

Enquiries:
Your Ref:
Our Ref: R0002533737

16 September 2019

The Hon David Templeman MLA
Minister for Local Government
7th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Minister

Office of the Auditor General Performance Report – Building Approvals

In accordance with section 7.12A(4)(a) of the *Local Government Act 1995*, a local government must prepare a report addressing any matters identified as significant by the auditor in the audit report, and stating what action the local government has taken or intends to take with respect to each of those matters. The City of Mandurah was one of four local governments selected in the performance audit of the Office of the Auditor General (OAG) in relation to Local Government Building Approvals (Report 28 June 2018-19) which was tabled in Parliament on 26 June 2019.

The following action plan that the City of Mandurah has prepared relates to the significant matters raised by the OAG:

1. The City of Mandurah:
 - a) Require written declarations of interest from assessment staff, and ensure appropriate mitigation action is taken for any conflicts

Status: Action is completed.

Comments:

All building application checklists have been updated to include a conflict of interest declaration that states:

I have reviewed the applicant, owner and property details and confirm that I do not have a Conflict of Interest in relation to this application.

Signature of building surveyor

In addition to adding the declaration of interest to the checklists, the Coordinator Building and Compliance will audit five randomly selected building application checklists per week to ensure the declaration of interests have been completed by the applicable building surveyor.

- b) Improve the transparency of their building control activities by providing information about permits, monitoring and enforcement activities, and building related complaints to Department of Mines, Industry Regulation and Safety's, Building and Energy Division (B&E), community and industry stakeholders.

Status: No action is required.

Comments

The City has received confirmation that the Department of Mines, Industry Regulation and Safety's, Building and Energy Division are not going to pursue the additional information and that they will focus their attention to the statutory information that the local government must provide. The City of Mandurah will continue to provide all statutory information that is required.

- c) Develop and implement a risk-based approach to monitor and inspect building works

Status: No action is required.

Comments

The City supports the following response from WALGA in relation to this matter:

The Local Government 'monitoring' and 'inspection' role was removed when the 2011 Act was gazetted, with section 29 specifying the onus on the Builder (and their Builders Registration) to ensure compliance with the building permit, including the plans and specifications and the applicable building standards. The Building Act provides for private certification for the limited list of mandatory inspections prescribed in the Building Regulations and for the Certificate of Design Compliance provided at the end of construction, without Local Government involvement or oversight. Parliament made clear its intent in the Building Act 2011 for industry self-regulation through private certification, rather than Local Government regulation.

The only prescribed inspectorial function for Local Government is in regard to 4-yearly inspections of swimming pool barriers, which is supported by prescribed fees.

*Local Government is no longer prescribed a monitoring or inspection role during construction and neither the Act nor Regulations specify such functions nor prescribe inspectorial fees to facilitate this function. Therefore, in accordance with the Act, Local Government only initiates an inspection when it is in receipt of a complaint or information which reasonably raises a concern regarding compliance with the permit or Building Code. It is misleading to state that Local Governments do not have formal policies or programs to monitor and inspect building works, nor conduct monitoring or inspections at all key stages of building works, when these functions **are not prescribed as the role of Local Government in the Building Act.***

Importantly, the Local Governments identified in the OAG report as having undertaken some level of monitoring or inspection of building compliance, have done so under their general competency powers, rather than in fulfilment of a prescribed function under the Building Act 2011.

An acknowledgement that the current prescribed Building Act fees are inadequate to undertake all of the functions of the Building Act, is also welcomed. The current fee structure supports only the basic processing of Building Permit applications and not adequate cost recovery for the consequential compliance and enforcement regime. As one of Local Governments stated....any compliance program should be self-funded to ensure that the wider community is not asked to pay for a function which has a very specific benefit. Therefore, if more compliance and enforcement is proposed following this report, then a Local Government should be able to recoup the costs from those incurring the service or compliance enforcement requirement. A full review of the fees and charges has been strongly advocated by WALGA over the last few years, with the ERA committing to undertake this review however, the ERA has not advised when this work will be commenced or completed.

- d) Improve guidance to staff on how to prioritise and manage building related complaints and enforcement activities to resolve community concerns and non-compliance issues in a timely way.

Status: Action is completed.

Comments

A review of the procedure has been undertaken and updated to ensure that there is active management for complaints and enforcement activities.

2. The City of Mandurah should limit the authority and delegation to issue permits only to appropriately trained staff who assess and issue permits.

Status: Action is completed.

Comments

The authority and delegation to issue permits is only granted to qualified and registered building surveyors. There are currently six registered building surveyors employed by the City of Mandurah who have the appropriate delegation and authority to issue building permits.

The comments in the OAG report state that the permit system users could approve and issue permits without delegated authority to do so. Although Mandurah requires its surveyors to sign a monthly declaration stating they completed the applications, this does not fully mitigate the risk of unauthorised permit approvals in the system.

The City's current corporate business system is currently used in a way that allows other teams within the City, (such as planning, engineering and health), to communicate and notify the building team of additional information to consider when assessing an application and the electronic communication has improved the efficiency of assessing applications and ensured accurate information is recorded on the building application electronic file.

The City has an employee Code of Conduct that outlines the expectations of an employee's behaviour and in particular, acting lawfully. If an employee who does not have authority and delegation to issue permits modifies the building application then disciplinary action by the City would be taken. The corporate business system could be changed to lock down the ability to track and add templates to building services staff only to limit the risk of any fraudulent activity, however such a change will also require having to ensure it does not affect the function of the current system and efficiencies that have been implemented to ensure the City meets its statutory timeframes. The City is moving to a new corporate business system over the next two years and will review the system security and access of the new system to determine whether access restrictions are possible without compromising efficiencies, functionality and meeting of statutory timeframes.

If you would like to discuss the matter further, please do not hesitate to contact me.

Yours sincerely



Mark R Neman
Chief Executive Officer