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using the law to protect the natural and built environment

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Local Government Legislation Review
GPO Box 123
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By email: lgareview@dpac.tas.gov.au

Dear Madam / Sir

Submission on Tasmania's Local Government Reform Directions Paper

EDO Tasmania is a community legal centre specialising in environmental and planning law. We regularly advise community members concerned about issues arising at a local government level and have a strong interest in ensuring that Tasmania has a system of local government that supports a socially, economically and environmentally sustainable future.

EDO Tasmania welcomes the Government's Local Government Reform Directions Paper.

In addition to completing the Reform Directions Survey online, we are pleased to provide our attached submission on some of the key Directions Paper themes relating to the legislative framework.

EDO Tasmania also made a submission on the Review of Local Government Legislation Framework Discussion Paper most of the comments in which remain relevant to the Reform Directions Paper. A copy of our previous submission can be found [here](#).

Parts A and C – Legislative Framework and Councils Connected to their Communities

- EDO Tasmania is supportive of the proposal to create a new local government Act that is flexible and innovative while at the same time being practical and outcomes-focused. The proposal to separate the local government election requirements into a separate Act is reasonable. We likewise support:
 - the alignment of a new local government electoral Act, as far as practicable, with the requirements of the *State Electoral Act 2004*; and
 - the consolidation of all other related local government legislation.
- While we support the removal of some level of prescription about how local governments are to achieve the good governance, community engagement and financial management principles that are to be prescribed in the proposed new local government Act, we consider that there will need to minimum standards set in the legislation or in the regulations to ensure that there is consistency between the approaches taken in different local government areas. Non-statutory guidelines are unlikely to be effective in ensuring councils, particularly those with fewer resources, are achieving the Act's objectives. Furthermore, guidelines will provide little or no immediate recourse for communities that are dissatisfied with the approaches taken by the local council to consult or engage with them. We therefore recommend that the Act provide for minimum standards for community consultation for certain strategic decisions.

- We do not support the removal of elector polls and public meeting requirements from local government laws, particularly in light of the Reform Discussion Paper's proposal to provide councils with greater discretion as to how and when to consult with communities about significant issues. If there are to be any reforms to the area of elector polls and public meetings, they should be directed at allowing councils to use electronic polling and other electronic means to facilitate better community engagement and reduce associated costs.

Part B – Representative and Democratic Councils

- We are supportive of the proposed:
 - simplification of the local government election process and allowing of alternative voting methods, providing these are delivered in accordance Tasmanian Electoral Commission recommendations;
 - caretaker provisions being incorporated into the new local government electoral Act to ensure that outgoing councils do not bind incoming councils to significant policy or contractual obligations; and
 - introduction of both pre-election and post-election training packages for local government candidates/councillors.
- As we have said in our submission in response to the Discussion Paper, there is no justification for voting rules at a local government level that differ from those at the State and Federal levels of government. We recommend that the Tasmanian Government adopt the simple approach to local government elections taken in Queensland: a person is entitled (and required) to vote where they are on the State and Federal electoral role for a district within the municipal area of that local government. We consider that this is reflective of the "one person, one vote" principle. We do not agree with the suggestion in the Reform Directions Paper of continuing to allow corporations and landholders who do not reside in the local government area to vote in local government elections. Eliminating the requirement to maintain a General Manager's roll would be far more efficient and obviate the need, suggested in the Reform Directions Paper, for the Tasmanian Electoral Commission to administer an additional electoral dataset.
- While introducing a legislative requirement for the declaration of gifts by all local government candidates would be an improvement on the current situation, we submit that such a reform alone would not be reflective of local governance best practice.¹ In addition to the proposed gift register reform, we recommend that the new local government electoral Act should:
 - impose a reasonable cap on donations to local government candidates;
 - impose a ban on developer donations to local government candidates/councillors;
 - require best practice reporting on electoral donations involving real time donation reporting for all donations greater than \$500;
 - expand the definition of "interest" for the purpose of councillors declaring interests to include both pecuniary interests and other beneficial interests; and
 - impose strong penalties for candidates or councillors who breach any of the local government electoral or conflict of interest laws.
- We consider that with effective enforcement, the above proposed reforms would go a long way to reducing the potential for corruption and undue influence on the exercise of the functions and powers of local governments.

¹ Best practice reporting of electoral donations is discussed at length in The State of Queensland (Crime and Corruption Commission) (2017) [Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government](#)

Part D – Responsible and Effective Councils

- We support the eight identified Good Governance principles being legislated. However, as noted in our submission on the Discussion Paper, we also recommend that there be an additional two principles of Good Governance be legislated. We recommend that local government make decisions that are:
 - Sustainable; and
 - Long-term.

The inclusion of these two additional principles would be reflective of best practice trends in both local government and corporate governance.²

- As previously noted, we consider there is some merit in allowing councils to identify the best methods to implement the Good Governance principles in their respective jurisdictions. However, there is also a need to ensure that minimum standards are set, and mechanisms provided to allow for measurement to determine whether they are being adequately achieved / implemented, such as annual reporting. In terms of the significant local government decisions, we submit that there is a need to ensure that all significant local government plans and strategies consider:
 - the target, objects and proposed principles of the *Climate Change (State Actions) Act 2008*;
 - sustainability; and
 - intergenerational equity.
- EDO Tasmania is supportive of the delivery of training to all elected councillors relating to their roles and responsibilities under the law, including:
 - the Model Code of Conduct and when performing the functions of the planning authority under the *Land Use Planning and Approvals Act 1993 (LUPAA)*;
 - ethical decision-making; and
 - financial management.

Mandatory reporting of who has undertaken this training will provide a strong incentive for elected officials to undertake it in a timely manner.

- We support the setting of minimum standards of behavior for council staff to ensure that they continue to act in a professional, ethical and impartial manner. While the conditions of employment of council staff may currently be governed under individual Enterprise Bargain Agreements, the Government could require minimum standards of behaviour for council employees to be incorporated into future agreements and provide for minimum consequences for breaches of the standards.
- We support the introduction of improved internal complaints management measures within councils, however, external investigations by the Director of Local Government should be mandatory where a complaint deals with the alleged serious misconduct of a general manager.
- We support the simplification and clarification of what is a “conflict of interest” in the new local government Act. We further support the clarification of how certain conflicts of interest are to be managed by council exercising its statutory powers. We suggest that these provisions be extended to managing conflicts of interest by general managers and other council staff.

² See [Strategy on Innovation and Good Governance at local level, endorsed by a decision of the Committee of Ministers of the Council of Europe in 2008](#); the United Nations Development Program good governance principle of “Strategic vision”, see the UNDP (1997) *Governance for sustainable human development: A UNDP policy document*; and ASX Corporate Governance Council (2019) [Corporate Governance Principles and Recommendations \(the Fourth Edition\)](#).

- In considering the issue of managing conflicts of interest, the Reform Directions Paper provides an example requiring the transfer of a council's planning authority power to another council in circumstances where the first council is a proponent for a development. We suggest that such a mechanism is unlikely to be workable, particularly if it requires the second council to decide whether to grant a permit for a project in which it could have an interest (for example, if the proposed development is in an area adjacent to the second council). We support such decisions being made by an independent arbiter, as this gives the community confidence in decisions made where council is also the proponent. We would prefer that such decisions be made by the Tasmanian Planning Commission either as the planning authority, or by legislating that the planning authority makes a recommendation to the Tasmanian Planning Commission. Such decisions should be made with public hearings and rights of appeal should lie to the RMPAT.
- The proposed oversight and intervention reforms outlined in section 6 of part D of the Reform Directions Paper appear both sensible and proportionate. In addition to the suggested reforms, we also recommend that:
 - any reform of the oversight of local government should include identifying a State department or agency to investigate and enforce any non-compliance with the duties of local government under section 63A of LUPAA or section 20A of the *Environmental Management and Pollution Control Act 1994*, and enable the public to seek redress or initiate an investigation for breach of these duties; and
 - in addition to making all recordings of council meetings available to the public in an electronic form, all development application and development permit documents should be made freely available by councils on their individual website and/or preferably, through a new layer on the LIST Map/iPlan website.
- As indicated in our previous submission, EDO Tasmania supports the introduction of a local government performance reporting framework. We recommend that the form and key performance indicators of this framework be prescribed but allow for flexibility for further performance indicators to be included in the future. At a minimum, the framework should require councils to report on their performance against certain environmental indicators. This information should be available to the Tasmanian Planning Commission to inform the 5-yearly State of the Environment reports. As these reports analyse the effectiveness of Tasmania's Resource Management and Planning System, they in turn, provide a useful basis for strategic planning by local governments.

Thank you for the opportunity to comment on the Local Government Reform Directions Paper. If you wish to discuss anything we have raised in this submission, please do not hesitate to contact our office on (03) 6223 2770.

Yours sincerely,

Environmental Defenders Office (Tas) Inc

Per:



Claire Bookless
Lawyer