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Mark Jones, Finance Manager  
8am to 6pm Mon - Thurs, 8am to 5pm Fri

19 February 2002

Productivity Commission  
Section 2D Inquiry  
Productivity Commission  
PO Box 80  
**BELCONNEN ACT 2616**

Dear Commissioner

**Re: Pittwater Council's response to the review of Section 2D of the Trade Practices Act, 1974.**

In presenting Council's submission concerning the removal of Section 2D of the Trade Practices Act, 1974 a multi level approach has been taken to give a rounded viewpoint. In the three tiers of Government that exist within Australia, those at a local level often bear the brunt of rising community needs yet are offered restricted levels of funding and support at State and Federal level to accomplish goals. Accordingly, when discussing this matter of legislative reform, to comment solely on the issue at hand would not give justice to the pressures that local Government face in their operations.

Pittwater Council's submission will address the following:

- The legislation review of Section 2D of the Trade Practices Act, 1974 and the impacts on Council
- National Competition Policy
- Consistency of Government legislation
- Defending the Rationales and the conduct of operations of Pittwater Council.

**The legislation review of Section 2D of the Trade Practices Act, 1974 and the impacts on Council**

The concepts of Section 2D of the Trade Practices Act, 1974 revolve around the exemptions that Local Government Bodies receive as to matters of licences (refusal, granting, suspension etc) and transactions conducted internally. The review in question seeks to address that as a result of these exemptions what are the implications in respect to the potential restriction of competition, impacts of trade and the economic performance of Council and local business.

In 1993, Council's legislative powers to licence were removed from the Local Government Act and in turn a fee for service was introduced by Councils for the administration/enforcement of business to comply with supportive regulatory legislation such as the Food Act, 1989. Accordingly, in strict terms Council's no longer issue licences and thus Section 2D of the Trade Practices Act, 1974 could be seen as having limited relevance when discussing licences.

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However, when looking at the intent of this section, Council's operations concerning licences now revolves around enforcement more than the issuance and therefore Council could still be seen as having the power to hinder competition in the supply of goods and services. This perceived market power and the restriction that it could have on trade is in Council's opinion outweighed by the community benefit that is achieved by the enforcement of such supporting legislation (various Acts). For example, in the case of the Food Act, 1989 community health and safety outweighs the perceived restriction on competition that Council could hold, thus exemptions such as Section 2D are valid. It may be more constructive if an amendment rather than the removal of this legislation were considered.

As far as internal transactions are concerned, as Council's primary objective is in the provision of public services at an optimum cost, any economic benefit that can be sourced should be so long as it is derived by legal and proper means. Accordingly, Council should promote the use of internal transactions and any legislation that supports its operations, such as Section 2D of the Trade Practices Act, 1974. This philosophy ensures Local Government Bodies can utilise their workforce to their maximum potential, minimise unnecessary costs, pursue internal benefits and skills and utilise economies of scale where appropriate.

### **National Competition Policy**

Pittwater Council embraces the guidelines of the National Competition Policy and applies the ideology of competitive neutrality where necessary and attempts never to utilise its market power for unfair advantage. In the promotion of competitive neutrality the removal of such legislation as Section 2D of the Trade Practices Act, 1974 that gives Council's a small perceived advantage would be unjust if removed while Council's are still subject to restrictions that can hinder or limit the level of their competitive service.

These restrictions such as the capping of Rates limiting Council's income stream, the payment of State levies and contributions such as the Department of Planning Levy and the NSW fire Brigade contribution are something that the private sector do not have to endure. It is these items that see Councils incurring costs and restrictions that unbalance the "level playing field". Accordingly, Council's need to hold what current legislative rights they have to protect community service quality and levels.

### **Consistency of Government legislation**

At the very least, legislation such as Section 2D of the Trade Practices Act, 1974 that gives Local Government Bodies certain exemptions should remain to keep Council's consistent with the State and the Commonwealth and the exemptions they receive. Section 2C of the Trade Practices Act, 1974 exempts State and the Commonwealth from certain transactions on the basis that they are not "carrying on a business" with respect to matters concerning licences and transactions. Accordingly, Local Government should be extended similar legislative powers that other levels of Government are allowed to enjoy as we conduct similar operations as a government body.

### **Defending the Rationales and the conduct of operations of Pittwater Council.**

The current exemptions within the Trade Practices Act, 1974 gives Council's legislative support to regulate licensing decisions and to conduct internal transactions. The rationale behind the current exemptions is to promote health, safety and standards within products and services with respect to licensing and cost effectiveness in service provision with

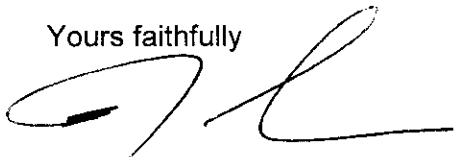
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respect to the conduct of internal transactions. The legislation in question brings necessary legal clarity and backing in the provision of the above.

In its operations as a service, infrastructure and regulatory provider, Pittwater Council is answerable to many parties including the Department of Local Government (State), ICAC (State), ACCC (Commonwealth) and more importantly the public, all of which ensure that the operations of Council are conducted fairly and honestly. Being answerable is one thing but being legally supported by legislation is another. Accordingly, the issue that Council is trying to promote is that legislation such as Section 2D of the Trade Practices Act, 1974 is essential to provide legal clarity and direction. Any concern that such legislation may hand Councils a means to abuse of their market power can be muted by the many external bodies that Local Government are answerable too.

Council hopes that the above comments assist in your review.

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a long horizontal stroke.

Dennis J Baker

**ACTING – GENERAL MANAGER**

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