

# State Council Summary Minutes

Held at the City of Perth

8 May 2019

## NOTICE OF MEETING

Meeting No. 4 of 2019 of the Western Australian Local Government Association State Council 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  
East Metropolitan Zone  
South Metropolitan Zone  
South Metropolitan Zone  
South Metropolitan Zone  
Great Southern Country Zone  
Gascoyne Country Zone  
Gascoyne Country Zone  
  
Chair of Commissioners City of Perth

President Cr Lynne Craigie OAM  
Cr Brooke O'Donnell  
Cr Doug Thompson  
Cr Michael McPhail (Deputy)  
Cr Jon Strachan (Deputy)  
President Cr Keith House JP  
President Cr Cheryl Cowell  
President Cr Karl Brandenburg  
(Deputy)  
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)

## 4. EMERGING ISSUES

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**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. To immediately address risks associated with Combustible Cladding

WALGA to advocate for the Minister for Commerce to prioritise initiating a Building Act 2011 regulatory amendment specific to combustible cladding 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. To address risks arising from any future Building / Building Product safety issues

WALGA to advocate for the Minister for Commerce to initiate a Building Act 2011 amendment that implements a statutory process 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<sup>1</sup> 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 the NSW Secretary of the Department of Planning and Environment (the Secretary) with details of the building and the external combustible cladding.

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<sup>1</sup> *Environmental Planning and Assessment Amendment (Identification of Buildings with External Combustible Cladding) Regulation 2018* (NSW).

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.<sup>2</sup>

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.<sup>3</sup>

## 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).<sup>4</sup>

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.<sup>5</sup> Depending on the initial assessment, the building owner may be required to complete a risk assessment of combustible cladding<sup>6</sup>, and obtain a fire engineering report if the outcome of the assessment requires one.<sup>7</sup>

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.<sup>8</sup>

## 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<sup>9</sup>
- the address of the building(s);
- 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.

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<sup>2</sup> *Environmental Planning and Assessment Regulation 2000* (NSW), r.186T.

<sup>3</sup> *Environmental Planning and Assessment Regulation 2000* (NSW), r.186U.

<sup>4</sup> *Building and Other Legislation (Cladding) Amendment Regulation 2018* (Qld), which came into force on 1 October 2018.

<sup>5</sup> *Building Regulation 2006*, r. 16Q.

<sup>6</sup> *Building Regulation 2006*, r. 16T.

<sup>7</sup> *Building Regulation 2006*, r. 16W.

<sup>8</sup> *Building Regulation 2006*, r. 16ZA.

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:

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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.
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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

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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.

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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?

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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 completion 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 undertaken ?

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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.

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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?

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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.

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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 indicated 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 cladding directly to the relevant owners or occupiers, with a notification to the Town to advise of the direction requirements.

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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.

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## ATTACHMENT 3 – LEGAL ADVICE

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 that 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



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**Combustible Cladding - Proposal to Amend the Building Regulations 2012**

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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 on a specified day at specified intervals, or when an specified event occurs, an existing*

**Combustible Cladding - Proposal to Amend the Building Regulations 2012**

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*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.

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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



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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.

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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

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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](mailto:pgillett@mcleods.com.au)

## 5. MATTERS FOR DECISION

### 5.1 Road Safety Audit Local Government Policy Template (05-001-3-0048 MS)

*By Mal Shervill, Policy Officer Road Safety*

#### WALGA RECOMMENDATION

**That the Road Safety Audit Local Government policy template be endorsed.**

Avon Midland Country Zone	WALGA Recommendation Supported
Central Country Zone	WALGA Recommendation Supported
Central Metropolitan Zone	WALGA Recommendation Supported
East Metropolitan Zone	WALGA Recommendation Supported
Gascoyne Zone	WALGA Recommendation Supported
Goldfields Esperance Country Zone	WALGA Recommendation Supported
Great Eastern Country Zone	WALGA Recommendation Supported
Great Southern Country Zone	WALGA Recommendation Supported
Kimberley Zone	WALGA Recommendation Supported
Murchison Country Zone	WALGA Recommendation Supported
North Metropolitan Zone	No meeting held
Northern Country Zone	WALGA Recommendation Supported
Peel Zone	WALGA Recommendation Supported
Pilbara Zone	No Meeting Held
South East Metropolitan Zone	WALGA Recommendation Supported
South Metropolitan Zone	WALGA Recommendation Supported
South West Country Zone	WALGA Recommendation Supported

**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.



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

### WALGA RECOMMENDATION

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 the third party appeals process for decisions made by Development Assessment Panels.

Avon Midland Country Zone	WALGA Recommendation Supported
Central Country Zone	WALGA Recommendation Supported
Central Metropolitan Zone	
Gascoyne Zone	WALGA Recommendation Supported
Goldfields Esperance Country Zone	WALGA Recommendation Supported
Great Eastern Country Zone	WALGA Recommendation Supported
Kimberley Zone	WALGA Recommendation Supported
Murchison Country Zone	WALGA Recommendation Supported
North Metropolitan Zone	No meeting held
Northern Country Zone	WALGA Recommendation Supported
Peel Zone	WALGA Recommendation Supported
Pilbara Zone	No Meeting Held
South East Metropolitan Zone	WALGA Recommendation Supported
South West Country Zone	WALGA Recommendation Supported

### SOUTH METROPOLITAN ZONE

That the Position Statement be referred back to WALGA officers to provide an evidence case to support the need for change, the expected benefits, and an analysis of the implications of change in terms of cost, resource and timeframes by utilising the experience of other States where third party appeals exist and applying that to the system proposed.

### GREAT SOUTHERN COUNTRY ZONE

That the Zone opposes Third Party Appeals in relation to Item 5.2 in the May 2019 WALGA State Council Agenda.

### EAST METROPOLITAN ZONE

That there be an amendment to the Preferred Model, being that third parties are able to appeal decisions made by the Western Australian Planning Commission and the State Administrative Tribunal, in addition to Development Assessment Panels.

### CENTRAL METROPOLITAN ZONE

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 original December 2018 'Preferred Model' as the third party appeals process for decisions made by the Development Assessment Panels with the following amendments:
  - a. DOT POINT 1 "which could possibly be expanded later if it proves to be beneficial" to be removed
  - b. DOT POINT 4 to be replaced with "Other affected parties would be able to appeal a DAP decision"

### **SECRETARIAT COMMENT**

A few Zones have proposed alternative 'Preferred Models' for decisions made by DAPs, preferred types of Third Party Appeals and one is opposing any Third Party Appeals model being introduced. The agenda item sought to finalise a 'Preferred Model' for appeals on Development Assessment Panel decisions, not to reconsider State Councils current policy position of Third Party Appeals.

Based on the formal resolutions received and members discussions at Zone meetings, there is a range of options are available for State Council to consider: -

1. Not adopt a Preferred Model until more information on cost and resource implications is provided;
  2. Adopt the Preferred Model as presented in the May 2019 Agenda;
  3. Adopt the Preferred Model as presented in the May 2019 Agenda, with the amendments suggested by the East Metropolitan Zone, ie ability to appeal decisions made by the Western Australian Planning Commission and the State Administrative Tribunal, in addition to Development Assessment Panels;
  4. Adopt the Preferred Model as circulated to members in December 2018;
  5. Adopt the Preferred Model as circulated to members in December 2018, with the amendments suggested by the Central Metropolitan Zone;
  6. Adopt the Preferred Model with different amendments (any amendments discussed by State Council);
  7. Not adopt any Preferred Model but still advocate for Third Party Appeal Rights for DAPs decisions
  8. Adopt a different Third Party Appeal model (ie wider than just for DAPs);
  9. Consult the sector again on what model of Third Party Appeal rights is considered acceptable given the wide range of views;
  10. Return to the pre-May 2018 position, where any Third Party Appeal rights are not supported
- The preferred approach by the majority of Zones is to adopt the Preferred Model as presented in the May 2019 Agenda, as this will provide the starting point for discussion with the State Government about the introduction of Third Party Appeals for Development Assessment Panel decisions.

*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**

### 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*

#### WALGA RECOMMENDATION

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

Avon Midland Country Zone	WALGA Recommendation Supported
Central Country Zone	WALGA Recommendation Supported
Central Metropolitan Zone	WALGA Recommendation Supported
East Metropolitan Zone	WALGA Recommendation Supported
Gascoyne Zone	WALGA Recommendation Supported
Goldfields Esperance Country Zone	WALGA Recommendation Supported
Great Eastern Country Zone	WALGA Recommendation Supported
Great Southern Country Zone	WALGA Recommendation Supported
Kimberley Zone	WALGA Recommendation Supported
Murchison Country Zone	WALGA Recommendation Supported
North Metropolitan Zone	No meeting held
Northern Country Zone	WALGA Recommendation Supported
Peel Zone	WALGA Recommendation Supported
Pilbara Zone	No Meeting Held
South East Metropolitan Zone	WALGA Recommendation Supported
South Metropolitan Zone	WALGA Recommendation Supported

#### SOUTH WEST COUNTRY ZONE

The document to be amended to remove the words “day/night use” at recommendation 3 on page 34 of the Interim Submission to the Department of Planning Lands and Heritage.

#### **SECRETARIAT COMMENT**

It is understood that the purpose of the recommendation from the South West Country Zone is to ensure that the intent of the draft position statement clearly covers proposals for tourism uses with overnight stays. We acknowledge the concerns of the zone, however the current wording in WALGA’s interim submission, utilising the term, ‘short-term accommodation’, is appropriate as this definition states:

*“short-term accommodation means temporary accommodation provided either continuously or from time to time with no guest accommodated for periods totalling more than 3 months in any 12 month period;”*

The definition clearly covers the prospect of overnight stays, and therefore addresses the concerns of the zone.

*President Cr Ronnie Fleay had declared an interest in Item 5.3 and was outside the room while deliberation occurred.*



**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**

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

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

*By Kirstie Davis, Policy Manager Community*

### WALGA RECOMMENDATION

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

<b>Avon Midland Country Zone</b>	WALGA Recommendation Supported
<b>Central Country Zone</b>	WALGA Recommendation Supported
<b>Central Metropolitan Zone</b>	WALGA Recommendation Supported
<b>East Metropolitan Zone</b>	WALGA Recommendation Supported
<b>Gascoyne Zone</b>	WALGA Recommendation Supported
<b>Goldfields Esperance Country Zone</b>	WALGA Recommendation Supported
<b>Great Eastern Country Zone</b>	WALGA Recommendation Supported
<b>Great Southern Country Zone</b>	WALGA Recommendation Supported
<b>Kimberley Zone</b>	WALGA Recommendation Supported
<b>Murchison Country Zone</b>	WALGA Recommendation Supported
<b>North Metropolitan Zone</b>	No meeting held
<b>Northern Country Zone</b>	WALGA Recommendation Supported
<b>Peel Zone</b>	WALGA Recommendation Supported
<b>Pilbara Zone</b>	No Meeting Held
<b>South East Metropolitan Zone</b>	WALGA Recommendation Supported
<b>South Metropolitan Zone</b>	WALGA Recommendation Supported
<b>South West Country Zone</b>	WALGA Recommendation Supported

**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**

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

### WALGA RECOMMENDATION

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

<b>Avon Midland Country Zone</b>	WALGA Recommendation Supported
<b>Central Country Zone</b>	WALGA Recommendation Supported
<b>Central Metropolitan Zone</b>	
<b>East Metropolitan Zone</b>	WALGA Recommendation Supported
<b>Gascoyne Zone</b>	WALGA Recommendation Supported
<b>Goldfields Esperance Country Zone</b>	WALGA Recommendation Supported
<b>Great Eastern Country Zone</b>	WALGA Recommendation Supported
<b>Great Southern Country Zone</b>	WALGA Recommendation Supported
<b>Kimberley Zone</b>	WALGA Recommendation Supported
<b>Murchison Country Zone</b>	WALGA Recommendation Supported
<b>North Metropolitan Zone</b>	No meeting held
<b>Northern Country Zone</b>	WALGA Recommendation Supported
<b>Peel Zone</b>	WALGA Recommendation Supported
<b>Pilbara Zone</b>	No Meeting Held
<b>South East Metropolitan Zone</b>	WALGA Recommendation Supported
<b>South Metropolitan Zone</b>	WALGA Recommendation Supported

### SOUTH WEST COUNTRY ZONE

The term “Technical” be changed to “Industry” in the title

### CENTRAL METROPOLITAN ZONE

That WALGA defers a decision relating to Item 5.5 pending further information being provided that relates to the activity based costs and other relevant resources and costs associated with the proposed purpose of the Community Technical Reference Group.

### **SECRETARIAT COMMENT**

The Community Industry Reference Group is proposed to be established to support informed decision making in relation to Community issues. The group would support the key deliverables of ‘Engagement with Members’ within the WALGA Strategic Plan, in particular:

- Improve communication and build relationships at all levels of member Local Governments,
- Build a strong sense of WALGA ownership and alignment, and
- Build a broad range of benefits and services that enhance the capacity of member Local Governments.

By bringing together a group of subject matter experts to assist in developing sector positions and more it will provide a depth and ownership to compliment the small but effective Community team at WALGA.

Costs will be limited to minor variable expenses (coffee, tea, etc) and the opportunity cost of the staff time in servicing the meeting process. Essentially this represents business as usual.

The group provides a mechanism to gain sector input to our wide positions and a mechanism for interested parties to discuss and formulate well thought positions on community matters.

In respect to the opportunity costing, it is as follows:

- \$4300 covering labour including a share of overheads attributable to each employee and \$800 assumed catering. This is based upon 3 people for 10 hrs each pa. ie 4 meetings @2hrs each +2hrs for sundry correspondence etc.

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

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

**RESOLUTION 47.4/2019**

**CARRIED**

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

**MATTERS FOR CONSIDERATION BY STATE COUNCILLORS  
(UNDER SEPARATE COVER)**

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**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 Municipal Waste Advisory Council Meeting February 27 2019

*By Rebecca Brown, (Manager, Waste & Recycling)*

#### WALGA RECOMMENDATION

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

Avon Midland Country Zone	WALGA Recommendation Noted
Central Country Zone	WALGA Recommendation Noted
Central Metropolitan Zone	WALGA Recommendation Noted
East Metropolitan Zone	WALGA Recommendation Noted
Gascoyne Zone	WALGA Recommendation Noted
Goldfields Esperance Country Zone	WALGA Recommendation Noted
Great Eastern Country Zone	WALGA Recommendation Noted
Great Southern Country Zone	WALGA Recommendation Noted
Kimberley Zone	WALGA Recommendation Noted
Murchison Country Zone	WALGA Recommendation Noted
North Metropolitan Zone	No meeting held
Northern Country Zone	WALGA Recommendation Noted
Peel Zone	WALGA Recommendation Noted
Pilbara Zone	No Meeting Held
South East Metropolitan Zone	WALGA Recommendation Noted
South Metropolitan Zone	WALGA Recommendation Noted
South West Country Zone	WALGA Recommendation Noted

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**

## **7. ORGANISATIONAL REPORTS**

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### **7.1 Key Activity Reports**

<b>7.1.1 Report on Key Activities, Environment and Waste (01-006-03-0017 MJB)</b>
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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**

<b>7.1.2 Report on Key Activities, Governance and Organisational Services (01-006-03-0007 TB)</b>
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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**

<b>7.1.3. Report on Key Activities, Infrastructure (05-001-02-0003 ID)</b>
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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**

<b>7.1.4 Report on Key Activities, People and Place (01-006-03-0014 JB)</b>
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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**



**7.2 Policy Forum Report (01-006-03-0007 TB)**

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**

**7.3 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**

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**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**

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#### **NORTHERN COUNTRY ZONE**

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##### **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.

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#### **GASCOYNE COUNTRY ZONE**

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##### **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.

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#### **SOUTH METROPOLITAN ZONE**

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##### **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.

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## **SOUTH EAST METROPOLITAN ZONE**

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### **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.

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## **SOUTH WEST COUNTRY ZONE**

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### **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.

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## **EAST METROPOLITAN ZONE**

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### **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

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## CENTRAL METROPOLITAN ZONE

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### **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.

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## AVON-MIDLAND COUNTRY ZONE

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### **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 on 5 June 2019.

Signed \_\_\_\_\_

Person presiding at the meeting at which these minutes were confirmed