

8 February 2018

LGA Review

Department of Local Government, Sport and Cultural Industries
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Via email: legislation@dlgsc.wa.gov.au

To whom it may concern,

Local Government Act 1995 Review Phase 1: Consultation Paper

Thank you for the opportunity to provide feedback in relation to the above Consultation Paper. The Urban Development Institute of Australia (UDIA) WA is the peak body representing the property development industry in Western Australia. UDIA is a membership organisation with members drawn from the residential, commercial and industrial property development sectors. UDIA members include both private and public sector organisations. Our industry represents approximately 12.3% of Western Australia's Gross State Product, contributing \$30.45 billion annually to the Western Australian economy and \$251.7 billion nationally. As well as helping to create sustainable and liveable communities, the industry employs a total of 228,500 Western Australians and over 2 million Australians across the country.

General Comments Regarding the Review

The effectiveness and efficiency of local government policy and operations directly impacts upon the development industry's ability to operate efficiently and to deliver affordable residential, commercial and industrial development required by the wider WA community. Therefore the Institute warmly welcomes the Government's commitment to undertaking a review of the Local Government Act and broadly supports the principles that underpin the review.

However, it is important that the review isn't limited to the matters raised in Phase 1, but also considers the full range of services that local governments provide and consequently, examines the quality and timeliness of these services. It is also important to recognise that many local government services are provided on a cost recovery, or in some cases fully commercial basis.

As such, the UDIA considers that the principles of the review should be expanded to include a broader consideration of local government services in Phase 2 of the review.

Whilst the Institute is supportive of the establishment of a working group to help guide the review process, UDIA remains concerned that the makeup of the working group does not accurately reflect the wide range of organisations affected by local government performance. The current working group is largely restricted to organisations representing those working within the local government sector. To ensure that the review delivers effective reform solutions, the reference group should

contain representation from a wider, more diverse range of organisations. This should include third party representation from organisations who frequently deal with local government and are reliant on the sector adopting efficient and effective procedures, including the development industry. Accordingly, UDIA would welcome the opportunity to work with the Department to ensure that the review delivers effective local government reform with suitable representation from the development industry. This representation is particularly important for Phase 2 of the review process in examining local government's regulatory framework and financial management.

Through a variety of development related fees and charges, including application fees, cash in lieu and development contributions, the development industry provides significant monetary contributions to local government. However the industry is concerned that these funds, particularly development contributions are not being managed efficiently or effectively by local government due to a severe lack of accountability and compliance assurance. From evidence provided by UDIA members, the Institute estimates that local governments across the metropolitan region are holding development contributions totalling between \$1.5-\$2 billion with little or no reporting of how this money is being managed or when it will be spent. Often local government's infrastructure cost estimates do not accurately reflect accurate current costs of providing infrastructure. This unnecessarily delays the provision of infrastructure and the failure to maintain estimates has led to over estimates of costs that have needlessly resulted in local governments having to manage the redistribution of funds collected. Further, in many cases it is also unclear if local governments are fulfilling their obligations to provide their own funding contributions with allocations from the wider rates base given that these residents will also benefit from the provision of new infrastructure. For these reasons, it is important that the 'improving financial management' component of Phase 2 of the review includes a detailed examination of local government performance regarding the management of development contributions.

The Institute also notes that Phase 2 of the review includes examining opportunities to increase community participation. The review needs to be clear that increasing community participation should only be where it is appropriate to do so. For example, for land use planning decisions to be effective, it is important that community engagement occurs at the beginning of the process. This engagement should occur at a strategic level through the adoption of a local planning scheme, or through precinct planning rather than through a reaction to a particular development proposal.

An important aspect not included in the review is local government decision making processes. This is a critical area of local government performance that needs to be examined. Various acts and regulations delegate functions and duties to local government to perform. Whilst this means that local governments have complex responsibilities, decision making often fails to give appropriate regard to statutory requirements. Sometimes outcomes sought seek to satisfy local government business objectives ahead of community interests or fulfilling statutory requirements. For example, one Metropolitan Council recently opposed a development application for a private car park as it would result in a loss of council revenue and sought financial compensation as a condition of development approval. Whilst this invalid reason was rejected by the State Government through its Development Assessment Panels, this example highlights the conflicted nature of local government decision making.

To resolve such issues, the Review should take the opportunity to provide greater clarity to local governments regarding relevant considerations in the decision making process.

Recommendations

1. The principles underpinning the review be expanded to include improving customer service with this issue addressed by Phase 2 of the review.
2. The working group overseeing the review be expanded to include appropriate representation from the development industry and other industry impacted by local government performance.
3. Phase 2 of the review to examine local government performance with regards to the management of development contributions.
4. The review clarify that it is seeking increasing public participation in local government processes only where it is appropriate and efficient to do so.
5. The review to examine the effectiveness of local government decision making processes and seek to provide greater clarity regarding relevant considerations.

Specific Comments and Recommendations: Phase 1 Consultation Paper

Training

The Institute strongly supports mandatory training for local government elected members. As the Consultation Paper identifies, Elected Members have a challenging role, responsible for the governance of local government affairs and functions, including the oversight of planning, finances and the determination of local government policies. Yet some 25% of elected members have not completed Year 12. Despite the significant investment made by the State Government in providing subsidised training, the uptake remains low. Therefore mandatory training in core areas of local government operations is required. These core areas include, governance and understanding the requirements of the Local Government Act, finance and land use planning. The Institute recommends that training in these core competencies should be taken at the earliest opportunity, within the first 3 months for newly elected metropolitan elected members and within 6 months for regional members.

UDIA is also supportive of elected member candidates undertaking preliminary training to help ensure that candidates have an appropriate understanding of the role and responsibilities of elected members. Undertaking this preliminary training and agreeing to the code of conduct should be a prerequisite that candidates must fulfil prior to the publication and distribution of any election campaign material. This would assist in ensuring that candidates' election statements and commitments give greater regard to the requirements and legislative capacity of local government. This may also help reduce the prevalence of 'single issue' candidates whose narrow focus is often detrimental to broader good governance by local government.

It is important that Elected Members undertake continued professional development to ensure that their knowledge and understanding remains contemporary. As such, a commitment to undertaking training throughout their elected term should be included in the code of conduct.

Code of Conduct

The Institute supports the establishment of a prescribed code of conduct for elected members. This would help overcome some of the inconsistency between local governments and provide greater clarity with regards to the role and responsibilities of elected members. A prescribed code of conduct would improve efficiencies, removing the need for individual councils to develop, adopt and review their individual codes of conduct, enabling local government resources to be allocated more effectively. This would also ensure that the code of conduct remained contemporary across all local governments.

It is important that the code of conduct is respected and suitably enforced. Appropriate procedures should be adopted to allow reporting of breaches of the code and suitable disciplinary measures in place. A standardised code of conduct would assist with enforcement, improving the efficiency of managing breach claims and enabling greater consistency in applying disciplinary measures. The Institute recommends that a broad representation working group is established to oversee the development of a centralised code of conduct and its accompanying enforcement measures.

The Institute does not support the introduction of the proposed restricted timeframe for making complaints regarding the code of conduct. The Consultation Paper fails to provide any justification for a reduced complaints period whilst the evidence provide by the chart on page 40 indicates that approximately 25% of all complaints are made outside the proposed three month period. A limited complaints period is likely to undermine compliance with the code of conduct. The proposal also fails to give regard to the fact that evidence of breaches may not come forward until after the three month complaint period.

The Institute contends that the proposed Conduit Review Committee model shown by option 2 is flawed by the review panel consisting of members from surrounding local governments. It is important for the integrity of review panels that they contain independent members.

To help deter inappropriate behaviour by elected members, the Institute strongly supports enabling the proposed conduct review panels to prohibit elected members from attending council meetings and in so doing suspending sitting fees and allowances for the duration of the suspension.

The Institute recognises the intent of an administration fee for lodging complaints and the need to ensure that complaints are genuine and not vexatious. However, it is important that the administration fee is set at an appropriate level that it is fully refundable for findings of minor breaches so as not to deter genuine breach claims.

For the purposes of transparency, the Institute is supportive of publishing complaints in an annual report.

Local government administration

The Institute recommends that to improve the CEO recruitment process, independent third party representation should be included in the recruitment panel. Representation should include commercial organisations who regularly interact with local government such as professionals from the local development industry and/or local Chamber of Commerce. Third party representation could also be extended to local community group/not for profit organisations. Likewise, third party representation should also be included in CEO performance appraisals. CEO performance appraisals should be informed by the wider performance of the local government, as highlighting any wider local government performance issues early and at the CEO level would help negate the need for remedial action. Nevertheless, the Institute is supportive of the proposed measures to appoint suitable persons should the need for remedial action arise.

Access to information and Available Information

The Institute supports providing access to various types of information listed on pages 97-98 and 100-101 online. The review should also give regard to the report prepared by LGIS and WALGA, *Disclosing Hazard Information: The Legal Issues* which encourages local government to disclose hazard information in order to avoid various forms of liability.

Reducing red tape

It is important to recognise that red tape either created, or administered by local government is not restricted to the provisions of the Local Government Act. UDIA recommends that a working group, containing representation from the development industry and other industries impacted by local government red tape, be established to provide advice on possible reforms.

A key area for reducing red tape that should be targeted is the duplication between State and local government requirements. This could be overcome by the increased sharing of information between the two spheres of government. Similarly local governments' local laws often unnecessarily add red tape and should be examined by the review. Ensuring that the Act contains the appropriate provisions to repeal local laws should be a priority, as is insuring that local laws do not impose additional requirements where the State Government has already established requirements.

Local Government Act Review Guidance question

As previously identified, the Institute contends that Phase 2 of the Review should include an examination of local government performance concerning the management of development contributions. Representation from the development industry on the working group would assist with this.

The Institute appreciates the Department's efforts in engaging with the development industry on this issue. Should the Department require any assistance or further information regarding this matter, the

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UDIA would be delighted to assist. Please do hesitate to contact me at [REDACTED] or [REDACTED].

