CENTRAL LAND COUNCIL

Our Ref: F19-1604
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8 October 2019

Ms Julia Knight
Committee Secretary, Committee Office
Department of the Legislative Assembly
GPO Box 3721
DARWIN NT 0801

Dear Ms Knight

Submissions concerning the Local Government Bill 2019

We refer to and enclose our comments dated 12 July 2019 in relation to the consultation draft of the bill for the Local Government Act (**consultation draft comments**). We remain of the view that each of our suggested changes should be adopted, noting that only our suggested change to section 219(1)(l)(i) has been adopted.

Our comments below are made in relation to the Local Government Bill 2019.

1. **Section 7 - Definition of "Aboriginal community living area association"**

   As noted in our consultation draft comments, there are Aboriginal corporations, incorporated under the *Corporation (Aboriginal and Torres Strait Islander) Act 2006* (Cth), which own Aboriginal community living areas (**Aboriginal CLA**). The definition in section 7 requires amending to include these corporations.

   We remain of the view that the definition of "*Aboriginal community living area association*" be amended to "*Aboriginal community living area entity*" and the definition be amended as follows:

   "***Aboriginal community living area ~~association~~ entity*** *means an incorporated association or an Aboriginal corporation in which an Aboriginal community living area is vested.*"

   Without this amendment Aboriginal Corporations would be required to apply for an exemption through, for example, their status as a charity. It is our view that this requirement would be unnecessarily bureaucratic and onerous.

2. **Freehold land in a remote community held by an Aboriginal corporation**

   As noted in our consultation draft comments, section 223 (previously section 220) does not address the situation where an Aboriginal corporation owns land in a remote community which does not fall within the definition of "Aboriginal community living area". An example in the CLC's region is the Aputula community (Finke) where Aputula Aboriginal Corporation and Aputula Housing Aboriginal Corporation own land which is not Aboriginal land or Aboriginal CLA and they are essentially land holding corporations, similar to an Aboriginal community living entity.

   We remain of the view that the following wording should be inserted as a new section in section 223:

   "*An Aboriginal corporation which owns land in a remote community is not liable to pay rates but:*

(a) *an occupier of land owned by the Aboriginal corporation (other than the Aboriginal corporation itself) is liable to pay rates; and*

(b) *if land owned by the Aboriginal corporation is held under a lease from the Aboriginal corporation, the leasehold estate constitutes the rateable land for the purposes of this Act."*

3. Consequential and other drafting amendments

As noted in our consultation draft comments, consequential amendments and other drafting amendments for the purposes of consistency and clarity are required, including to sections:

- 223(4) - previously section 220(4));
- 228(1) - previously section 225(1);
- 229(2) – previously section 226(2); and
- 255(2) – previously 251(2).

These amendments are set out in paragraphs 6 to 9 in our consultation draft comments.

4. Transfer of leasehold interests

As noted in our consultation draft comments, consistent with the Central Land Council's functions under section 23(1)(e)(b) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), section 260(3) (previously section 256(3)) should be amended so as to extend the requirement of Land Council's approval of the sale of a leasehold estate granted by a CLA entity, as well approval by the relevant Aboriginal corporation of the sale of a leasehold granted by it in a remote community.

We remain of the view that section 260(3)(b) (previously section 256(3)(b)) should be amended as follows:

"If the land is:

(a) *a pastoral or other lease granted by the Territory, or a mining tenement, the sale must be made as approved by the Minister administering the legislation under which the lease or mining tenement was granted; and*

(b) *a leasehold estate granted by a Land Trust, the sale must be made as approved by the relevant Land Council; and*

(c) *a leasehold estate granted by an Aboriginal community living area entity, the sale must be made as approved by that Aboriginal community living area entity or the relevant Land Council; and*

(d) *a leasehold estate in a remote community granted by an Aboriginal corporation, the sale must be made as approved by that corporation*.

5. Changes made to the consultation draft

The following provisions have been deleted from the consultation draft and therefore no longer appear in the Local Government Bill:

(a) **section 212** – removal of the requirement that a council, when entering into a contract, must have regard to the following principles: support of local business and industry, ethical behaviour and fair dealing, value for money, environmental protection and open and effective competition; and

(b) **section 286** - removal of the requirement of a council to publish in its annual general report an itemisation of the salary, allowance or other payments made to or on behalf of its CEO.

We are concerned with the removal of these sections and are of the view that they should be reinstated, particularly section 212. We are perplexed as to why a council should not be required to have regard to the principles set out in section 212, especially in relation to ethical behaviour and fair dealing. With respect to section 286 we suggest reinstating as it is consistent with the general trend towards maximum transparency. For example all Commonwealth funded agencies will be required to report CEO's salaries in their annual reports from this financial year. There seems to be little reason to remove this requirement form local Government legislation.

If you have any questions about these comments, please contact CLC Policy Manager Josie Douglas at (08) 8951 6212 or josie.douglas@clc.org.au.

Yours sincerely

Joe Martin-Jard
Chief Executive Officer

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12 July 2019

Mr. Lee Williams
Senior Director Legislation and Policy
Local Government and Community Development Division
Department of Local Government, Housing and Community Development
GPO Box 4621
DARWIN NT 0801

Dear Mr Williams

Amendments to the Local Government Act

We refer to the consultation draft of the bill for the Local Government Act (**Proposed Act**).

The comments of the Central Land Council (**CLC**) are set out below.

1. **Section 7 - Definition of "Aboriginal community living area association"** – There are Aboriginal corporations which own Aboriginal community living area (**Aboriginal CLA**). This definition will need to be amended to include these corporations.

   We propose that the defined term of "*Aboriginal community living area association"* be amended to "*Aboriginal community living area entity"* and the definition be amended as follows:

   "***Aboriginal community living area ~~association~~ entity*** *means an incorporated association or an Aboriginal corporation in which an Aboriginal community living area is vested."*

2. **Section 219(1)(l)(i)** – This section should be removed as the NTG should not prescribe any part of Aboriginal land or Aboriginal CLA as rateable land other than in accordance with the Proposed Act.

3. **Section 219(1)(l)(ii)** – This section refers to a licence conferring a right of occupancy. No other sections referring to the grant of estate or interest by a Land Trust or an Aboriginal community living association (**CLA entity**) refers to a licence, see sections 220(2)(b), 220(3)(b) and definition of "land" in section 7. The term "licence" should be removed.

4. **Section 220(2)** – Our proposed typographical amendments are:

   "A Land Trust is not liable to pay rates but"

   (a) an occupier of land owned by the Land Trust (other than the Land Trust itself) is liable to pay rates; and

   (b) if land owned by the Land Trust is held under a lease from the Land Trust – the leasehold estate constitutes the rateable land for the purposes of this Act."

Similar amendments should be made to section 220(3) of the Act and the term "association" should be replaced with the term "entity" to address CLC's suggestion of the change to the definition of "Aboriginal community living area association".

5. **Freehold land in a remote community held by an Aboriginal corporation** – Section 220 (Special Cases) – Section 220 does not address the situation where an Aboriginal corporation owns land in a remote community which does not fall within the definition of "Aboriginal community living area". An example in the CLC's region is the Aputula community (Finke) where Aputula Aboriginal Corporation and Aputula Housing Aboriginal Corporation own land which is not Aboriginal land or Aboriginal CLA. There is likely to be similar situations in the region of the Northern Land Council.

   We propose that the following wording be inserted as a new section in section 220 to address this situation:

   "*An Aboriginal corporation which owns land in a remote community is not liable to pay rates but:*

   (a) an occupier of land owned by the Aboriginal corporation (other than the Aboriginal corporation itself) is liable to pay rates; and

   (b) if land owned by the Aboriginal corporation is held under a lease from the Aboriginal corporation, the leasehold estate constitutes the rateable land for the purposes of this Act."

6. **Section 220(4)** – This section will need to be changed to address the situation referred to in paragraph 5. Our proposed amendments are as follows:

   ***"**Land owned by a Land Trust or an Aboriginal community living area ~~association~~ entity or land in a remote community owned by an Aboriginal corporation:*

   (a) is not subject to the provisions of this Chapter under which overdue rates become a charge on the land to which they relate; and

   (b) is not liable to be sold for non-payment of rates."

7. **Section 225(1)** – Similar to the note in section 226(2), there will need to be a note inserted to make it clear that only the occupier will be liable for rates payable in respect of an allotment. Our proposed wording for the note is as follows:

   "*Note for subsection (1)*

   In the case of an allotment owned by the Land Trust or an Aboriginal community living area entity, the Land Trust or the Aboriginal community living area entity is not liable to pay rates, only the occupier will be liable for rates payable in respect of an allotment.

   In the case of an allotment in a remote community owned by an Aboriginal corporation, the Aboriginal corporation is not liable to pay rates, only the occupier will be liable for rates payable in respect of an allotment."

8. **Section 226(2)** – The note does not address allotment owned by a CLA entity. The note should also be amended to address the situation referred to in paragraph 5. Our suggested amendments are as follows:

   "*In the case of an allotment owned by a Land Trust or an Aboriginal community living area entity, the Land Trust or the Aboriginal community living area entity ~~itself~~ is not liable to pay rates so the lessee (if there is a lessee) is treated under this Act as the owner and hence the principal ratepayer for the allotment. If there is no lessee, the occupier may be liable for rates (see section 225(2)) and, if so, would be the principal ratepayer for the allotment.*

"*In the case of an allotment in a remote community owned by an Aboriginal Corporation, the Aboriginal corporation itself is not liable to pay rates so the lessee (if there is a lessee) is treated under this Act as the owner and hence the principal ratepayer for the allotment. If there is no lessee, the occupier may be liable for rates (see section 225(2)) and, if so, would be the principal ratepayer for the allotment. "*

9. **Section 251(2)** – As section 251(2)(b) refers to "Aboriginal community living area", for completeness, this section should refer to Aboriginal land and freehold land in a remote community owned by an Aboriginal corporation.

   "Rates do not become a charge over land:

   (a) unless the owner of the land is a ratepayer who is liable for the rates that are in arrears; or

   (b) within an Aboriginal community living area;

   (c) held by a Land Trust; or

   (d) in a remote community owned by an Aboriginal corporation."

10. **Section 256(3) –** Under section 23(1)(eb) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), the CLC has the statutory function to assist the owner of Aboriginal CLA including in relation to any dealings in the land. Similar to Aboriginal land, there should be a similar requirement to seek the approval of the Land Council for the sale of a leasehold estate granted by the CLA entity. Our proposed amendments are as follows:

    "If the land is:

    (a) a pastoral or other lease granted by the Territory, or a mining tenement, the sale must be made as approved by the Minister administering the legislation under which the lease or mining tenement was granted; and

    (b) a leasehold estate granted by a Land Trust, the sale must be made as approved by the relevant Land Council; and

    (c) a leasehold estate granted by an Aboriginal community living area entity, the sale must be made as approved by that Aboriginal community living area entity or the relevant Land Council; and

    (d) a leasehold estate in a remote community granted by an Aboriginal corporation, the sale must be made as approved by that corporation.

We look forward to receiving an amended bill which reflects our comments and proposed amendments. If you have any questions about these comments, please contact Josie Douglas at (08) 8951 6212 or josie.douglas@clc.org.au.

Yours sincerely

Joe Martin-Jard
Chief Executive Officer