



Submission

**Draft Final Report
The Future of Local Government Review**

TAS

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Who we are

The Australian Institute of Building Surveyors (AIBS) is recognised nationally and internationally as the peak professional body representing building surveying practitioners in Australia.

Our Mission

AIBS is committed to ensuring a safer Australia through continuous improvement and development of the profession of Building Surveying. The overarching objective of the Institute can best be summarised as follows:

To achieve the highest standard of professionalism through Professional Development, such as education pathways and training, and Advocacy in representing the profession and establishing standards.

Professional Standards

The Australian Institute of Building Surveyors (AIBS) Professional Standards Schemes for Building Surveyors operates across all states and territories and is a legislative instrument that obliges AIBS, to monitor, enforce and improve the professional standards of members under the Scheme, thereby reducing risk for consumers of professional services.

The AIBS Professional Standards Scheme upholds the professional standards of Scheme Members, who are building surveyors, and ensures that clients have access to appropriately qualified and skilled building surveyor practitioners for representation and advice.

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Preparation

This submission has been prepared in response to public consultation inviting comments on the draft final report into the future of local government review.

Overview

AIBS agrees that there is nothing manifestly wrong with the range and scope of current service delivery across local government in Tasmania, however there are areas where significant improvements in public accountability will provide a capacity to avoid some of the poorer examples of practice currently occurring. This will support the broader objectives of delivering on increasingly complex community needs and will be key to delivering on the State's future prosperity.

There are key elements of the role of local government that AIBS believes must be more clearly addressed in the final report in order that an appropriate program of reform can be understood and established.

The core function of local government as a regulator is at significant risk at a political level because this function can be influenced or potentially compromised by excessive or insufficient regulatory activity. The potential for astute developers to exploit capacity constraints, susceptibility to external influence, and the like, at the expense of the Tasmanian community is significant. The structures and mechanisms to prevent this should be strengthened.

At the same time, service provision must deliver value for Tasmanian residents. Revenue streams in addition to rates are important. Unless and until careful planning is undertaken around delivery of any service, local government should refrain from engaging in a market. There should be mechanisms that ensure that service provision meets strict criteria around the value it represents for the ratepayers and the community, inclusive of checks and balances that prevent service delivery from occurring where subsidisation cannot be demonstrated to be an essential community service, especially where the provision of a subsidised service could be viewed as operating in an anti-competitive manner. The sections of the report dealing with service delivery should be strengthened in this respect.

Resourcing of local government compliance and enforcement functions must be sufficient and adequate to ensure that, in addition to attraction and retention of competent persons, the actions that are necessary to properly fulfill the compliance and enforcement obligations of local government as regulator can be undertaken within a just timeframe and consistent with model litigant principles.

AIBS sees sharing of resources across multiple council areas as critical to delivery of the points raised above.

The following recommendations are made by AIBS throughout this submission and are reproduced here for ease of reference:

1. AIBS recommends that steps are taken to create a robust regulatory environment to ensure local government can be an effective regulator for the whole of the community it serves.
2. AIBS recommends that the benefits of a resource sharing approach in respect of building surveying regulatory functions are more clearly addressed in the report.
3. AIBS recommends that the report make specific reference to employment of qualified building surveyors to undertake compliance and enforcement roles in the discussion about the advantages and benefits of resource sharing as well as in sections dealing with local government's role as a regulator of the building industry.
4. AIBS recommends that local government is encouraged to ensure it retains a capacity to provide a safety net statutory building surveying service that is delivered at cost.

5. AIBS recommends that local government should ensure that adequate budgetary allocation is made to compliance and enforcement activities utilising building surveying staff in house or where necessary shared across local government areas.

AIBS is pleased to contribute to the public conversation about the pathway to reform of the Tasmanian system of local government and the following section of this submission provides details in expansion of the broad points made above, and specific comments addressing the consultation questions in the draft final report.

In detail

The points raised above are described in more detail in the following section. Following this, this submission also contains a section which addresses key consultation questions.

Regulatory function of local government

There is potential for a conflict of interest to arise where the scale of a development that is to be regulated by local government is large in comparison to the investment activity that typically occurs within the local council area. It is also possible that local vested interests may create adverse operational environments for prospective competitors seeking to enter a local area via direction or encouragement of undue regulatory attention.

Local government must be compelled to perform compliance and enforcement functions in a transparent manner, ensuring that actions are taken without fear or favour, and where actions are not taken, it should be possible for all to see that decisions were made according to a net community benefit in not acting. AIBS recommends that steps are taken to create a robust regulatory environment to ensure local government can be an effective regulator for the whole of the community it serves. The existing Section 65 of the Local Government Act 1993 requiring qualified persons to provide input to the General Manager is not working uniformly across local government and needs reform.

Funding of local government regulatory functions

It is acutely important that, where any service is provided by local government in a competitive market, service provision is not anti-competitive. Additionally, any subsidisation of services provided must not be undertaken without publicly supported transparent justification and for specified purposes that are in the interests of the whole of the community served.

The role of local government in the delivery of statutory building surveying functions is not limited so that in addition to receipt and processing of applications related to the authorisation of construction activity and post construction occupation of new or altered buildings, local government is also able to engage in the undertaking of mandatory inspections during construction and to undertake a range of compliance and enforcement actions should the need arise also.

The provision of services such as inspections and authorisation of construction and occupation is also able to be undertaken by building surveyors operating in a private capacity. There has been a long standing desire that local government can ensure that qualified staff are able to engage with work that supports skills retention of individual staff as well as ensures local government can provide a stimulating range of work for staff to engage with. A key means of doing this is to ensure that local government 'wins' its share of the application work that is available.

To ensure that local government is able to secure a supply of work that addresses staff retention aspirations, there is a tendency to subsidise the fees quoted and charged for this work. The impact of this is anti-competitive in nature, hindering private practitioners from participation in the market, particularly where there are few major developments occurring within the local government area.

In many instances, private practitioners who have been operating small businesses in a local government area find they are forced to seek work outside of the area where they are based because they are so impacted by anti-competitive pricing strategies of their local council. In effect, the strategy does not address the needs of the local community fairly or in any transparent manner so that certainty of the scope of the market available within private practice can be known in advance.

Local government should be encouraged to explore additional means of supporting retention of key building surveying staff. The following section of this submission addresses how to resource local government's regulatory functions, noting that resource sharing is a key component to this solution.

Additionally, local government should be encouraged not to view building surveying services as a potential revenue stream to off set the cost of employing qualified persons. Local government very clearly has an important regulatory role with respect to the building industry and its activities within each local government area. If key qualified staff are concerned with winning and delivering on assessment work, those staff will not be focussed on compliance and enforcement functions essential to regulation of the building industry, or will have their attention split between the two functions and activities. It will also create significant issues for a local government should it be necessary to take compliance or enforcement action for a project for which it has been providing statutory building services, particularly where there are few building surveyors on staff.

It is far better for local government to look to support retention of building surveyors by other means.

AIBS recommends that local government is encouraged to ensure it retains a capacity to provide a safety net statutory building surveying service that is delivered at cost. AIBS recommends that local government should ensure that adequate budgetary allocation is made to compliance and enforcement activities utilising building surveying staff in house or where necessary shared across local government areas.

Resourcing of local government regulatory functions

Local government must retain sufficient numbers of competent staff if it is to have any realistic capacity to perform a regulatory function. If it cannot employ sufficient numbers of staff directly, it should do so in concert with other local authorities via secondment or service agreements addressing key employment issues such as wage parity across sharing organisations, insurance and other worker entitlement sharing provisions. AIBS recommends that the benefits of a resource sharing approach in respect of building surveying regulatory functions are more clearly addressed in the report.

A key consideration in resourcing a compliance and enforcement function of local government related to the undertaking of building work is the competence of the person or persons employed. There are many entities willing to advise that minimally qualified persons are capable of undertaking inspections. Just as anyone with basic literacy skills can write a story, it is possible to inspect building work with few qualifications however; just as it is with an experienced author, the quality of the work is far more useful when undertaken by a person with appropriate qualifications.

There is insufficient value in having a person who has a basic trade background and minimal additional training on building codes and standards doing inspections in a regulatory setting for local government. This role will be called upon to give evidence in a Court, should a person be found to have breached the law regarding building work that has occurred, and the person's qualifications and capacity to understand and explain to the Court what has transpired will be tested. Where the qualifications are inadequate, or the quality of the evidence provided is found wanting, there is a significant risk that the action taken will be defeated. It is not appropriate for local government, who is expected to act as a model litigant, to fail to ensure the Court has the benefit of quality evidence.

It is therefore vital that local government ensure that they employ formally qualified building surveyors who are recognised across industry and by the Courts as experts in building compliance to undertake building compliance and enforcement roles within a local government setting. This will ensure that all aspects of building compliance can be properly inspected, with any deviation from requirements or approval documentation identified and dealt with efficiently. Should matters end up in Court, the action will be far less likely to be undone by defects in the advice or integrity if the local government building surveyors involved in collecting and giving evidence in the action. Local government is also therefore less likely to be criticised for failing in its duty as a model litigant.

Whilst organisations representing the interests of builders might suggest minimally qualified persons are capable of effectively undertaking an inspection role, this serves to support their membership by allowing lower levels of capability to exist within regulatory bodies, relieving their members of scrutiny that might otherwise be available, and further by providing post trade career pathways for their members, deriving a member benefit that they will market.

Whilst AIBS supports post trade career pathways into statutory building surveying work, we have investigated the viability of this extensively. We have found that because trades are not required to undertake continuing professional development throughout their career, quite often their knowledge of technical requirements is commensurate with what they learned when they were at Trade School on entering their vocation. This can mean their knowledge is between 15 to 40 years out of date. Their dated knowledge of their trade after a long career is extensive.

To become a productive and capable building surveyor, they need to understand what has changed since they qualified in their trade, to learn about what is applicable across all relevant technical requirements, and to learn about relevant legislation that they are responsible for administering if they take up a role with local government supporting its role as regulator.

The TAFE system can deliver this training to a basic level of qualification in building surveying over two years full time, inclusive of recognition of prior learning in a trade.

AIBS recommends that the report make specific reference to this issue in the discussion about the advantages and benefits of resource sharing as well as in sections dealing with local government's role as a regulator of the building industry.

Consultation questions

Mandated shared services

1. Regarding recommendation 9 to “amend the Local Government Act so that the Minister for Local Government can require councils to participate in identified prescribed shared service or shared staffing arrangements”, are there particular issues that need to be considered when that power is being defined in the Act?

Careful attention should be given to the difference in mandating provision of a service vs a regulatory function of local government. There should not be any compromise on the specification of qualifications that must be met regarding mandating the sharing of building surveyors where a local government area is not able to attract or retain a building surveyor on staff.

2. How should councils be supported to achieve consensus on a shared service model?

No comment is provided in response to this aspect of the consultation.

3. Which of the three services recommended as the first priorities for developing mandatory shared service arrangements do you agree with? (multiple choice)
 - a. Sharing of key technical staff, commencing with Environmental Health Officers

- b. Sharing of common digital business systems and ICT infrastructure
- c. Sharing of asset management expertise through a centralised, council-owned authority
- d. **None – AIBS makes no comment in relation to this aspect of the consultation.**

4. Are there any reasons the above services would, or would not, be suitable as shared services?

No comment is provided in response to this aspect of the consultation.

5. Are there particular issues that would need to be considered in transitioning to a shared service?

Building surveyors are obliged to undertake continuing professional development to ensure they remain capable of delivery of quality advice that is accurate and timely. Support for this activity must also be shared, together with other costs of employment.

6. Are there any other council services that should be considered early priorities for mandatory shared service arrangements?

No comment is provided in response to this aspect of the consultation.

Rating and revenue

1. Are there particular issues that need to be considered when investigating alternative mechanisms for rating land that supports high value activities?

No comment is provided in response to this aspect of the consultation.

2. Are there particular issues that need to be considered when investigating a new developer charging regime?

No comment is provided in response to this aspect of the consultation.

3. Two recommendations refer to helping the community understand rates notices and the distribution of Financial Assistance Grants. How should the community be involved in those reviews?

No comment is provided in response to this aspect of the consultation.

4. How should the framework for council fees and charges be developed?

There must be a provision that ensures that delivery of services for a fee is not undertaken where a private service provider is available to service the market unless specified needs are addressed by the provision of the service and stringent anti-competitive tests are met.

5. How should any future review of the rating system be undertaken to give it the best chance of leading to a simpler, more equitable, and more predictable rating system for landowners?

No comment is provided in response to this aspect of the consultation.

In closing

AIBS is committed to working with government, industry and key stakeholders to continually improve the building regulatory system throughout Australia.

Please contact us for any clarification or further information that may assist.