and consider the submissions. Progress on the Act review process will be provided to the sector when information is available.

Association Governance

Awards

Nominations are sought for three awards programs, with awards to be presented at the WALGA Annual General Meeting in August 2019:

WALGA Honours Program

The WALGA Honours program recognises the most valuable and committed members of our community. There are six categories of awards in the program:

- Local Government Medal
- Life Membership Award
- Eminent Service Award
- Long and Loyal Service Award
- Merit Award, and
- Distinguished Officer Award
-

Nomination packs are available here and close on Friday, **10 May.**

ANZAC Day Awards

The ANZAC Day Awards recognise Local Government contribution to the promotion and facilitation of community involvement in ANZAC Day commemorative events and initiatives.

Two awards will be presented in 2019:

- A Local Government with up to 10,000 people, and
- A Local Government with 10,001 or more people.

More information is available in the nomination form available on the WALGA website. Nominations close on Friday, **31 May.**

Most Accessible Community in Western Australia Awards

WALGA is assisting the Regional Capitals Alliance WA in their sponsorship of the Western Australian community awards for the Most Accessible Community in WA.

Awards are presented in three categories:

- Metropolitan
- Regional City
- Regional Shire or Town

Nominations Close on 1 July 2019 and more information can be obtained by contacting Jane Lewis on 0419 322 779 or janeredz1@gmail.com.

Recruitment

Currently WALGA Recruitment are busily assisting a number of Local Governments with the following positions:

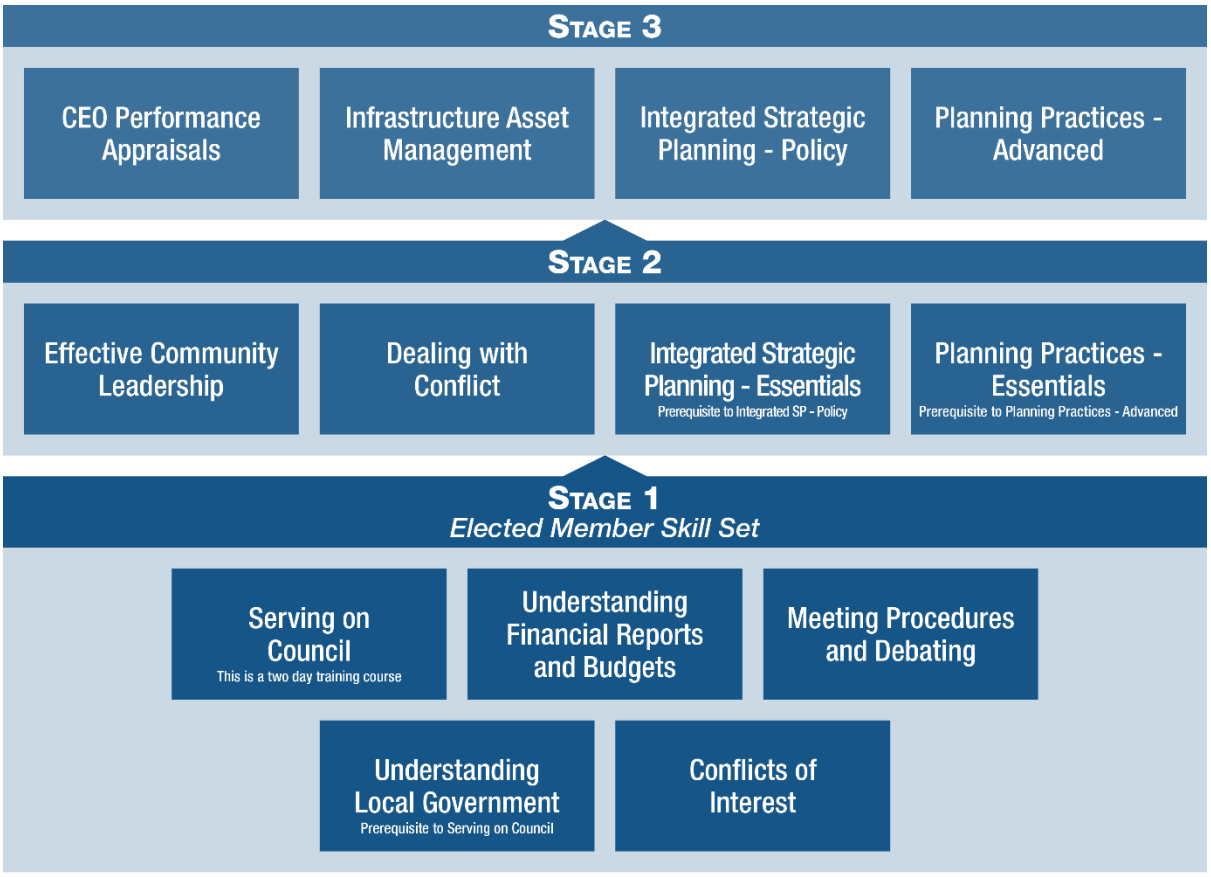
- CEO – Shire of Trayning
- CEO – Shire of Pingelly
- Executive Development Services– Shire of Serpentine-Jarrahdale
- Director Corporate Services – Shire of Mundaring
- Project Co-ordinator – Tamala Park Regional Council

Training

Continuous Improvement – Elected Member Qualification

WALGA's RTO have received approval (on 13 March 2019) from the Training Accreditation Council (TAC), who are responsible for the quality assurance and recognition of VET service, for a structural change to its Diploma of Local Government (Elected Member).

Changes were made based on feedback received from both WALGA members and from a recent RTO renewal of registration audit (see diagram of new structure below).



Elected Member Learning and Development Pathway

7.1.3 Report on Key Activities, Infrastructure (05-001-02-0003 ID)

By Ian Duncan, Executive Manager Infrastructure

Moved: **Mayor Logan Howlett**
Seconded: **Cr Julie Brown**

That the Key Activities Report from the Infrastructure Unit to the May 2019 State Council meeting be noted.

RESOLUTION 56.4/2019 **CARRIED**

The following provides an outline of the key activities of the Infrastructure unit since the last State Council meeting.

Roads

Methodology for Calculating the Cost of Road Wear on Unsealed Roads

In response to member requests, WALGA has worked closely with ARRB to develop a guide for calculating the cost of road wear on unsealed roads subject to a significant increase in heavy vehicle traffic. This builds on similar work completed for sealed roads and now adopted by many Councils.

The ARRB report has been completed and work commenced on the final stage, the development of a User Guide to enable the model to be applied in a practical way. The User Guide is nearing completion and will be presented to the Regional Road Groups and published on the WALGA website.

Review of the Restoration and Reinstatement Specification

The Specification was originally published in 2002 and IPWEA has endorsed a comprehensive review to be performed by a working group of industry experts. The working group comprises members from IWEA, WALGA, Local Government and Main Roads WA. The working group has met on several occasions and has decided to rewrite the specification which will be titled “Local Government Guidelines for Restoration and Reinstatement in Western Australia”. This guideline will be a key supporting resource to a Model Policy Guideline for Managing Third Parties Working in the Road Reserve. Compilation of the document is well advanced and a draft will be circulated to all stakeholders for comment in coming months.

Proposed Changes to Main Roads WA Policy on Control of Heavy Vehicle Operations on Local Government Roads

It is Main Roads policy to consult with Local Governments before adding or amending a RAV route. Local Governments may propose an operating condition that requires the Operator to obtain written approval from the Road Owner. The approval letter must be carried in the vehicle and produced upon request. This is commonly referred to as a CA07 condition. It is Main Roads WA policy to apply this condition to all roads that are designated Type A or B Low Volume Roads. Records indicate that there are 117 Local Governments that have roads with the CA07 condition.

Some Local Governments are charging transport operators a fee to obtain the letter of approval. Main Roads have advised WALGA that instructions have been received from the State Solicitors Office that Local Governments do not have the powers to charge transport operators to access a public road (note that the practice of establishing a maintenance agreement with a freight owner / generator in instances of an extraordinary transport task is a separate issue). Consequently they are proposing to abolish the condition.

WALGA has advised Main Roads that changes should only be considered once there is a proper understanding of the functioning of the current arrangements. Seventy Local Governments participated in the survey undertaken by the Association. Results indicate that the overwhelming

majority of Local Governments are against withdrawal of the CA07 condition and that only a minority are charging transport operators. WALGA has subsequently advised Main Roads that the sector does not support withdrawal of the condition unless an acceptable alternative can be developed and that the issues can be resolved by advising Local Governments not to use the letter to charge transport operators and to establish consistent administrative practices regarding fees and letter formats. WALGA State Council endorsed this position in December and WALGA continues to consult with Main Roads to develop an acceptable solution. WALGA will consult with Local Governments and State Council before determining if any proposed solution is “acceptable”.

Development of a Model Policy Template for Works or Events in the Local Government Road Reserve

The requirement for notifications, approval and management of works and events in the road reserve is an important responsibility of Local Government. Currently these responsibilities are specified in different documents causing confusion for Local Governments, utility providers and contractors. Based on requests from Local Governments and utility providers, WALGA developed a draft model policy template to assist Local Governments frame consistent and robust policy to govern works or events in the local road reserve or on land owned by a Local Government. The sector provided feedback on the draft model policy template, which prompted further research and guided framing the final draft. The policy template will be considered by State Council at the July meeting.

Road Safety Management System

The recently signed State Road Funds to Local Government Agreement 2018/18 to 2022/23 requires that WALGA, Main Roads WA and Regional Road Groups work towards establishing a Road Safety Management System to suit the needs of Local Government. It is proposed the system be used by all Local Governments to assess Black-Spot and other grant funded projects. WALGA and Main Roads WA are currently working with member Local Governments of the South West Regional Road Group to determine the components of a Road Safety Management System and identify the gaps that need to be addressed. It is intended to pilot the system in the South West Region.

Funding

Roads to Recovery

Following advocacy from the Australian Local Government Association (ALGA) the Federal Government has increased Roads to Recovery funding by approximately 27.5% relative to that previously announced and advised to Councils in January 2019. This will provide WA Local Governments with an additional $16 million per year for roads. Further details are anticipated to be available following release of the Federal Budget on 2 April.

Australian Government Black Spot Program

The Federal Government has announced a significant increase in funding for the Black Spot program. Based on the change in funding to the total program this should provide an additional $6 million per year for work to improve the safety of the road network. This represents a near doubling of funding. Local Government co-funding is not required for Australian Government funded Black Spot projects.

Wheatbelt Secondary Freight Routes Funding

The Federal Government has provided $70 million from the Roads of Strategic Importance Initiative to commence work on the Wheatbelt Secondary Freight Routes project. The working group will be developing governance arrangements to progress this project.

Street Lighting

The Association is advocating that LED street lighting technology be available and supported to improve the quality of public area lighting, reduce costs, reduce energy consumption and reduce greenhouse gas emissions.

The Economic Regulation Authority (ERA) has now published the approved Access Arrangements and Price Lists for Western Power. This includes some important changes for Local Governments. The definition of the Reference Service now includes the requirement for Western Power to operate and maintain the streetlights such that they continue to provide lighting output in accordance with the design output. Local Governments had expressed concern that lack of routine globe replacement means that although the light was still technically on and working, light output was only a fraction of the initial output. A differential asset-pricing framework has been introduced to apply where the Local Government provides the full upfront cost of an LED luminaire replacement, and a standard service for LED replacement has been added. There have also been changes to the unmetered supply reference service (A10) so that streetlights with smart control systems that include energy metering can use this service. Further work is on-going to determine how these changes will be implemented.

The prices that Western Power charge to Synergy for the most common types of street light have fallen by around 1.3% for the Mercury Vapour 80 watt and 4.2% for the CFL 42 watt. The basic LED 20 watt tariff has been reduced around 10.3%. It is not yet known how these changes will be reflected in tariffs charged by Synergy.

Level 1 Bridge Inspections

The State Road Funds to Local Government Agreement states that WALGA and Main Roads WA will implement a framework during 2019 to monitor and support all Local Governments to fulfil the obligation of performing annual Level 1 bridge inspections.

In order to be eligible for Special Project funding from the State Road Funds to Local Government Agreement, Local Governments must be able to show that Level 1 inspections have been performed and that adequate routine and preventative maintenance have been undertaken to prevent undue deterioration.

WALGA has developed a draft framework that sets out the obligations of Local Governments and Main Roads and introduces timelines for completion and submission of inspections. The document also details potential financial and training support.

WALGA has met with Main Roads WA on several occasions to discuss progress of the framework. All Local Governments will be invited to provide comment on the framework in coming months.

Urban and Regional Transport

Electric Vehicles

WALGA has contributed to working groups developing recommendations for incentives, policy changes and infrastructure to accelerate uptake of electric vehicles in Western Australia. A scope of work has been completed establish whether there is a case for government intervention to accelerate the rate of electric vehicle uptake and, if so, by how much, and when. The effectiveness and cost of a range of financial and non-financial incentives will be investigated. The Department of Water and Environmental Regulation is funding this work. Electric vehicles offer the potential to achieve a range of benefits including improving air quality in cities.

Road Safety

Road Safety Council Update

With the *Towards Zero* road safety strategy due to expire next year much of the Road Safety Council's (RSC) current focus is on developing recommendations to the Minister, for a new strategy to guide road safety efforts beyond 2020. At the February meeting, the Road Safety Council received reports from the Road Safety Commission on the development of a discussion paper and plans for community and stakeholder consultation through an online survey and a series of regional forums. The consultation phase is expected to commence in April or May.

RoadWise Road Safety Newsletter

The March 2019 editions of the *RoadWise Road Safety Newsletter* can be accessed electronically at http://roadwise.asn.au/roadwise-road-safety-newsletter.aspx.

New subscribers can register to receive the newsletter directly through the following link: http://eepurl.com/PHFsr.
The newsletter is currently distributed to more than 1800 members of the community road safety network in Western Australia. Readership of the newsletter is estimated to be significantly higher than distribution.

WALGA RoadWise Facebook page

The WALGA RoadWise Facebook page is designed to help promote the community road safety network's road safety initiatives, enable the network to interact more, raise community awareness of road safety and promote RoadWise campaigns and projects. The WALGA RoadWise Facebook page can be found at https://www.facebook.com/WALGARoadWise/.

7.1.4 Report on Key Activities, People and Place (01-006-03-0014 JB)

By Jo Burges, Executive Manager People and Place

Moved: **Mayor Logan Howlett**
Seconded: **Cr Julie Brown**

That the Key Activities Report from the People and Place Unit to May 2019 State Council meeting be noted.

RESOLUTION 57.4/2019 **CARRIED**

The following provides an outline of the key activities of the People and Place Team since the last State Council meeting.

COMMUNITY

National Redress

Consultation – Phase 1 (Information)

- The Department of Local Government, Sport and Cultural Industries (DLGSC) sent their Information and Discussion Paper to all WA Local Governments on 10 January 2019.
- DLGSC commenced phase 1 of the consultation with the WA Local Government sector in early 2019 including:
    - Webinar information session in February involving 34 Local Governments
    - Departmental representatives attending and presenting at the Central Country, Peel, Great Eastern, Central Metro, South Metro, South East Metro zone meetings
    - Other – LG Professionals meetings – Great Southern, Busselton, Community Development network
- Approximately 80% of Local Government sector covered
- DLGSC / DPC to provide update on Phase 1 to Ministerial Cabinet Sub-Group in late April 2019

Consultation – Phase 2 (Decision)

- DLGSC to publish Discussion Paper (part 2) in May 2019

It is anticipated that at the Zone meetings in June 2019 members will be requested to consider adopting a recommendation regarding Redress participation at the WALGA State Council meeting 3 July.

Public Health Risks at Events

As part of the implementation of the *Public Health Act 2016*, and under the *Health (Public Buildings) Regulations 1992*, the Department of Health (DOH) has released a Discussion Paper 'Managing Public Health Risks at Events in WA' exploring how the risks associated with public health should be managed into the future. Feedback can be provided by written submission or completion of an online survey. Submissions are due by **Friday 21 June**. WALGA is coordinating a submission on behalf of Local Governments. To have your views included in the submission, please send feedback via email to Kirstie Davis, Policy Manager Community by **Tuesday 11 June**. The Discussion Paper is available here.

Obesity

WALGA will be representing Local Governments at the Obesity Advocacy Targets Food Focus Forum to be held on 24 May 2019. Key themes for the day include improving food labelling and food literacy, removing fast food sponsorship from sport, promoting fruit and vegetable consumption, improving nutrition for children and improving nutrition for Aboriginal people, particularly in rural and remote communities. Development of a state-wide set of targets will assist in Local Government public health planning.

Type 2 Diabetes Prevention and Management

WALGA was invited to attend the Health and Education Standing Committee inquiry into the role of diet in type 2 diabetes prevention and management on Friday 1 March 2019. The hearing focused on Local Government health planning and further considered:

- The cost of type 2 diabetes to the community
- The adequacy of prevention and intervention programs
- The use of restrictive diets to eliminate the need for type 2 diabetes medication
- Regulatory measures to encourage healthy eating
- Social and cultural factors affecting healthy eating, and
- Behavioural aspects of healthy eating and effective diabetes self-management.

WALGA was well positioned to advocate for the role of Local Government within the *Public Health Act 2016* and pending public health planning responsibilities.

Regional Health Event

On February 19, WALGA hosted an event which brought together WA primary health agencies with Local Government Elected Members, CEOs and Officers from over twenty-five regional areas in Western Australia. Feedback from the event has highlighted the challenges surrounding communication with service providers, primarily WACHS, diminishing funding, volunteer burnout and access to mental health treatment. Participants have provided clear guidance to WALGA on what they would like actioned in the coming 12 months which includes local regional forums for face to face engagement and greater engagement and collaboration with Western Australian Country Health Service (WACHS). WALGA officers will also work with WACHS for the potential to provide an updated contact list of who to contact and what services they provide.

***Aboriginal Heritage Act 1972* Review**

In March 2019, the Minister for Aboriginal Affairs released a Discussion Paper to modernise Aboriginal heritage legislation, to make it more culturally appropriate and equitable for Aboriginal people, and more efficient for industry. The Discussion Paper sets out proposals for a new system to recognise, protect, manage and celebrate the places and objects that are important to Aboriginal people, as well as providing an efficient land use proposal framework. The Minister is keen to hear from all stakeholders with an interest in Aboriginal heritage about their views on the proposals in the Discussion Paper. Stakeholders are encouraged to respond to the questions in the Consultation Paper. All feedback will be used to prepare a Green Bill for the proposed new legislation, which will be advertised for comment. Submissions close on **31 May 2019.** WALGA will be developing a sector position and submission. If you make a Submission, please send a copy of your Submission to WALGA to assist us understand our members views. More information on the Phase Two Consultation and the Discussion Paper and Consultation Paper are available here.

State Heritage Awards

Congratulations to the Shire of Leonora for winning the Contribution by a Public or Private Organisation for their significant work at the museum that demonstrates a commitment to cultural heritage and the services and programs they provide to their community. Also to the Town Of East Fremantle for being awarded a Highly Commendable and to the City of Wanneroo for being

awarded a Highly Commendable in the category Heritage Practices by a Local Government for their maritime heritage project.

Heritage

Pursuant to the new *Heritage Act 2018,* Draft Guidelines for Local Heritage Surveys Local Government feedback has been prepared. Whilst general overall support for the draft guidelines was provided the following key themes have been provided.

- Further guidance required around definition of place (sites with multiple values, listings, precincts)
- Clarity required about updates and reviews
- Further clarification requested specifically with consultation requirements, specifically in relation to the heritage list, and
- Provision of 'local' and 'level of significance' classifications aspect to the assessment process.
- Case studies to be provided as part of the guide.

Final Guidelines are to be provided to Local Governments in the near future.

Off-road Vehicles

In response to ongoing engagement with Local Government, DLGSC is proposing to undertake the following initiatives, utilising funding from the ORV account:

- Develop online mapping to identify all permitted and prohibited ORV areas across Western Australia
- Develop a guideline for Local Governments to enable better understanding of the ORV Act, the role of the ORV Committee, and local ORV area planning and management
- Update education materials for riders and retailers regarding the selection of appropriate ORV for recreational use; licencing and registration required; and information about where it is permitted (and not permitted) to ride,
- Review the Management Plan for the Medina ORV area to determine the feasibility of upgrading current facilities.

These proposed projects address (in part) recommendations 2-6 made by WALGA in the recent ORV discussion paper, and were initiated through an informal collaborative working group comprising officers from WALGA, DLGSC, the Department of Biodiversity, Conservation and Attractions (DBCA), with assistance from the Recreational Trail Riders Association (RTRA). It is expected that the information resources and mapping (projects 1-3) will be produced as online and hard copy publications.

Directions Paper for the 10-Year Strategy on Homelessness

In mid-2018 the State Government Supporting Communities Forum established a Homelessness Working Group to deliver on a State Homelessness Strategy.

Senior WALGA staff have participated in the process to date along with representatives from the Youth Advisory Council WA, National Disability Services WA, Ruah, Shelter WA, Foundation Housing, Western Australian Alliance to End Homelessness, and the Ebenezeer House Homeless Service.

State Government representatives from Education, Finance, Justice, Treasury, Health Networks, DPC and Communities also contribute. Key stakeholders have been identified and co-opted throughout the process as needed.

A Directions Paper for the 10-Year Strategy on Homelessness has been developed and at the time of writing this report was sitting with the Minister for approval to release for Public Consultation.

It is envisaged a six week Consultation period will be undertaken. As soon as the Directions Paper is released members will be notified via WALGA's communication mechanisms in particular, LG News and Councillor Direct. WALGA staff will seek to gather feedback to inform the preparation of an Interim Submission and Item for Decision to the July State Council meeting.

PLANNING

Proposal to amend the Building Regulations 2012 - Cladding

The Building & Energy division of the Department of Mines, Industry Regulation and Safety (DMIRS) have sent through a proposal to amend the Building Regulations 2012, to require owners of existing buildings with external combustible cladding to report certain information to the Building Commissioner. The proposal is being circulated only to Local Government for comment, prior to the proposal being presented to the Minister for Commerce for his consideration. The consultation closes on 1 May 2019 and will be subject to an interim submission, which is currently being prepared by the Planning team. The submission will be presented to State Council at its next meeting.

Local Government Performance Monitoring project (Planning and Building)

In preparation for the 2018-19 edition of the Performance Monitoring report the Planning team has been undertaking meetings with Local Governments to gauge their interest in joining the project. To date two additional metropolitan Local Governments have agreed to join the project. Further, in March, the Planning team met in Bunbury with five (5) South West Region Local Governments to introduce them to the project. It is hoped that the next edition of the report will be able to provide a snapshot of the performance of regional Local Governments in their planning and building functions. The next edition of the report will be presented to State Council in early 2020.

Planning for Bushfire Guidelines – Element 3 – Vehicular Access

The Department of Planning, Lands and Heritage has been undertaking targeted consultation with Local Governments on proposed changes to the vehicular access arrangements for proposals within bushfire prone areas. A number of significant changes have been proposed that go to the design and scale of roads in bushfire prone areas, which will likely have implications on streetscape, vehicle speed, vegetation clearing and also viability of developments. The Association has been active in communicating the changes to members. The consultation closes on April 12 2019 and will be subject to an interim submission, which is currently being prepared by the Planning team. The submission will be presented to State Council at its next meeting.

7.2 Policy Forum Reports

7.2 Policy Forum Reports (01-006-03-0007 TB)

The following provides an outline of the key activities of the Association's Policy Forums since the last State Council meeting.

Moved: **Mayor Logan Howlett**
Seconded: **Cr Julie Brown**

That the report on the key activities of the Association's Policy Forums to the May 2019 State Council meeting be noted.

RESOLUTION 58.4/2019 **CARRIED**

7.2.1 Mayors / Presidents Policy Forum

By Tony Brown, Executive Manager Governance & Organisational Services

The Mayors/Presidents Policy Forum has been tasked with addressing the following key issues;

i. Advise the WALGA President on emerging policy issues;
ii. Serve as a stakeholder forum to effectively support and complement the broader work of the Western Australian Local Government Association;
iii. Provide a networking opportunity for all Mayors and Presidents across the State;
iv. Provide a forum for guest speakers to present on topical sector issues.

Comment

A Mayors and Presidents' Policy Forum has been scheduled for Monday 15 April 2019.

The Forum will be covering the following issues;

- GRA Partners: Federal Election – What it means for WA
- Economic Development Project Update – Anne Banks-McAllister & Dana Mason, WALGA
- Emerging Sector Issues
    - Local Government Amendment Act (Phase 1 changes) – Update
    - 2019 Local Government Elections
    - Issues from the Floor

At the time of writing this report, the forum had not been held.

An update on the outcomes of the forum will be provided in the next report.

7.2.2 Mining Community Policy Forum

Wayne Scheggia, Deputy CEO

The Mining Communities Policy Forum has been tasked with addressing the following key issues;

v. Monitor and assess the continuing impacts of State Agreement Acts on Local Government revenue raising capacity and service delivery;

vi. Monitor and assess the impacts of State Government legislation, regulation and policies on the capacity of Local Governments to appropriately rate mining operations.
vii. Develop and recommend relevant advocacy strategies in relation to i & ii;
viii. Consider and recommend relevant strategies in respect to "Fly-in, Fly-out (FIFO) and "Drive-in Drive-out" (DIDO) workforce practices with specific reference to;
    a. The effect of a non-resident, FIFO/DIDI workforce on established communities, including community wellbeing, services and infrastructure;
    b. The impact on communities sending large numbers of FIFO/DIDO workers to mine sites.

Comment
There has not been a meeting of the Policy Forum since the previous State Council meeting.

7.2.3 Container Deposit Legislation Policy Forum

By Mark Batty, Executive Manager Waste and Environment

A Container Deposit Scheme (CDS) is a form of Extended Producer Responsibility which seeks to place financial/physical responsibility for a product (at end of life) on the original producer.

The objectives of the Container Deposit Scheme Policy Forum shall be to:
- *Provide constructive input into the development of a CDS for WA*
- *Ensure that regional and remote communities have access to the benefits of a CDS*
- *Engage with Local Government, and collectively negotiate with the Scheme operator, to ensure the sector has the opportunities to be involved in the implementation of a CDS.*

Comment

The Policy Forum met on the 25 March 2019 to discuss issues relating to the design and implementation of the Scheme, which is now anticipated to commence in early 2020.

Matters discussed included:

- **Benefit sharing – Local Government and Material Recovery Facilities** - A Discussion Paper on sharing the benefits of the CDS between Local Government and MRF Operators has been developed and circulated to the sector. Following the inclusion of feedback provided by the sector, the Discussion Paper has been distributed to MWAC for endorsement.

- **Legislative Update** – the legislation on to establish the CDS passed through the Legislative Council on 13 March. Key Local Government concerns that need to be addressed in the Regulations, include:
    - Tracking the performance of the Scheme Coordinator including requirement to publish results
    - Reasonable access targets for distinct areas of Western Australia including accessibility metrics and opening hours, number of refund points initially provided
    - Recovery target for distinct areas of Western Australia
    - Type of penalty used for not meeting Scheme outcomes for example, default mechanisms to increase the recovery rate.

- **The LGAQ Experience** - Robert Ferguson (LGAQ) provided an overview of the implementation of the QLD Container Deposit Scheme. Following the presentation, discussion included:

- **Benefit Sharing:** In QLD, there is yet to be a resolution as to how benefits of the CDS will be shared in situations where contracts are held between Local Governments, MRF operators, and third parties (e.g. collectors). There was a default 50/50 benefit sharing for a period of 12 months. If an agreement is not reached within this timeframe, no party receives a benefit from Scheme. The 12 month period has only delayed consideration of this issue. Guidance material, protocols or assistance in negotiating contracts has not been provided by the Department. A lack of transparency and data have also been significant issues, with MRF operators hesitant to 'open their books.'

- **Bin Diving:** Bin diving has become more prevalent over time, but is yet to receive the same profile as in NSW. Local Governments are responding to this issue on a case by case basis.

- **Meeting demand at refund points:** There are hot spots where demand / queuing at refund points is an issue. However, as time goes by people are choosing to use types of refund points that suit their lifestyle (RVM, bag drop, donation point etc). It is important that access is well defined, and refund points are located in convenient locations - particularly in cities. There has been variety in the success of the population-based metrics that was used to determine the number of refund points provided.

- **Closure of refund points:** It is yet to be determined if the use of unsuitable locations for refund points is linked to the closure of certain refund points.

- **Encouraging Local Government operated refund points:** In the lead up to implementation of the CDS, timing allocated to the establishment of refund points was limited. Lengthy contracts and limited information on key operational matters has discouraged Local Governments involvement.

- **Regional and Remote access:** The Scheme Coordinator has struggled to achieve reasonable access requirements in some regional and remote areas, with service providers displaying a degree of hesitance in participating. This could be related to the Handling Fee being similar in both metropolitan and non-metropolitan areas. It is likely that additional incentives will be needed to secure service providers in these areas. It is possible that access will soon be delivered in the Torres Islands.

- **Additional layer when determining access:** The QLD experience was that more detail is needed when determining access to the Scheme, so instead of just including 2 access points per regional centre access needs to go into greater detail to ensure the access is spread across the population area.

- **Issues with the bag drop model:** Some of the refund points provided in QLD have adopted the bag drop model. Eligible containers can be 'dropped' in a bag at either a manned or unmanned refund point, and funds deposited into a bank account electronically at a later date. There have been issues at unmanned refund points, with customers finding it difficult to prove that a bag drop occurred, or dispute the refund amount provided. In some instances, it has taken over 5 days for funds to be deposited into the bank account.

The next meeting of the Policy Forum will be held on 15 April 2019.

7.2.4 Economic Development Policy Forum

Tony Brown, Executive Manager Governance & Organisational Services

The Economic Development Policy Forum has been tasked with addressing the following key issues;

1. *Provide sector leadership on Local Government's role in economic development*
2. *Provide guidance on effective engagement with Elected Members to inform the Economic Development Framework Project*
3. *Review and provide input into the draft outcomes of the Economic Development Framework Project, including the Local Government Economic Development Framework, Economic Development Discussion Paper, Economic Development Policy and Advocacy Strategy and Sector Support Strategy*
4. *Monitor the outcomes and effectiveness of the Economic Development Framework Project*
5. *Provide guidance on ongoing work to support the sector in its economic development activities*
6. *Provide input into the development of economic development policy and advocacy*
7. *Provide input and guidance into WALGAs responses to emerging issues as they relate to economic development*

Comment

A Policy Forum meeting has not been held since the last report.

The Economic Development discussion paper and framework were endorsed by all Zones and State Council on 27 March 2019.

The formal launch of the Economic Development project will be held on 7 May 2019 at Crown Towers, Burswood. The Minister for Local Government will launch the project and this will be followed by an Economic Development forum. The forum will showcase the content of the framework and to profile some of the activities being undertaken by Local Governments.

7.3 President's Report

Moved: **Cr Julie Brown**
Seconded: **Mayor Logan Howlett**

That the President's Report for May 2019 be received.

RESOLUTION 59.4/2019 **CARRIED**

7.4 CEO's Report

Moved: **Mayor Logan Howlett**
Seconded: **Cr Les Price**

That the CEO's Report for May 2019 be received.

RESOLUTION 60.4/2019 **CARRIED**

7.5 LG Professional's Report

Moved: **Cr Julie Brown**
Seconded: **Mayor Logan Howlett**

That the LG Professional's Report be received.

RESOLUTION 61.4/2019 **CARRIED**

Mr Wayne Scheggia returned to the meeting at 5:15pm.

8. ADDITIONAL ZONE RESOLUTIONS

Moved: **President Cr Malcolm Cullen**
Seconded: **President Cr Phillip Blight**

That the additional Zone Resolutions from the April / May 2019 round of Zone meetings as follows, be referred to the appropriate policy area for consideration and appropriate action.

RESOLUTION 62.4/2019 **CARRIED**

NORTHERN COUNTRY ZONE

WALGA – Process for Proclamation and De-proclamation of Roads- Infrastructure

The NCZ recommend WALGA take the position of no roads being declassified from State Government to Local Government responsibility without the prior approval of the affected local government. This be listed as formalised WALGA's position and the State Government be informed accordingly.

GASCOYNE COUNTRY ZONE

Financial Assistance Grants Allocations - Executive

That WALGA:

1. Be requested to review the current Grant Commission allocation methodology, including the minimum grant, and the continuing suitability of the allocation methodology; and,
2. Advocate to the Minister for Local Government and ALGA to request a review of the Financial Assistance Grants methodology, particularly the continuing applicability of the minimum grant.

SOUTH METROPOLITAN ZONE

Request for information on Mayors for Peace to be presented at WALGA Annual Conference - Finance and Marketing

a) WALGA consider inviting Tilman Ruff to present to interested delegates for the August WALGA conference on the work of Mayors for Peace.

b) State Council report back to the Zone on other ways in which WALGA can assist in highlighting the work of Mayors for Peace.

Container Deposit Scheme (CDS) – Pending Coordinator Announcement – Environment & Waste

1. The South Metropolitan Zone requests WALGA to express concern to the State Government should the beverage industry have involvement or be appointed CDS coordinator and its capacity to maximise benefits to the community and the environment.

2. That the South Metropolitan Zone request WALGA to advocate for the coordinator to be carried out by the recycling industry.

SOUTH EAST METROPOLITAN ZONE

Local Government Disability Access and Inclusion Groups – People and Place

That WALGA be requested to invite Local Government Access and Inclusion Advisory Group members to attend the quarterly Access and Inclusion Network Group meeting.

Training Course in Heritage – Governance and Organisational Services

That WALGA investigates the potential for a training course in heritage to be established, which provides a formal qualification or accreditation for those who complete the course.

SOUTH WEST COUNTRY ZONE

Charitable Organisations – Rate Exemption – Governance and Organisational Services

That the SWZ request that WALGA continue to lobby the State Government to consider the removal of rate exemptions for charitable organisations under the Local Government Act 1995 and that an alternative position may be implementing a rebate similar to the Pensioners and Seniors Rebate Scheme.

Landgate Valuation Services – Governance and Organisational Services

That the SWZ:

1 Request that WALGA lobby the State Government for the provision of increased funding to address resourcing issues within Landgate Valuation Services to ensure timely processing of valuation services for Local Governments;
2 Writes to the Valuer-General indicating its concern regarding the deterioration of services to Local Government over the past 12 to 24 months; and
3 Invites a representative from Landgate's Valuation and Property Analytics Team to a future meeting of the SWZ to discuss some of the issues faced by the members.
4 Request Landgate to review Timelines of Mining revaluations.

EAST METROPOLITAN ZONE

Regional Greenhouse Alliances – Environment and Waste

That WALGA investigate options and Local Government support for establishing regional greenhouse alliances or climate change networks to co-ordinate climate change action.

Bushfire Planning – People and Place

That Western Australian Local Government Association (WALGA):

1. advocate for changes to the *Guidelines for Planning in Bushfire Prone Areas* that balance bushfire, biodiversity and other risk considerations; and
2. write to the Minister for Emergency Services and Minister for Planning requesting the State Government.
    a. undertake an independent review of the bushfire policy development process and State Planning Policy (SPP 3.7) with a view to provide for greater transparency and participation, and
    b. assist in the funding of Western Australia specific research to better adapt eastern states bushfire standards into a Western Australian context

CENTRAL METROPOLITAN ZONE

Funding Support on Government Initiatives – Governance and Organisational Services

The Central Metropolitan Zone requests that WALGA undertake a review to assess the likely costs to be imposed on Local Government by the Local Government Legislation Amendment Bill 2019, currently before Parliament.

AVON-MIDLAND COUNTRY ZONE

Biosecurity and Corellas – Environment and Waste

That the WA Local Government Association be requested:

(a) to actively advocate on behalf of the sector for a review of the *Biosecurity and Agriculture Management Act 2007* as a matter of urgency; and

(b) to advocate to the State Government to urgently develop a strategy for the control and management of corellas.

9. MEETING ASSESSMENT

Cr Russ Fishwick provided feedback as to the effectiveness of the meeting.

10. DATE OF NEXT MEETING

That the next meeting of the Western Australia Local Government Association State Council be held in the Boardroom at WALGA, ONE70 Railway Parade, West Leederville, on **Wednesday 5 June 2019** commencing 4pm.

State Councillors sent their support and best wishes to President Lynne Craigie.

11. CLOSURE

There being no further business the Chair declared the meeting closed at 5.31pm.

DECLARATION

These minutes were confirmed at the meeting held June 2019

Signed Cr Lynne Craigie

Person presiding at the meeting at which these minutes were confirmed