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The Local Law

Navigating good government

November 2025

Welcome

We are pleased to bring you the November 2025 edition of The Local Law.

In an ever-changing landscape of local government, staying informed is crucial. This publication is designed for CEOs, elected representatives, local government officers and in-house lawyers, offering insights and updates on key decisions, legislation, and relevant topics you need to make informed decisions.

In this edition we explore a range of timely legal and practical issues relevant to council. We cover changes to the right of support under the *Property Law Act 2023* (Qld) and examine the complexities of quarry management. Technology and compliance are also front of mind, with insights on artificial intelligence and "hallucinations", and practical tips for avoiding PID paralysis when managing public interest disclosures. We also have another instalment in our enforcement series and finally look at strategies for managing the rise in workers' compensation claims for psychological injury.

Please reach out to a member of our Local Government team or any of the authors if you have any questions.

We hope that you find this edition insightful and engaging.

Troy Webb
Partner and Head of Local Government

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Court of Appeal provides direction on Trunk vs Non-Trunk Infrastructure Conditions

The recent Queensland Court of Appeal decision of *Homeland Property Developments Pty Ltd v Whitsunday Regional Council* [2025] QCA 234 provides clarification on the operation of the infrastructure provisions in chapter 4 of the *Planning Act 2016 (Qld)* (**PA**) and their relationship with the development assessment framework in chapter 3.

Whitsunday Regional Council (**Council**) approved a large residential development to be developed in stages over a long period of time. Council imposed conditions on the development approval which required the applicant to undertake various infrastructure works, including water reservoir and sewerage works. Council imposed the conditions under section 145 of the PA as non-trunk infrastructure works. The applicant was prepared to undertake the works but sought to have the conditions imposed under section 128 of the PA. A condition imposed under section 128 would enable the applicant to benefit from offsets and refunds for trunk infrastructure works.

The applicant appealed various conditions to the Planning and Environment Court (**PEC**). At the time the development application was properly made, there was no Local Government Infrastructure Plan (**LGIP**). However, at the time of the hearing an LGIP was in place but it did not identify future water or sewerage infrastructure to service the site. His Honour Judge Williamson KC made orders to approve the application subject to conditions without the imposition of conditions under section 128 of the PA.

The applicant made an application to appeal to the Court of Appeal (**COA**) alleging errors of law.

The central issue before the COA was whether the statutory pre-conditions for imposing necessary infrastructure conditions under section 128 of the PA were met. The COA confirmed that these provisions only apply where an LGIP formed part of the planning scheme when the development application was properly made. Her Honour Justice Debra Mullins, COA President, thought that the starting point for determining the dispute should have been the decision of the PEC as to the weight to be given to amendments made to the LGIP in assessing the development application.

Her Honour held that section 111 of the PA governs the application of part 2 of chapter 4 (other than section 112 and division 5) which only applies to a local government if its planning scheme includes an LGIP. In this matter, no LGIP was in place at the time the application was properly made. As a result, the legislative basis for imposing a necessary infrastructure condition under section 128 was not engaged as part of the ordinary assessment under section 45(5) and (7) of the PA. If the planning scheme is amended (as happened here), then the primary question becomes what weight, if any, should be afforded to the LGIP amendment in the exercise of the planning discretion, acknowledging that section 128 is only engaged if the requirements of section 127 of the PA are met.

A significant aspect of the judgment was the COA's endorsement of the primary judge's interpretation of section 127 of the PA. Mullins P accepted that the provision should be read as requiring trunk infrastructure "for the subject premises", reinforcing the need for the LGIP to identify the infrastructure relevant to the particular site as a threshold issue to the availability of a necessary trunk infrastructure condition under section 128 of the PA. This interpretation aligned with the statutory context and explanatory notes. The amended LGIP in force at the time of the PEC hearing did not identify existing or future trunk infrastructure which meant that the requirements of section 127(1) of the PA had not been met.

The COA accepted that later amendments introducing an LGIP could be afforded weight in the development assessment under section 45(8) of the PA, but the weight given to those amendments is a discretionary matter for the assessment manager (or the PEC on appeal). The primary judge had given no weight to either of these LGIP amendments. Mullins P confirmed that the exercise of this discretion was open to the primary judge and there was no error of law.

The COA also drew a clear distinction between trunk and non-trunk infrastructure conditions. While section 128 applies only where an LGIP exists and the requirements of section 127 of the PA are satisfied, section 145 is not so limited. That provision is in part 2, division 5 which is excluded from the application section (section 111). A condition under section 145 of the PA can be imposed even if no LGIP exists provided its requirements are met.

Key takeaways

This decision reinforces the importance of identifying at the outset whether an LGIP was in force when the development application was properly made. Without an LGIP, the statutory pathway for imposing a necessary infrastructure condition under section 128 cannot be engaged in the standard assessment of an application. Even where an LGIP exists, the infrastructure must be identified as trunk infrastructure for the specific premises to satisfy the requirements of section 127(1)(a) and (b) of the PA. Later LGIP amendments may be relevant as a question of weight under section 45(8), but the extent to which amendments influence the assessment will always depend on the circumstances and involve matters of discretion.

The case also demonstrates that, where section 128 is unavailable, a local government still retains the ability to impose non-trunk infrastructure conditions under section 145. These conditions are not subject to the LGIP-based constraints for necessary trunk infrastructure conditions, provided they meet the statutory requirements for a development condition.

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Changes to the right of support under the Property Law Act 2023 (Qld)

Under section 179 of the *Property Law Act 2023* (Qld) (**PLA**), strict liability and nuisance-based claims for loss of support are now abolished. Instead, each landowner owes a duty of care to not do, or omit to do, anything that adversely affects support provided by supporting land to supported land.

The PLA, was amended on 1 August 2025, introducing a significantly revised right of support provision in section 179, replacing the former provision in the *Property Law Act 1974* (Qld).

The amended section 179 establishes a duty of care on both owners of supporting and supported land not to do, or fail to do, anything that adversely affects the support provided by it to either the supported or supporting land (whichever it may be).

The new section 179 of the PLA is substantially different to the previous provision because:

a. the cause of action is now in negligence rather than nuisance, removing strict liability and automatic entitlement to damages; and

b. the right of support applies to both actions and omissions, and so a failure to act can now give rise to liability.

The new right of support applies a reciprocal duty of care to both the supported and supporting property owners. Whilst both parties owe a duty of care, the conduct required of each party will differ based on their unique circumstances.

These changes have implications for local governments. For council's in Queensland, it is important to consider the land which you hold as owner or trustee, particularly those parcels of land which are supporting other land and are susceptible to erosion from waterways, rivers or any other natural elements. Because the revised provision creates a negligence-based cause of action, councils should also consider section 35 of the *Civil Liability Act 2003* (Qld) which sets out factors a Court will consider in deciding whether a public authority has breached its duty of care. To mitigate potential future claims, councils could adopt a policy or procedure clarifying how these matters will be managed across the city or region.

There are currently no cases which have considered new section 179 of the PLA. The only Queensland case under the former nuisance-based section 179 held that a person whose actions caused the withdrawal of support, resulting in damage, was liable to remedy that damage.

Key takeaways

In practice, these changes introduce a more proactive and reciprocal obligation on landowners, particularly councils, to consider how their land management decisions may affect neighbouring parcels. With the right of support now grounded in negligence, policies and procedures addressing land stability and erosion risks may help mitigate future claims. Although there is presently no case law interpreting the new provision, councils should remain mindful of the factors in section 35 of the *Civil Liability Act 2003* (Qld) when assessing potential exposure. As the courts begin to apply the amended section 179, further clarity will emerge on how this duty of care is to be met in a local government context.

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The quarry dilemma

Queensland has an abundance of quarry materials including stone, gravel sand, rock, clay and soil, which are critical for local economies and major resource projects. Regional councils in particular rely on these materials to upgrade roads and community infrastructure.

The Queensland Government allocates and sells state-owned quarry material across state forests, timber reserves, leasehold lands, reserves, public roads and certain freehold land. Access to these materials requires a permit under the *Forestry Act 1959* (Qld) (**Forestry Act**).

The Queensland Government recently changed its interpretation of sales permits under the *Native Title Act 1993* (Cth) (**NT Act**), which has meant that many existing permits for state-owned gravel pits (often held by local governments) have expired and cannot be renewed without a native title agreement (such as an indigenous land use agreement or ILUA) being in place. Proponents can no longer rely on the future act provisions in sections 24GE, 24JA, 24KA or the right to negotiate process under the NT Act.

What does this mean for users of quarry material from state-owned gravel pits?

Before a permit can be issued or renewed, a native title assessment must confirm whether native title still exists. If it does, the proponent must negotiate an ILUA with the relevant native title party to obtain consent to the 'future act'. The ILUA will address:

a. consent to the 'future act';
b. access rights and how land and waters in the permit area can be used;
c. if relevant, other leases, licences or permits that might be required under the Forestry Act;
d. compensation; and
e. protection of cultural sites.

The requirement for an ILUA has already had an impact on many local councils as negotiating an ILUA can often be a lengthy and complex process. Local governments and councils rely on quick access to quarry materials for road works, flood repairs, resealing of air strips etc which are vital for connecting isolated outback communities. Being unable to access quarry materials means delays to operations as well as budget blow outs to seek alternatives sources of material.

To ensure that proponents can still access the quarry material, relevant parties are now entering into interim 'standstill agreements'. These agreements are a temporary, but legally binding, arrangement for the use and management of an area pending the resolution of the ILUA. They allow proponents to continue accessing quarry materials on the understanding that an ILUA will be signed in the future.

The result of the changes has meant that local councils (and private companies) face greater operational challenges and increased financial costs as they must now formalise agreements with native title holders, a process that ensures traditional owners are respected but adds layers of administration and additional costs to their essential services.

Aboriginal cultural heritage

Aboriginal cultural heritage must also be addressed, and where a proposed quarry requires an environmental impact statement (**EIS**), the proponent will be required to develop an approved cultural heritage management plan with the relevant Aboriginal party for the area. If there is no EIS requirement, the proponent must still adhere to its Aboriginal cultural heritage duty of care under the *Aboriginal Cultural Heritage Act 2003* (Qld) or the *Torres Strait Islander Cultural Heritage Act 2003* (Qld).

Key takeaways

New sales permits, as well as variations to existing permits, require a native title assessment under the NT Act, which may result in the need to negotiate an Indigenous Land Use Agreement (**ILUA**). The negotiation of an ILUA can be a costly and time-consuming process, potentially leading to budget blowouts for local governments, councils, and private entities, with flow-on effects for other industries that rely on quarry materials. As an interim measure, and on the understanding that an ILUA will be agreed in the future, proponents can enter into a standstill agreement to continue operations until the ILUA is signed. It is essential that proponents engage early with traditional owners and do so respectfully and transparently. Finally, compensation will be payable for both future quarrying activities and any past quarrying conducted without valid agreements.

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Artificial intelligence and "hallucinations"

Artificial intelligence, or "AI", now permeates everyday life. Its advancement has forced institutions such as courts and regulatory bodies to adapt and innovate. Generative AI technologies, like Open AI's ChatGPT, increasingly challenge traditional legal practices. Core tasks such as sending correspondence, preparing written submissions and conducting research are radically changing. Even writing an article like this can now be done almost instantaneously by prompting an AI tool with a few succinct questions. The "author" (a human) need only think of a topic they wish to write about, populate a few questions to an AI tool and then review the finished product.

Hallucinations

A major risk of AI tools is the phenomenon known as a "hallucination", where an AI generates information that is incorrect, misleading, or entirely fabricated. The Supreme Court of Queensland, in a 2025 Practice Direction notes:

> *"One of the risks associated with using generative artificial intelligence tools is that they may produce apparently coherent and plausible responses to prompts, but the responses may be inaccurate or fictitious, including because they refer to non-existent sources (case authorities, legislative references, legal and academic resources)."*[1]

Hallucinations arise from limitations or biases in the AI's data, causing it to "fill the gaps" with fictious information or sources, such as legal citations. Hallucinations typically occur in legal practice when a litigant uses AI technology to prepare written submissions, which are then filed in Court. Those submissions, if not checked carefully, can contain fictious or non-existent cases, or references to evidence or documents that do not exist.[2]

The misuse of AI tools can have severe ramifications for legal practitioners. This is well-known in Australia and overseas.

In a Federal Circuit and Family Court of Australia proceeding, a solicitor provided the Court with a list of fictional authorities and case summaries generated from an AI tool. The solicitor apologised for their conduct but was nonetheless referred to the Victorian Legal Services Board. Similarly, in a native title proceeding, the Federal Court of Australia ordered a law firm to pay indemnity costs after a junior solicitor used Google Scholar to generate citations which were either incorrect or referred to documents which did not exist. In ordering indemnity costs, the Judge held:

> *"[t]he applicant's solicitor's use of AI in the preparation of two court documents has given rise to cost, inconvenience and delay to the parties and has compromised the effectiveness of the administration of justice."*

Courts are increasingly taking the approach of redacting hallucinations in their published decisions in the hope that by doing so, these fictious references are not propagated further by other litigants using similar tools or, theoretically, by other litigants referring to earlier authorities. Justice Jane Needham of the Federal Court of Australia, speaking extra-judicially, has commented that this approach was such that it does 'not give credence to hallucinated cases'.[5]

Key takeaways

Councils should be aware that Courts are very much alive to the use and risks of artificial intelligence. The once slow creep of AI into legal practice has become a tidal wave of change in how litigation and court proceedings are conducted. Courts will continue to adapt their processes and procedures to these technologies. Similarly, Councils will no doubt face new challenges in their legal and regulatory matters as these technologies emerge.

[1] Supreme Court of Queensland Practice Direction Number 5 of 2025.
[2] *Murray on behalf of the Wamba Wemba Native Title Claim Group v State of Victoria* [2025] FCA 731.
[3] *Dayal* [2024] FedCFamC2F 1166 (27 August 2024).
[4] *Mark Khoury v Nira Kooij* [2025] QSC 217 [17]; *Luck v Secretary, Services Australia* [2025] FCAFC 26 at [14].
[5] Justice Jane Needham, 'AI and the Courts in 2025' (Speech, *2025 Judges Series*, 27 June 2025).

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Avoid PID paralysis: tips for managing Public Interest Disclosures

Public interest disclosures (**PIDs**) under the *Public Interest Disclosure Act 2010* (Qld) are a common occurrence for many councils. That Act sets out strict obligations for councils to manage PIDs. Councils occasionally fail to manage PIDs promptly and diligently. However, councils should avoid overreacting to PIDs – stopping reasonable employment processes such as performance management or discipline, and rushing into a potentially unwarranted and expensive investigation which soaks up time and resources. Sometimes those actions are necessary, but understanding the obligations and options allows for informed decisions and an appropriate process. We support our clients to effectively manage PIDs, and some of our tips are below.

What is a PID?

Not every disclosure meets the definition of a PID.

Councillors and members of the public can make PIDs about four categories of issues.[1] Public officers can make PIDs about broader issues such as alleged corrupt conduct, maladministration,[2] or misuse of resources.

The discloser must have an honest and reasonable belief the disclosure shows the relevant issue, or provide information tending to show it. A council employee's allegations about fraud, discrimination or bullying could all potentially be PIDs.

Council's key obligations

Some critical obligations for councils managing PIDs are:

a. Establish procedures: Procedures to assess disclosures, investigate disclosures when appropriate, support disclosers, and address any identified wrongdoing must be created.

b. Reprisal Risk Management: Identify and manage reprisal risks, in tandem with managing psychosocial safety risks.

c. Referral: If a PID is also an allegation of 'corrupt conduct', as defined in the Crime and Corruption Act 2001 (Qld), it generally needs to be referred by council to the Crime and Corruption Commission.

d. Confidentiality: Strict confidentiality must be maintained over PIDs, subject to exemptions (e.g. to investigate the disclosure). Breaching confidentiality may constitute an offence.

e. Records: Make and retain detailed records about council's management of a potential PID. Even if council determines a disclosure is not a PID, that decision should still be recorded as this may later be the subject of dispute.

Avoiding PID paralysis

Employees sometimes raise complaints to subvert or stop employment processes.[3] Each disclosure must be managed diligently. It is sometimes possible to continue an employment process while managing that employee's disclosure. If managed expertly, with council's decision-makers independent and insulated, prompt and compliant resolution of the PID and employment process can be achieved.

Importantly, bear in mind that:

a. A PID is a shield against reprisal. It does not render a discloser immune to lawful and reasonable management action.

b. Not every PID requires an investigation. A council may elect not to investigate or further deal with a PID where, for example:

(i) relevant information is too dated;

(ii) it is too trivial, and dealing with it would substantially and unreasonably divert Council's resources; or

(iii) the matter has been investigated or dealt with by another process.

PID paralysis can be avoided. Disciplined PID management, supported by experienced advisors, will allow your Council to meet its obligations, protect disclosers, and mitigate operational disruptions.

Key takeaways

Councils should assess whether a disclosure truly meets the definition of a PID before acting. PIDs must be managed promptly and confidentially, with clear records and consideration of reprisal and psychosocial safety risks. It is not always necessary to investigate every PID, and reasonable management action can often continue alongside the process. Careful, informed management supported by experienced advisors helps ensure compliance while avoiding unnecessary disruption.

Please reach out to Cameron Dean or Bernard Dwyer from our Employment Relations and Safety Team if you have any questions.

[1] A substantial and specific danger toa disabled person's health or safety , issues related to substantial and specific environmental dangers covering two categories, and reprisals.

[2] This is a very broad category which includes 'unreasonable' Council administrative actions.

[3] For example, disciplinary action, performance management or redundancy.

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Getting process right: investigating allegations

Local Governments have broad duties under the *Local Government Act 2009* (Qld) to administer and exercise regulatory functions, including:

a. enforcing the law;

b. addressing non-compliance with the law by requiring parties to remedy non-compliance; and

c. seeking redress for any harms, and where appropriate pursuing a penalty or punishment.

It is common practice for a local government to first become aware of an alleged unlawful activity by way of a specific complaint from the public (including from sector, industry, media and social media), a referral from another regulator, enforcement agency or police, or an observation by Council officers in the course of a general local government program of inspection and enforcement.

It is important that when collecting information in respect of an alleged unlawful activity a local government (either by phone, an online phone, in person or via social media) should capture:

a. Time and date – that the allegation was received;

b. Details of the receiving officer – including their role and workplace;

c. Details of the person making the allegation – including name, contact details, relationship to any possible offender/s, reliability of any information given, and assurance of any confidentiality sought/given;

d. Details of the alleged unlawful activity – including time, date, place, person/s involved, property type or environment involved (where relevant), vehicles involved, and any links to further information; and

e. Time and date – the allegation was referred for assessment.

There are three stages to investigating an allegation:

a. initial assessment;

b. investigation; and

c. finalising an investigation.

Initial assessment

Assessing an allegation involves the evaluation of available information and evidence to determine whether an investigation is warranted. While not every report alleging unlawful activity or non compliance will require an investigation to be opened, all reported allegations must be assessed. Liability will arise if allegations are not assessed appropriately.

Where the initial report does not contain sufficient information on which an assessment can be made, further information may be sought from the report's originator and/or via desktop inquiry or inspection. Only after an assessment of an allegation can a decision be made as to what further action, if any, might be undertaken. Priority will be given to allegations where there is an imminent threat to health, life, or property.

Investigation

When investigating an alleged unlawful activity or non-compliance, a local government should approach all allegations in a systematic and consistent manner. At a minimum, local governments should consider:

a. whether the alleged unlawful activity will have, or has the potential to have, the significant damage to health, property or environment;

b. the financial cost of responding to and/or remedying the non-compliance;

c. whether the nature of the allegation indicates the existence of a bigger problem (pattern of behaviour/conduct or more widespread issue than just a single report);

d. whether the allegation refers to persons/ organisations or work/activity that has been the subject of previous reports or enforcement activity; and

e. whether there are any legal or public interest issues that may impose constraints on or affect the ability of the local government to investigate.

Finalising an investigation

The outcome/s of the assessment process fall into three categories:

a. take no action, however a full and proper record of a decision not to open an investigation must be recorded, which identifies the evidence relied upon and the reasoning to not progress;

b. refer to another regulator, enforcement agency or police. This option is appropriate if the matter is better dealt with by another regulator, enforcement agency or police. A full and proper record of the decision to refer to the matter should be kept by Council of the reasons for this decision, and when the matter was referred; or

c. open an investigation - a local government should open an investigation where it appears the following conditions are met:

(i) the allegation/s – is within the Council's jurisdiction;

(ii) the allegation/s – initial assessment determines that the allegation/s is/are credible;

(iii) the allegation/s – are aligned with the Council's priorities;

(iv) alternative regulatory actions are not possible or appropriate – in the context of the issues or circumstances specific to the allegation/s; and

(v) the issues or circumstances specific to the allegation/s are such that it is in the public interest – and that an investigation appears to be warranted.

Key takeaways

Local governments must assess all allegations of unlawful activity and ensure they collect clear, accurate information at the point of receipt. An investigation should only proceed where the allegation is credible, within the council's jurisdiction, and in the public interest. Councils should prioritise matters involving immediate risk to health, life or property and take a consistent, evidence-based approach to assessment and investigation. Outcomes will either be no action (with reasons recorded), referral to another agency, or the opening of an investigation.

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Managing the rise in workers' compensation claims for psychological injury

Workers' compensation claims for psychological injuries have significantly increased. In the four years up to 2022, Work Safe Queensland reported a 92% increase in accepted psychological injury claims and a further increase in the subsequent year. It is therefore critical for local governments to proactively respond to these claims and to comply with the recently enhanced rehabilitation and return to work obligations.

Increased penalties for failing to assist with rehabilitation

Under the *Workers' Compensation and Rehabilitation Act 2003* (Qld) (**WCRA**), employers have a duty to take all 'reasonable steps' to assist or provide the worker with rehabilitation (including necessary and reasonable suitable duties programs) and to cooperate with the insurer to provide rehabilitation. The maximum penalty for non-compliance was increased last year to $83,450.

If an employer believes that a suitable duties program is not practicable, it must produce written evidence to the insurer of this or it may incur a penalty of $16,690 (prior to 23 August 2024 there was no penalty). If the insurer is not satisfied with the employer's evidence, it must provide the employer with reasons for that opinion and 'reasonable opportunity' for further submissions.

Responding to claims

If a worker has made a claim for psychiatric injury (or there are signs of one emerging), employers should take appropriate steps to:

a. ensure adequate support is provided (regular check ins, employee assistance programs, allowing the worker to take time off);

b. investigate and document the claim circumstances; and

c. if there are concerns about the veracity of the claim, respond to the claim at an early stage by gathering all relevant information and documents and providing that to the insurer with submissions outlining the employer's version of events. Often a claim is contestable on the basis that the injury was caused by the employer's 'reasonable management action'.

Key takeaways

The growing number of workers' compensation claims for psychiatric injury makes it increasingly important for employers to be proactive about contesting claims at an early stage, including preparing responsive submissions to the insurer. If a worker's claim is accepted, employers now have enhanced obligations to take reasonable steps in providing rehabilitation to the injured worker.

We have assisted many government bodies to respond to contentious workers' compensation claims.

For detailed guidance on the enhanced rehabilitation obligations and managing claims, please reach out to our Insurance and Corporate Risk team.

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Alan is a partner in our Litigation and Dispute Resolution group, specialising in contractual disputes, commercial claims, and regulatory matters for local governments and public authorities. He provides practical, strategic advice to help councils manage risk, resolve planning and infrastructure disputes, and respond to regulatory investigations, including those conducted by the Queensland Crime and Corruption Commission.

Alan regularly represents clients in State and Federal Courts, tribunals, and inquiries, providing councils with clear, practical guidance on dispute, investigations governance and compliance. Before joining McCullough Robertson, he served as judicial associate to a District Court judge, gaining experience across criminal, planning, and personal injury law.

Alan has advised local councils on leasing disputes, debt recovery actions, commercial claims and property disputes.

Meet our team

McCullough Robertson has acted for local governments across Queensland for over 30 years. Our dedicated Local Government Industry Group are specialists in fields of law relevant to local government and ensure that the advice given aligns with, and is cognisant of, the industry and its framework.

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