



Local government amalgamations

July 2013

'It's the end of the world as we know it (and I feel fine)' R.E.M.

Introduction

On 30 July 2013, the Premier, the Hon Colin Barnett MLA and the Local Government Minister, the Hon Tony Simpson MLA, unveiled the State Government's 'blueprint for stronger, more efficient Perth metropolitan councils'.

The major component of this reform is the amalgamation, and in some cases reconfiguration, of the 30 existing local governments within the metropolitan area to 14.

It is intended that the new local governments will be operational by July 2015. In the first instance, Commissioners will be appointed, with elections being held in the October of that year to elect new Councillors.

Implications for planning

Much has been said in the media about the impacts on property, rating and regulatory approvals – both for and against.

In a practical sense, local government amalgamations, and boundary readjustments are not a new phenomenon. In recent years, for example, the City of Geraldton amalgamated with the Shire of Greenough in 2007, and then with the Shire of Mullewa in 2011, to now form the City of Greater-Geraldton.

Section 2.1(2) of the Local Government Act 1995 read together with Schedule 2.1, Item 11 gives power to the Governor to make regulations regarding transitional matters where local government districts amalgamate, where district boundaries change, or whether districts are abolished.

These regulations are already in place and are called the *Local Government (Constitution) Regulations 1998 (LGC Regulations)*. The LGC Regulations provide helpful guidance on a number of transitional matters, including rating and planning matters.

Local Planning Schemes

Regulation 6(4)(d) of the LGC Regulations confirm that where a local government district is abolished:

- an existing local planning scheme has effect as if it were a scheme prepared by the new local government;
- the new local government is taken to be the responsible authority for the local planning scheme; and
- any reference to the abolished local government is taken to be a reference to the new local government.

This will be clear in circumstances such as the proposed City of Cockburn – Town of Kwinana amalgamation, where there are no proposed boundary changes.

Care will need to be taken, however, in circumstances where small parts of existing local governments are amalgamated into a newly formed local government district to ensure that landowners are aware what local government area they now fall within.

Until new local planning schemes are prepared, some new local governments will be administering several local planning schemes, which will be administratively challenging.



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Planning policies

While the LGC Regulations specifically confer power on the new local governments to administer existing planning schemes, this will not lead to an automatic adoption of any planning policies which have been adopted by the abolished local governments.

Some local governments rely heavily on a non-statutory policy framework to impose design guidelines and development standards.

There may also be circumstances where the policies of abolished local governments differ markedly – for example, in relation to design considerations, second storeys and their size, and car ports and garages in front setbacks. It would therefore be difficult for the new local governments to simply readopt the policies of the abolished local governments which they have subsumed.

Development contribution plans

One of the big challenges will be how to continue the operation of statutory development contribution plans, where the new local government district boundaries run through existing and operational development contribution areas.

Transitional regulations will need to be considered to allow such plans to continue to operate, and to allow one or other of the local governments to administer the plan, maintain the accounts, and ensure that the contributions are used for the purpose for which they were collected.

If you have paid over a development contribution, then you should keep a close eye on what happens post July 2015 to ensure that your contributions are being used appropriately. Case law suggests that if a statutory authority does not use the contribution for the purpose for which it was collected, it should be returned.

Development Assessment Panels

The State Government has confirmed that it intends maintaining Development Assessment Panels (**DAPs**) as a decisionmaker on planning applications which satisfy the relevant criteria after the amalgamations occur.

The DAPs will have to be re-established after July 2015. The reason for this is that pursuant to section 171C of the *Planning and Development Act 2005*, a DAP may only be made for one or more whole local government district.

Currently there is only one Local DAP (**LDAP**) – the City of Perth LDAP. The other 14 DAPs are Joint DAPs (**JDAP**). It will be interesting to see whether the amalgamations will lead to more LDAPs or whether the JDAP model currently used will remain in place.

Housekeeping before July 2015

When the new local governments commence operation in July 2015, presumably if your land falls within a new local government district, your property file will be transferred to that new entity.

In our experience obtaining historic property information can be difficult where there has been a local government amalgamation or district boundary realignment. Hard copies of plans often get separated from the property file or packet filing system used by many local governments.

Hard copies of Council and Committee meeting minutes of the previous local government are often not available at the new local government. In relation to electronic copies of meeting minutes, many local governments only host a limited number of years on their websites.



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We strongly recommend making contact with your local government and requesting an opportunity to review the property file for your property, so that copies of relevant approvals and plans can be made. Some local governments may require you to apply for this information by way of an application under the Freedom of Information Act 1992.

Obtaining this information is particularly important if you are:

- relying upon non-conforming use rights for your existing operations; or
- if you have been granted relaxations of development standards on previous approvals, (car parking, or seat numbers for example), which you may wish to maintain under future approvals.

Maintaining a complete register of planning and building approvals is good practice at any time, however even more so at

a time where document management systems and corporate knowledge will be put under pressure.

We suggest that your property approvals register contain:

- Copies of all building permits (previously called building licences), certificates of construction compliance, certificates of building compliance.
- Copies of all occupancy permits (previously called certificates of classification).
- Copies of all planning approvals, including:
 - the application for development approval (including plans);
 - the planners' report which would have been prepared for applications determined by Council, Council committees or a DAP;
 - the approval document itself, including the stamped plans;
 - in relation to any conditions of approval, evidence of compliance.

Moharich & More would be happy to assist if you require such a register to be created for your property.

Conclusion

This update provides a snapshot of potential planning issues resulting from local government amalgamations. Please contact Moharich & More if you require specific advice in relation to your project.



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