



**14.1 CITY OF PORT PHILLIP SUBMISSION TO THE DRAFT LOCAL GOVERNMENT ACT BILL**

**EXECUTIVE MEMBER: KYLIE BENNETTS, DIRECTOR, OFFICE OF THE CEO**

**PREPARED BY: MURRAY CHICK, COORDINATOR GOVERNANCE**

**1. PURPOSE**

- 1.1 To present to Councillors for endorsement the City of Port Phillip submission to the State Government's Exposure Draft Local Government Act Bill (the Draft Bill). The invitation for submissions closes at 5pm Friday 16 March 2018.

**2. EXECUTIVE SUMMARY**

- 2.1 The intent of the Victorian Government through the Draft Bill is to present a principles-based review of the current Local Government Act. The key objectives of the Draft Bill are to more clearly define the outcomes required of councils while simultaneously giving councils greater agency to determine how to achieve them.

- 2.2 Council endorsed a submission on the State Government's Directions Paper at its 23 August 2016 Council meeting. Several of Council's previous concerns have been addressed, and as a result officers now believe that the majority of the Draft Bill should be supported or supported with a request for further clarity to support implementation. Notwithstanding this, officers are of the view that the following parts should not be supported:-

2.2.1 **The proposal that a Mayor can be voted out of office mid-term if 75% of Councillors agree.** It is understood this clause was part of an earlier draft where a two (2) year Mayoral term was proposed. Given the current Draft Bill has the Mayoral term set at twelve (12) months and given the provisions and internal resolution procedures outlined in the Code of Conduct, officers are of the view that existing provisions are adequate.

2.2.2 **The inclusion of significant lease proposals as part of the overall budget consultation process.** Officers are of the view that this may result in the loss of genuine community consultation on leasing proposals as it may be absorbed into the overall consultation process of the budget.

2.2.3 **Granting the Mayor specific power to appoint a councillor to be chair of a committee with delegated powers.** Officers are of the view that an appointment of this nature should be the role of the full Council.

2.2.4 **All councils (except city of Melbourne) must use capital improved value to value land for rating purposes.** A change in methodology is likely to lead to confusion for the City's ratepayers and possible increased costs to Council in implementation of such change. Officers are of the view that the method of valuing land for rating purposes should be left to individual Councils to enable the most equitable spreading of the rate burden.



- 2.2.5 **The rate capping framework being enshrined into the draft Bill.** In line with the Council's previous position on this matter, Council is of the view that rate capping erodes local government powers as a legitimate level of government. Furthermore, the Council is of the view that the rate capping framework should be abolished and replaced with a performance based mechanism that drives local government efficiency and transparency for performance and value for money.
- 2.2.6 **The ability for a councillor who has a conflict of interest to remain and participate in the discussion at a meeting (other than a council or delegated committee), i.e. an Advisory Committee meeting.** Officers are of the view that conflict of interest provisions should be as simple as possible to understand. Officers also believe this proposal is a move away from the fundamental concept that if a person has a conflict of interest they should not be part of discussions on an item.
- 2.2.7 **Temporary appointment of an Acting CEO by Council.** Officers believe that the requirement for a Council resolution for temporary appointments is unwieldy for short periods of time, and provides no ability to handle periods of unexpected leave (such as leave due to illness) of the CEO.
- 2.2.8 **Future Council elections to be conducted using a uniform voting method.** Officers are of the view that the method of voting at council elections should be left to individual Councils to decide as they are best placed to understand the preferences of their communities.
- 2.2.9 **Land used exclusively for charitable purposes will continue to be exempt from rates.** Officers are of the view that this clause in the Draft Bill is a missed opportunity to engage the sector in the review of the rating provisions and in particular notes that there is inconsistency across councils regarding the definition of 'charitable' entities and organisations.



### 3. RECOMMENDATION

That Council:

- 3.1 Notes the report on the State Government's Exposure Draft Local Government Act Bill.
- 3.2 Endorses many aspects of the State Government's Exposure Draft Local Government Act Bill but calls for the State Government to provide further information and detail to support effective implementation by the local government sector.
- 3.3 Does not support:-
  - 3.3.1 The proposal that a Mayor can be voted out of office mid-term if 75% of Councillors agree;
  - 3.3.2 The inclusion of significant lease proposals as part of the overall budget consultation process;
  - 3.3.3 Granting the Mayor specific power to appoint a councillor to be chair of a committee with delegated powers;
  - 3.3.4 All councils (except city of Melbourne) being required to use capital improved value to value land for rating purposes;
  - 3.3.5 The rate capping framework being enshrined into the draft Bill;
  - 3.3.6 The ability for a councillor who has a conflict of interest to remain and participate in the discussion at a meeting (other than a council or delegated committee), i.e. an Advisory Committee meeting;
  - 3.3.7 Temporary appointment of an Acting CEO by Council;
  - 3.3.8 Future Council elections being conducted using a uniform voting method;
  - 3.3.9 The provisions outlined in the Draft Bill that relate to the rating of charitable entities and organisations.
- 3.4 Subject to resolving recommendation 3.3, endorses the Draft Submission as outlined in Attachment 1.
- 3.5 Authorises the CEO to make any further minor editorial amendments required to finalisation the submission.

### 4. KEY POINTS/ISSUES

- 4.1 The draft Council submission, contained in Attachment 1 to this report explains for each relevant part of the Draft Bill the legislative requirements currently in place under the Local Government Act 1989, the proposed legislation and Council's submission as to whether the proposed legislation is supported or not supported, and the



rationale. Council's submission has also been informed by the draft submission dated January 2018 provided by the MAV.

- 4.2 The structure of the draft Bill is that it has eleven (11) parts. The major legislative changes proposed in the Bill relate to parts two (2) – nine (9). The following is a brief description of these parts:
- 4.2.1 Part 2 Councils (Roles and powers of Councils; Overarching governance principles; Roles of Mayor, Deputy Mayor and councillors; Electoral structure; Audit and Risk Committee; CEO's; Council staff).
  - 4.2.2 Part 3 Council Decision Making (Community engagement; Public transparency; Meeting procedures; Local Laws; Council committees).
  - 4.2.3 Part 4 Planning and Financial Management (Community vision; Council Plan; Financial Plan; Asset Plan; Revenue and Rating plan; Budget processes).
  - 4.2.4 Part 5 Rates and Charges (Methods to value land; environmental upgrade agreements; rate caps).
  - 4.2.5 Part 6 Council Operations (Service performance principles; Complaints handling; Procurement).
  - 4.2.6 Part 7 Council Integrity (Improper conduct; Conflict of interest; Councillor Code of Conduct).
  - 4.2.7 Part 8 Ministerial Oversight (Restructuring orders; Municipal Monitors; Chief Municipal Inspector; Suspension of a councillor).
  - 4.2.8 Part 9 Electoral Provisions (Voting method; Voter entitlement; Candidates; Conduct of elections; Election campaign donations).
- 4.3 One of the fundamental changes detailed in the Draft Bill is the intent to use regulation and guidance rather than detail through legislation. This is a fundamental shift in that it minimises Parliament's determination of practice in the sector and places it with the Minister. It is important for the local government sector to properly consider the implications of this in the context of its autonomy and authority. At a minimum, the content of regulations and best practice guidelines need to be subject to detailed consultation with the sector and to be finalised well in advance of any compliance deadlines specified in the Act.
- 4.4 A major consideration for Councils is the proposed onerous requirement for additional plans and policies. A council will now be required to develop a community vision of at least 10 years; a four-year council plan; a four-year budget; a financial plan for at least the next 10 years; an assets plan for at least the next 10 years and a revenue and rating plan for at least the next 4 financial years.
- 4.5 A council will also be required to have a workforce plan; council expenses policy; CEO employment and remuneration policy; Community engagement policy; Public transparency policy; Governance rules; Complaints policy; Procurement policy; Councillor gifts policy and Financial policies that give effect to the financial management principles.



## 5. CONSULTATION AND STAKEHOLDERS

- 5.1 Council's submission has been developed from input received from Councillors and senior management, and is aligned with the previous submission adopted by Council on 23 August 2016. Officers have used the MAV draft submission January 2018 to assist in the development of Council's submission and also attended the MAV sector consultation in February 2018.

### Audit and Risk Committee

- 5.2 On Thursday 22 February 2018, at the Audit and Risk Committee, members received an update on the Draft Bill and asked a range of questions, particularly around the impact of proposed rating changes. The proposed changes to the Audit and Risk Committee under the Draft Bill were noted and the Council's submission on this matter was informed following consultation with the Audit and Risk Committee Chair. The Audit and Risk Committee have requested that a copy of the Council's submission be provided to them once finalised, as well as a presentation on the matter.
- 5.3 The Committee highlighted that the Council may wish to consider as part of finalising its submission the need to ensure there is adequate legislative provisions to manage conflicting interests that may arise from time to time where a councillor may hold dual roles for example appointments on external boards or political party involvement.

## 6. LEGAL AND RISK IMPLICATIONS

- 6.1 If Council chooses not to make a submission on the draft Bill, then Council will miss a significant opportunity to influence the outcome of the new Local Government Act.

## 7. FINANCIAL IMPACT

- 7.1 Victorian Councils manage over \$89 billion of public infrastructure and deliver services valued more than \$7 billion every year. The legislative framework which determines the governance and representation of local government is critically important.
- 7.2 The draft Bill contains an integrated planning and reporting framework including requirements for all councils to have: a 10 year Community Vision; a 10 year Financial Plan; a 10 year Asset Plan; a 4 year Council Plan and budget and a 4 year Revenue and Rating Plan.
- 7.3 Rating Provisions
- 7.3.1 The Bill proposes that all councils (except city of Melbourne) must use capital improved value to value land for rating purposes. Council's submission does not support this proposal. Mandating the use of the Capital Improved Value (CIV) rating system would have a significant



impact on rates distribution to City of Port Phillip ratepayers due to the shift in Council's valuation methodology from NAV to CIV.

- 7.3.2 To address the fairness of rates distribution (e.g. rebalancing the impact from NAV to CIV) Council may need to utilise differential rating to achieve specific objectives or outcomes via a pricing mechanism.

## **8. ENVIRONMENTAL IMPACT**

- 8.1 The Draft Bill contains provisions allowing councils to engage in more simplified environmental upgrade agreements to help residents and businesses access funding for building works to improve energy efficiency, reduce waste and cut water use.
- 8.2 The Draft Bill has as one of its overarching governance principles – “the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted”.

## **9. COMMUNITY IMPACT**

- 9.1 The Draft Bill has a strong deliberative community engagement focus and contains Community Engagement Principles that have the following objectives:
- 9.1.1 Participants in community engagement must have access to objective, relevant and timely information to inform their participation.
- 9.1.2 Participants in community engagement must be representative of the persons and groups affected.
- 9.1.3 Participants in community engagement are entitled to support to ensure they can participate in a meaningful way.
- 9.1.4 Participants in community engagement are informed of the ways in which they can influence council decision making.
- 9.2 The Victorian Government has three overriding objectives for the new Local Government Act:
- 9.2.1 Victorians will better understand and value the role of councils as democratically elected bodies that represent their interests; participate more as candidates, voters and citizens in council activities; and contribute to council strategic visions and plans.
- 9.2.2 Councils will drive reform across the state by being more autonomous and outcome-oriented; and by embracing innovative and collaborative arrangements that increase organisational efficiency and deliver public value for residents.
- 9.2.3 The Act will be a living document that tells people clearly what councils do and how to get involved, and provide a sound framework for the sector to become more efficient and enterprising in its local governance.



**10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY**

- 10.1 Under the Bill, comparable performance data of councils is benchmarked and publicly reported to give ratepayers a comprehensive picture of council performance.

**11. IMPLEMENTATION STRATEGY**

**11.1 TIMELINE**

11.1.1 The State Government is undertaking a four-stage engagement process regarding the creation of a new Local Government Act to replace the existing Local Government Act 1989. Stages 1 – 3 have been completed and involved the Government in June 2016 releasing a Directions Paper outlining 157 potential reform directions and inviting submissions to the Directions Paper. Council at its meeting of 23 August 2016 adopted its submission to the review.

11.1.2 As Stage 4 of the process, the State Government developed an Exposure Draft Bill, and in December 2017 made this publicly available for community comments and submissions. The deadline for submissions on the proposed Bill is Friday 16 March 2018. After considering submissions on the Exposure Draft Bill the State Government intends to take the Bill into Parliament.

11.1.3 The indicative timeline for implementation of the entire new Act is over four (4) stages, with the final stage being implemented in line with the 2020 general council election.

- **Stage 1** of the new Act has a planned commencement date of 1 July 2018, at which time the new legislative framework relating to the constitution of councils, the role and functions of councils and the overarching governance principles are introduced.
- **Stage 2** – Final implementation by 1 July 2019, involves Councils having in place key policies in relation to community engagement, public transparency, CEO Employment and Remuneration, and a reconstituted Audit and Risk Committee.
- **Stage 3** – Final implementation by 1 January 2020, relates to local laws, governance proceedings and rules including conduct of Council meetings, conflict of interest provisions, councillor conduct framework and financial policies to ensure Council complies with the financial management principles.
- **Stage 4** – Final implementation by 1 July 2021, includes role of the Mayor and councillors, electoral provisions applying to the 2020 council elections and the adoption of key plans such as the 10 year long term vision, 10 year Financial Plan, 10 year Asset Plan and 4 year Revenue and Rating Plan.



## ORDINARY MEETING OF COUNCIL 7 MARCH 2018

### **12. OFFICER DIRECT OR INDIRECT INTEREST**

- 12.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

**TRIM FILE NO:** 38/08/24  
**ATTACHMENTS** 1. City of Port Phillip Submission