

Submission of Local Government reform ideas

ITEM 4.3 02/04/2019
The Committee

2014/04834
Public

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EXECUTIVE SUMMARY:

On 7 March 2019, the Hon Minister for Transport, Infrastructure and Local Government Stephan Knoll, MP, wrote to the Lord Mayor [\[Link 1\]](#) inviting Council to submit ideas for improvement to inform the State Government's legislative review of the local government sector.

Council Members were advised of the Government's legislative review and invited to submit their ideas to the Administration through E-news articles.

This report provides the basis for the Lord Mayor to provide a submission to the Minister, as requested, by the due date of 26 April 2019. The Minister has also flagged ongoing consultation with the local government sector, with proposed development of a consultation paper in mid-2019 to be followed by more discussions with the sector and communities in preparation for development of an amendment bill by early 2020.

RECOMMENDATION:

THAT THE COMMITTEE RECOMMENDS TO COUNCIL

That Council:

1. Notes the report and discussion of potential ideas for legislative review of the local government sector as set out in Attachment A to Item 4.3 on the Agenda for the meeting of The Committee held on 2 April 2019.
 2. Adopts the proposals set out in Attachment A to Item 4.3 on the Agenda for the meeting of The Committee held on 2 April 2019 as the basis for negotiations during the State Government's local government reform process.
 3. Authorises the Lord Mayor to provide a written submission on behalf of Council to Minister Knoll, other Members of the South Australian Parliament as appropriate, and the Local Government Association of South Australia.
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IMPLICATIONS AND FINANCIALS:

City of Adelaide 2016-2020 Strategic Plan	Strategic Alignment - Corporate Activities This report relates to corporate activities which enable the City of Adelaide to achieve its strategic objectives.
Policy	This report will not impact Council policies and procedures. The State Government has undertaken to further consult local government during the development of legislative reforms to the sector. Those reforms may in future require City of Adelaide to develop new or amended policies and procedures.
Consultation	Council Members were advised via eNews articles dated 6 and 15 March 2019 of the request for local government reform ideas, and invited to submit their ideas to the Administration.
Resource	Not as a result of this report.
Risk / Legal / Legislative	Not as a result of this report.
Opportunities	The request provides Council with an opportunity to engage in and positively influence the legislative development of proposed reforms to the local government sector.
18/19 Budget Allocation	Not as a result of this report.
Proposed 19/20 Budget Allocation	Not as a result of this report.
Life of Project, Service, Initiative or (Expectancy of) Asset	Minister Knoll has requested that ideas be submitted by Councils before Friday 26 April 2019. The Minister indicates that there will be further consultation beyond this initial due date including consultation papers to be distributed in mid-2019. The Government anticipates developing an amendment bill by early 2020.
18/19 Budget Reconsideration (if applicable)	Not as a result of this report.
Ongoing Costs (eg maintenance cost)	Not as a result of this report.
Other Funding Sources	Not as a result of this report.

DISCUSSION

1. On 20 February 2019 Council hosted the Premier's Local Government Roundtable for Mayors in the Adelaide Town Hall.
2. The Hon Premier, and the Hon Ministers Knoll, Ridgway, Whetstone and Wade spoke with Mayors in attendance following presentations from the Premier and Minister Knoll.
3. On 7 March 2019 Minister Knoll wrote to the Lord Mayor [\[Link 1\]](#) and to all Council Members, identifying the following four areas of local government and activity that he considers could benefit from sensible reform:
 - 3.1. Stronger council member capacity and better conduct
 - 3.2. Lower costs and enhanced financial accountability
 - 3.3. Efficient and transparent local government representation
 - 3.4. Simpler regulation
4. Council has been invited to submit feedback on the above reform areas or any suggestions for other improvements that should be considered during the State Government's legislative review.

Council engagement

5. Council Members were advised via E-news of the State Government's planned legislative review of the local government sector and invited to submit their ideas to Administration. In addition, the Lord Mayor and Deputy Lord Mayor met with the Chief Executive Officer on 20 March 2019 to discuss potential ideas for legislative reform.
6. The Minister's letter indicates that following the current round of consultation closing on 26 April 2019, consultation papers will be released that discuss ideas within the four reform areas and other reforms that may be raised by the sector and communities. This is intended to enable further discussion of proposals for reform before the State Government develops a Local Government Reform Amendment Bill in early 2020.
7. The Minister also stated that if matters are identified that could bring immediate benefit to councils and their communities, he will consider taking forward an initial reform Bill in mid-2019. Councils are invited to identify any immediate improvements ('quick wins') in their submissions.

City of Adelaide response

8. This report and **Attachment A** are intended to provide the basis for the Lord Mayor to respond to the Minister as requested. The response may also form the basis for further negotiations during the local government reform process, including with other Members of Parliament and the Local Government Association (LGA).
9. It is recommended that the response calls for the City of Adelaide to work closely with Government, given the scope of the reform for our Council is likely to encompass consideration of proposed amendments to the *City of Adelaide Act 1998*.
10. In addition the response should request the Government undertake a cost benefit analysis of the new legislative provisions and amendments proposed through the reform process. This is necessary to ensure that the provisions of the anticipated amendment bill do not impose an undue regulatory burden on councils (which may in turn drive upward pressure on rates). If change is to be implemented, sufficient lead time must also be allowed for system and procedural changes to be implemented by Councils.
11. **Attachment A** sets proposed ideas for reform for Members' consideration, based upon:
 - 11.1. engagement with the Lord Mayor and Deputy Lord Mayor
 - 11.2. recent Council decisions
 - 11.3. suggestions from the Administration to increase the efficiency of Council's operations and activities
 - 11.4. LGA Local Government Reform discussion materials (March 2019), which espouse reforms with the stated aims of driving downwards pressure on council rates, improving the financial sustainability of councils, and delivering lasting benefits to South Australian Communities
12. The proposals, which align with the Minister's four local government reform areas, are summarised as follows.

Reform drivers	Proposal	Source/s LGA alignment
Stronger council member capacity and better conduct	<ul style="list-style-type: none"> ▪ Better conduct ▪ Code of Conduct 	Lord Mayor, Deputy Lord Mayor, Administration LGA aligned
Lower costs and enhanced financial accountability	<ul style="list-style-type: none"> ▪ Downward pressure on rates ▪ Review of mandatory rate rebates and exemptions and flexibility to diversify local government revenue sources ▪ Accountable and transparent financial reporting ▪ Confidentiality provisions ▪ Audit Committee makeup ▪ Benchmarking and service reviews ▪ Review of fees and charges ▪ Industrial relations ▪ Contemporary future-ready consultation and engagement framework 	Lord Mayor, Deputy Lord Mayor, Administration Majority of proposals LGA aligned
Efficient and transparent local government representation	<ul style="list-style-type: none"> ▪ Need for consultation with City of Adelaide due to special provisions under <i>City of Adelaide Act 1998</i> ▪ Electoral reform to enable improved democratic participation ▪ Eligibility ▪ Representation review procedures and decision-making processes 	Lord Mayor, Deputy Lord Mayor, Administration LGA aligned
Simpler regulation	<ul style="list-style-type: none"> ▪ Simplify and clarify conflict of interest provisions ▪ Better manage impact of developments on neighbouring communities and business ▪ <i>Local Nuisance and Litter Control Act 2016</i> 	Administration LGA aligned in part

13. Any other proposals that are not able to be addressed through the State Government's current legislative review process but may be dealt with by other, non-legislative means will be investigated separately.
14. Council approval is sought for the Lord Mayor to communicate regarding the reforms on this basis with the Minister, Local Government Association, and other Members of Parliament.

ATTACHMENTS

Attachment A – State Government Local Government Reform: Draft City of Adelaide Response (April 2019)

- END OF REPORT -

STATE GOVERNMENT LOCAL GOVERNMENT REFORM
DRAFT CITY OF ADELAIDE RESPONSE

REFORM DRIVER

Stronger council member capacity and better conduct

assist all council members to act in the best interests of their communities, and to ensure that their decisions are always made with the highest standards of integrity

Better conduct

The City of Adelaide (CoA) requests an improved framework for managing behaviour and conduct, including development of a Code of Conduct. Consistent with the Local Government Authority's (LGA's) work with the sector to date, reforms should consider:

- Training and prevention strategies
- Deterring vexatious or frivolous complaints
- Clear classifications of misconduct including bullying and harassment
- Limiting escalation of minor behavioural matters to a statutory body
- A range of powers for management of disruptive conduct at meetings (with accountability) and clarity regarding imposition of sanctions
- Strong penalties and sanctions for serious, persistent misconduct
- Powers for an appropriate oversight body to sanction individual council members following investigation
- Possible inclusion of enforcement mechanisms for breach of general duties under section 62 of the *Local Government Act 1999* (LG Act) in the Code of Conduct

COMMENT:

Source: Lord Mayor, Deputy Lord Mayor, Administration
LGA aligned: ✓

STATE GOVERNMENT LOCAL GOVERNMENT REFORM
DRAFT CITY OF ADELAIDE RESPONSE

REFORM DRIVER

Lower costs and enhanced financial accountability

provisions to guide all councils' financial accountability to deliver a system of local government that councils' constituents see as robust, sustainable and transparent

Downward pressure on rates

CoA would welcome improved financial accountability within the sector for council rate decisions. Our financial statements are already audited independently and reported through Audit Committee.

CoA would support introduction of financial measures relevant to local government to ensure councils are acting appropriately and efficiently. This could include measures within the long-term financial plan and annual business plan and budget. We are also keen to continue to expand opportunities to encourage and facilitate resource-sharing where appropriate.

Regarding efficiencies, CoA has frozen the rate in the dollar in its last four budgets and is planning to continue to do so in the 2019-20 financial year.

CoA also supports the LGA call to drive downward pressure on council rates by:

- undertaking a review of legislative barriers to commercial operations within local government to better equip Councils to ensure their ongoing financial sustainability by additional means other than rates
- working with the sector and State Government to reduce the Solid Waste Levy, which has currently accumulated around \$120 million in the State's Green Industry Fund, while councils face additional costs of \$8.8 million per year due to the China National Sword Policy (LGA commissioned research)
- increasing State Government grants to councils in SA to the national average.

Rates

CoA asks that the reforms explore diversification of local government revenue sources including review of mandatory rate rebates and exemptions in order to improve rating equity (per the LGA).

A review could also explore initiatives including:

- Enabling Councils to impose higher rates on:
 - long-term vacant properties (as a disincentive to 'land banking')
 - heritage properties which are neglected over lengthy periods sometimes resulting in the loss of heritage values and missed opportunities for adaptive re-use
- Flexibility to provide rate rebates for certain models of social and affordable housing providers during construction/development, rather than on occupancy.

The LGA estimates that the cost to Councils (and thus ratepayers) of rebates and exemptions has risen to \$33 million a year, noting a significant State Government transfer of public housing stock (on which the Government pays rates in full) to Community Housing Providers (eligible for a 75% rate rebate). A review could help recalibrate and equitably apply rate rebates.

COMMENT:

Source: Lord Mayor, Deputy Lord Mayor, Administration

LGA aligned: ✓ in part

COMMENT:

Source: Administration

LGA aligned: ✓

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REFORM DRIVER
Lower costs and
enhanced financial
accountability

Rates (continued)

The reforms, coinciding with the introduction into Parliament of the Landscape South Australia Bill 2019 into Parliament, provide an opportunity to explore removal of the requirement for Councils to collect the State's current NRM levy from landowners through Council rate notices. This incurs a cost burden for councils as the administration fee received from the State does not cover the costs incurred by councils in collecting the fees, and Councils are liable to pay NRM Board any outstanding debts if the landowner fails to pay the levy. CoA's liability for this levy is approximately \$1.6 million per annum.

Accountable and transparent reporting

In discussion of transparent and accountable reporting, the CoA suggests that the Government takes into account councils' existing requirements under the Local Government (Finance and Management) Regulations 2011.

CoA supports retention of our current practices as follows:

- Council approval needed for Members to take overseas travel (prior to travel being taken)
- Council Member reports to Council following overseas travel
- Publication of 6 monthly credit card expenditure at supplier level (LGA states common practice across sector)
- Not limiting components of salaries nor publishing CEOs' contracts, as an 'employer of choice'
- Publication and maintenance of registers including:
 - Gifts and benefits (NB naming should be consistent with section 79 LG Act which refers to 'allowances and benefits')
 - Travel (Members and staff)
 - Salaries, linked to levels rather than identifiable individuals

A cost benefit analysis should be undertaken regarding any new financial/other reporting requirements and timeframes proposed through the reform process to ensure that they do not impose an unreasonable regulatory burden on councils (which can put upward pressure on rates). If change is to be implemented sufficient lead time must be allowed for system and procedural changes to be implemented by Councils.

COMMENT:

Source: Administration

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REFORM DRIVER

Lower costs and enhanced financial accountability

Confidentiality provisions

CoA strongly supports maintenance of existing protections in the LG Act for Councils' and third parties' commercially sensitive information to ensure the best negotiating position for Council which delivers the best value for ratepayers (in opposition to provisions of the recent Local Government (Ratepayer Protection and Related Measures) Bill 2018).

COMMENT:

Source: Administration

REFORM DRIVER

Lower costs and enhanced financial accountability

Audit Committees

CoA supports the LGA proposal for the review to identify a best practice approach without being unnecessarily prescriptive.

COMMENT:

Source: Administration

LGA aligned: ✓

For example, CoA proposes requiring a majority of independent members on Audit Committees, in line with current CoA practice as well as the LGA proposal, as this ensures Committee members have a diverse and appropriate skills sets and knowledge. CoA opposes any proposal to remove Council Members from Audit Committees. Council Members contribute their in-depth understanding of the Council environment and are able to bring additional background regarding Audit matters and decisions to the Chamber.

CoA proposes the Auditor-General establishes a list of persons who may be selected by Councils as independent members of Council Audit Committees. Listing people for a time-limited duration is suggested, in order to maintain diversity and currency of experience. This will ensure members have the appropriate experience (finance, risk etc) to provide effective scrutiny and are able to provide best practice advice and feedback to councils. It is recognised that some flexibility may need to be provided for regional councils.

REFORM DRIVER

Lower costs and enhanced financial accountability

Benchmarking and service reviews

The LGA has highlighted the benefits of developing a platform for benchmarking across the sector.

COMMENT:

Source: Administration

LGA aligned: ✓ noting caution around service review requirements

CoA notes in addition that 25 South Australian Councils have already invested significant resources and effort in the *Australasian LG Performance Excellence Program*, which provides 163 participating councils in Australia and New Zealand with internationally recognised performance benchmarking.

The Performance Excellence Program enables participating local councils to share and compare meaningful data on performance and self-assess their operations and management performance with confidence.

CoA proposes that State Government work with the local government sector to consider whether this Program could be extended across more councils (i.e. with support for those Councils not resourced to

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participate at present). This could provide a sound basis to help improve councils' individual and collective ability to monitor trends, make sound evidence-based decisions, and identify emerging issues.

The CoA also wishes to clarify that any call for service reviews should not result in 'one size fits all' requirements given that some councils have already conducted numerous such reviews in recent years.

REFORM DRIVER

Lower costs and enhanced financial accountability

Review of fees and charges

The CoA supports the LGA proposal to introduce a requirement for Councils to develop a revenue policy to help communities understand which services are user-paid, funded externally, which generate revenue, and which are rate-subsidised in whole or part. There would need to be a transition period to facilitate CoA systems to support such an initiative.

CoA also supports the LGA call for the reforms to incorporate a review of statutory fees and charges, based on the cost recovery model applied by the State Government to its own fees and charges.

This would allow Councils to more accurately reflect the cost to Councils and thereby ratepayers of delivering those services, acknowledging that 'user pays' services are not always possible (ie where there are broader social benefits and inability to pay). LGA research indicates that in many cases the statutory fees councils are permitted to charge for e.g. planning assessments, building and food inspections meet only 20-30% of costs.

REFORM DRIVER

Lower costs and enhanced financial accountability

Industrial relations

The CoA is committed to continuing to collaborate and share information with other councils on a variety of matters including contemporary approaches to industrial relations. Council, however, is cautious in relation to a 'one size fits all' sector-wide industrial relations framework.

REFORM DRIVER

Lower costs and enhanced financial accountability

Public Consultation

CoA has comprehensive and consultative public engagement processes in place already for strategic planning and the annual business plan and budget.

CoA calls for development of a more flexible, contemporary, over-arching public consultation framework for local government that is adaptable for varied council operating environments.

Ideally the review could deliver a contemporary public consultation framework which is outcome based (requiring ie effective engagement with the community), in order to better future-proof legislative provisions

COMMENT:

Source: Administration

LGA aligned: ✓

COMMENT:

Source: Administration

LGA aligned: ✓ -noting caution re- sector-wide industrial framework

COMMENT:

Source: Administration

LGA aligned: ✓

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often slow to keep up with technological advances and changing community expectations (requirements to publish in newspapers being an example).

Consultation requirements should also be scaleable to the level of community impact of and interest in the subject.

REFORM DRIVER

Efficient and transparent local government representation

incorporating a review of the 2018 local government elections

The CoA seeks to have further input to State Government consultation regarding local government elections, noting the *City of Adelaide Act 1988* (CoA Act) makes special provisions for CoA elections (in addition to the LG Act).

Electoral matters

CoA supports improved democratic participation in local government elections and seeks simplification and streamlining of provisions as sought by the LGA. In particular CoA seeks consideration of:

- Electronic voting systems
- Compulsory voting
- Allowing candidates access to an electronic copy of the voters' roll as recommended after the 2014 SA local government election review
- Eligibility to vote extended to businesses (automatic for new businesses), business lessees (tenants), co-working tenants (individuals and businesses) of the same building and those who work in the area
- Compulsory disclosure of political party memberships and donations by candidates prior to elections rather than afterwards
- A requirement for Council Members to take leave of absence and have allowances suspended if standing in a State or Federal election, from nomination until conclusion of the election
- Amendment of section 20(3) CoA Act to remove the restriction on a person holding the office of Lord Mayor for more than 2 consecutive terms of Council, consistent with other Mayors and Council Members
- Amendment of section 86(6) LG Act so that a presiding member at a meeting of Council may have a deliberative vote, rather than only a casting vote

Eligibility of non-Citizens

COMMENT:

Source: Lord Mayor, Deputy Lord Mayor, Councillor Simms' recent MoN, Administration
LGA aligned: ✓ majority

COMMENT:

Source: Member of the Public

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REFORM DRIVER

Efficient and transparent local government representation

CoA has considered and does not support a proposal received from an individual who has written to Council proposing prevention of non-Australian Citizens from being able to enrol to vote in Council general elections, noting such a proposal would necessitate amendment of the CoA Act.

Representation review

CoA proposes a review to identify opportunities to simplify and streamline representation review processes and achieve better outcomes for Councils. This could include e.g.:

- Streamlining provisions relating to challenges which presently require that process 're-starts' if challenged. This is a very lengthy and costly process which can happen multiple times, if multiple challenges are initiated.
- Review of procedural and decision-making processes, including composition of council, number of members, division into and the size and boundary areas of wards.

CoA last underwent representation review in 2013 meaning our next representation review is due in April 2020-2021. Due to the length and complexity of the process, preparations will need to commence by mid-2019. CoA therefore requests the Minister defer the due date for the next CoA representation review, to enable the development and implementation of reforms in this area to occur first.

LGA aligned: -

COMMENT:

Source: Lord Mayor, Deputy Lord Mayor, Administration

LGA aligned: ✓

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REFORM DRIVER

Simpler
regulation

an opportunity to identify statutory requirements whose costs outweigh their public benefits.

CoA seeks other reforms to improve effectiveness of regulation and address public concerns

Conflict of interest

CoA seeks review and amendment of Division 3 of the LG Act (Conflict of Interest provisions). Practical application of these provisions has been difficult, and additional clarity and simplification is desirable.

Examples include:

- Further clarity on the application of the ordinary business exemption prescribed by the regulations (8AAB of the LG (General) Variation Regulations 2016 (Provisions relating to subsidiaries and committees)
- S73(h) LG Act: material conflict – fees received for professional services from a person: not always possible for the Member to know in the event of high volume or online transactions e.g. through online business.
- S73(2) (a) and its application, e.g. being a shareholder of a publicly listed organisation and the application of “substantial proportion of ratepayers of the council area” exemption.
- S73(c) – material conflicts and membership of community boards (body corporate governing body membership).

Impact of developments on neighbouring communities and businesses

Council has identified a need to better support our community when impacted by construction of new buildings and roadworks for developments in the City of Adelaide

The Development Regulations 2008 require consultation for certain categories of development (CAT 2 and 3, but not CAT 1). Any consultation requirements relate to the proposed development, rather than the construction process which generally also has some impact on the public. In the case of large scale developments in particular, construction and associated roadworks can cause significant adverse impacts over lengthy periods for neighbouring businesses, residents and visitors to the area. Recent examples covered by the media include the closure of the Edinburgh Castle Hotel in Currie street – the *Advertiser* (Adelaide Now 3 August 2018) cited the impact of construction of a \$80 million, 772 bed student accommodation complex nearby.

As the State Commission Assessment Panel (SCAP) is the relevant authority for approval of developments worth <\$10 million in the CBD, the CoA Council Assessment Panel has no role in approval of such developments.

Before construction commences developers seek permits from the CoA i.e. permission for alteration to a public road (s221 LG Act) or common law licences and agreements in instances where the LG Act does not

COMMENT:

Source: Administration

LGA aligned: -

COMMENT:

Source: Administration

LGA aligned: -

STATE GOVERNMENT LOCAL GOVERNMENT REFORM
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apply (eg Crown Developments), or permission for business use of road (s222), although this requirement may be set to change with implementation of relevant provisions of the *Planning, Development and Infrastructure Act 2016* (PDI Act).

Currently Council process requires the Developer to undertake a level of consultation or at least notification prior to a permit being issued, however this is generally not legislated, and permit applications are processed in 2 business days, leaving very limited time for the Developer to meaningfully consult those impacted.

(In the limited number of cases where public consultation is required by law, Council then consults the community regarding the issue of the permit.)

Once a permit is issued, builders proceed with construction activity and road closures that could last for months, with potential adverse impacts on neighbouring businesses and community that are very difficult to manage, particularly with very little or no notice in advance.

Chapter 11 LG Act requires Council to follow steps set out in its public consultation policy and notify relevant agencies as prescribed by regulation, before granting an authorisation or permit (s223) that would result in fencing or impeding a part of the road, or another activity for which public consultation is required under regulations. Chapter 11 also enables Council to grant an authorisation of permit on conditions it considers appropriate. However, there is no requirement that the developer consult nor advise neighbouring residents, businesses, the EPA, Police, DPTI etc, and Council notification and conversations with these groups is conducted within days before works commencing, which does not provide enough time for businesses and residents to query the developers.

These requirements are likely to be undermined with implementation of Part 7 Schedule 6 to the PDI Act. These provisions will mean that where alteration of a public road or use of a public road for business purposes is approved as part of a development authorisation under the PDI Act a separate permission under the LG Act will not be required and Council's role under the LG Act will be more limited. This will give Councils even less power to manage the impacts of construction of such developments that are approved by the SCAP in the CBD and may cause significant disruption for local residents, businesses and visitors including workers.

Should a Developer breach a condition of a permit the ability for Council to undertake enforcement is limited, slow and the expiation fee may not reflect the seriousness of the breach.

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Outcome sought:

Require developers to undertake consultation with and take into account impacts on the community (neighbouring residents, businesses, workers and visitors) of construction of developments and impacts to the public realm, sufficiently in advance of construction works commencing.

CoA proposes a 90 day project be undertaken to allow key stakeholders to identify legislative and other measures that could be used to address these concerns.

90 day project

Measures that could be explored as part of a 90 day project involving all relevant stakeholders, further to discussions already commenced between the CoA and the Small Business Commissioner, could include:

- Review and amendment of the LG Act
- Exploration of other legislative means such as simplification of the many provisions which regulate construction across i.e. the *Development Act 1993*, *PDI Act*, *Local Nuisance and Litter Control Act 2016* and LG Act (as an opportunity for simpler and more effective regulation to better manage adverse impacts to the community).
- Consultation requirements should be tailored to the scale of development and its anticipated impacts analogous to the Development Regulations categories for consultation purposes (but relating to impacts of construction).

The project could also incorporate an improved expiation process, with fines better scaled to reflect the value of the development (a \$250 fine does not match the scale of a multi-million dollar development).

Other options could include a fund set aside from council and developer contributions for affected businesses and / or residents to fund measures to ameliorate or address impacts of the construction e.g. directional signage, marketing assistance and the like.

REFORM DRIVER

Simpler
regulation

Local Nuisance and Litter Control Act 2016

The Local Nuisance and Litter Control Act (LNLC Act) regulates local environmental issues caused by nuisance and littering. Councils are the principal authority for dealing with local nuisance and littering.

The Act prescribes which authorities are able to enforce breaches. For example, under Schedule 1: 'an activity on, or noise emanating from, licensed premises within the meaning of the *Liquor Licensing Act 1997* in respect

COMMENT:

Source: Administration
LGA aligned: -

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of which a complaint may be lodged with the Liquor Licensing Commissioner under section 106 of that Act is not a local nuisance for the purposes of the Act.

This means that Council is in some circumstances unable to use the nuisance provisions of the Act to enforce compliance in relation to licensed premises. Rather, the Liquor Licensing Commissioner is authorised to do so, which is appropriate in circumstances of, for example, a complaint in relation to loud music. In the case of a complaint regarding issues more closely related to planning and development e.g. a loud extractor fan that may be audible in the neighbouring area, the complaint may be best dealt with by Council's authorised officers rather than the Commissioner. However, unless there is some authority for Council to pursue the complaint under the Development Act (i.e. if it breaches a condition of a Development Approval), Council may find itself without authority to act. Anecdotally it does not appear that the Environment Protection Authority has the remit, authority nor resources to undertake such investigation/enforcement actions.

In addition, while the Act provides a suitable suite of powers for authorised officers, expiable amounts are insufficient to encourage compliance. For example, while local nuisance exemptions are available for a fee, such a fee needs to be set lower than the expiation fee for non-compliance otherwise the latter may be seen by some as an acceptable cost of doing business. The fee is therefore set so low that it does not cover the administrative cost of issuing the exemption, which is effectively subsidised by ratepayers. While maximum statutory penalties are adequate, Councils is not in position to routinely prosecute offenders and prosecution takes so long that the nuisance may be resolved before a matter gets to Court (construction is complete, an event is over, etc) meaning that the punitive measure only works as a general community deterrent, rather than to correct individual behaviour.

Outcome sought:

Review of the LNL Act is sought to ensure that the appropriate authority is able to effectively administer its provisions including through compliance and enforcement activities, in order to efficiently address and minimise adverse impacts on the community.

CoA proposes scope of the review to include:

- Mechanisms to better allow for the appropriate authorities to undertake compliance and enforcement activities to prevent and manage breaches of the Act, and
- Penalties in particular expiation fees should be proportionate to the breach/behaviour, to encourage compliance, so that non-compliance is not seen as a 'cost of doing business'.