

28 June 2004

Mr Tony Hinton  
Commissioner  
Study into Reform of Building Regulation  
Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616

Dear Mr Hinton

Thank you for the opportunity to provide a submission to the Productivity Commission's Study into Reform of Building Regulation. ALGA is represented on the Australian Building Codes Board (ABCB) and is committed to regulatory and institutional reform to ensure sustainable built environments meet the needs and aspirations of local communities.

In this context, local government serves a fundamental role, working in partnership with industry and the community to identify and achieve community expectations of the future built environment. The attached submission outlines the important role of local government in planning and development, particularly in response to the questions raised by the discussion paper initiating this study.

ALGA thanks the Commission for the opportunity to offer these remarks and looks forward to the findings of the study. ALGA is represented on the ABCB by Cr John Chandler of Stonnington City Council. Should you have any further questions regarding ALGA's position in relation to the ABCB, do not hesitate to contact Cr Chandler to discuss this further. He can be reached on phone: 03 9827 4899 or email: [john.chandler@stonnington.vic.gov.au](mailto:john.chandler@stonnington.vic.gov.au). For further information regarding the detail of this submission, contact Jonathan Cartledge, Assistant Director, Regional Development Policy on phone: 02 6122 9443 or email: [jonathan.cartledge@alga.asn.au](mailto:jonathan.cartledge@alga.asn.au).

Yours sincerely

Ian Chalmers  
**Chief Executive**



## **Productivity Commission Research Study Reform of Building Regulation**

**Submission by the Australian Local Government Association**

**June 2004**

### **Introduction**

The Australian Local Government Association (ALGA) welcomes the opportunity to provide this submission to the Productivity Commission's research study examining the contribution of national building regulatory reform under the auspices of the Australian Building Codes Board (ABCB). ALGA is the national voice of local government representing the collective national and international interests of approximately 675 Australian local governing bodies. ALGA represents local government on national bodies and ministerial councils including the Australian Building Codes Board (ABCB), the Local Government and Planning Ministers' Council (LGPMC), and the Development Assessment Forum (DAF).

The issues paper associated with the Productivity Commission's study raises a number of issues relevant to local government. This submission focuses particularly on issues relating to the institutional arrangements governing building activity and planning and the ability of local councils to add to existing building requirements above those contained in the Building Code of Australia (BCA).

ALGA is of the view that it is a fundamental responsibility of local government to respond to the needs and aspirations of local communities. Any moves to impede this ability through further regulation are strongly opposed by ALGA. In this context it is vital to consider the contribution of the ABCB not just in terms of economic efficiency and productivity gains, but also in terms of the capacity to adapt the built environment to meet new challenges and community expectations.

### **Background**

In Australia, local government is established under state/territory legislation and its structures, powers and functions are determined by that legislation. In all jurisdictions in the last 10-15 years, the relevant legislation creating and regulating local government has been reviewed and significantly amended or replaced with new legislation that gives local councils greater general competence powers. In most jurisdictions it was the first time that the legislation creating and regulating local government had been reviewed so comprehensively for more than forty to fifty years. Generally speaking, these changes enable local governments to provide a wider range of services or to undertake functions to meet the needs of their local communities that may be beyond their historical statutory requirements.

Local government is an elected sphere of government, representative of and directly accountable to, local communities. The fact that it is elected and responsible for a broad range of services in a clearly defined geographic area, means that local

government is potentially better placed than the other two spheres of government to understand and meet local needs and to respond to those needs in ways that are appropriate to local conditions. Local government is multifunctional and, unlike other spheres of government, is able to combine and integrate services to best satisfy community expectations.

These characteristics of local government also raise some dilemmas in the management of local areas. For example, local governments are often treated as the servants of state/territory governments, creating tensions over direction setting and accountability. The fact that local governments also have a measure of choice over the range of non-statutory functions they may exercise, as well as the manner in which they interpret their statutory functions, results in a considerable range of differences and diversity across local councils within and between jurisdictions.

The diversity of local government is apparent by reference to a number of characteristics, including differing powers and functions, the level of financial resources, population size, geographic area, location and human resources. Any consideration of local governments' role in building regulation must therefore be cognisant of the diversity of roles and functions and the diversity of issues confronting local governments throughout Australia.

## **Planning & Urban Development**

The location and quality of urban development is regulated through land use planning. The location of land for particular uses affects the spatial relationship and accessibility of housing, employment and services as well as proximity to transport. The overall purpose of planning is to ensure land use and development meets present and future needs of the community, reflects minimum community standards of health, safety and amenity, protects the environment, provides a process for resolving competing interests and ensures there is a reasonable level of choice. Without this framework, development would be unregulated and minimum community standards of health, safety and amenity would not be achieved consistently.

Planning generally occurs at two distinct levels - strategic and statutory. Strategic planning involves developing plans for a medium to long term horizon, setting goals and identifying strategies for achieving those goals over time. Strategic planning is a form of 'gap analysis'. It establishes where a spatial area is today in socio-economic terms, where it would like to be at a particular time frame, and how it can get there. It provides an opportunity to change priorities or shift the emphasis on particular matters in response to emerging trends or needs.

Statutory planning involves the development of and adherence to the legally binding documents that control development. These are known variously as planning schemes, local environmental plans, development plans, or development controls depending on the jurisdiction. Although many people consider there is too much restriction on how land may be used, planning regulations are the only way the interests of the majority can be protected in a democratic society. If a person or a private corporation wants to develop land or change the use of land, then that use or development is controlled by a statutory planning document.

State/territory governments establish the statutory framework for land use planning and development. They are responsible for the statutes that regulate the ownership of land, the sale and purchase of land and housing, land use, and planning and development. The states provide the legislative and administrative framework that

authorises local government to perform certain planning functions. These regimes vary between and within the various jurisdictions. Local government exercises its statutory planning powers in two ways:

- through the creation of land use plans and development controls; and
- through the process of assessing applications for land use and development by granting approval, granting approval with conditions, or refusing an application, and through the enforcement of planning scheme provisions and permit conditions.

### **Building Regulation & Development Assessment**

The issues paper prepared to inform the Productivity Commission's Study outlines the institutional arrangements governing building activity and regulation. As noted, State and Territory governments establish the statutory framework for land use planning and development including the legislative and administrative frameworks governing local government. By the authority of State legislation, local governments in all jurisdictions<sup>1</sup> are required to prepare a range of statutory planning documents that are legally binding. At the local level, these include planning schemes, by-laws, codes and regulations within which the operational rules and criteria for development are set out. There is considerable variation in the format and content of these instruments within and between jurisdictions and the level of authority and autonomy given to local government to regulate. Regulations exist to control and manage the use and development of private land and are an integral part of the development process. The regulations can be broadly categorised as follows:

- **Development control:** Local councils have power over development assessments and are able to grant approval, grant approval with conditions, or refuse an application. The controls regulate allowable densities, height, external design and siting, building materials, open space provisions, and in some jurisdictions the level of developer contribution required to cover physical and/or community infrastructure costs arising from the proposed development. Local councils also have control over the demolition of buildings.
- **Land release/supply, subdivision control and infrastructure provision:** The level of control over subdivision varies between jurisdictions. Where local councils do have control, this includes discretion over engineering standards for roads, drainage, allotment size and, in some jurisdictions, water and sewerage arrangements. Although local government has a significant role in infrastructure provision, it plays a more limited role in relation to land release/supply and coordination, especially in the major capital cities.
- **Building Regulation:** Local government does not set building regulations, it administers them in accordance with the Building Code and planning and building by-laws (for example relating to matters such as bushfires, water, waste management, salinity and energy efficiency). Where applications do not conform with the building regulations they are generally rejected in the first instance.

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<sup>1</sup> Except the Northern Territory

## Planning and Development for Local Communities

The issues paper notes that most States and Territories are undertaking reviews of their planning systems and/or development assessment processes to improve their transparency and efficiency. The current activities of the Development Assessment Forum (DAF)—working on a leading practice model for development assessment—are also noted.

These planning reforms have had a profound impact on the capacity of local government to meet the needs of local communities in the development of better built environments. A recurring focus on local governments' role in planning and development has seen unfounded criticism on the way in which Development Applications (DAs)<sup>2</sup> are processed by councils and also on the quality and aesthetics of developments approved by local government. Criticisms such as these and further moves to diminish local government's control over planning and development are strongly refuted by ALGA.

ALGA's current advocacy in support of local government's role in the planning process<sup>3</sup> was initiated in response to the draft Leading Practice Model for Development Assessment (draft Model DA) currently subject to public consultation by DAF<sup>4</sup>. The draft Model DA is highly contentious as it proposes a separation of roles for elected representatives (who would take responsibility for the development of planning policies) and independent bodies responsible for assessing applications against these policies.

This proposal is fundamentally flawed in that it fails to recognise the essential role of elected representatives in determining controversial or sensitive DAs that are not able to be appropriately decided by officials. The argument supporting the proposed separation of roles suggests that it is inappropriate for elected councillors to both set standards and oversee their application. In contrast, ALGA believes that planning and development assessment processing must be seen in the context of a 'community partnership' in which the community, elected councillors and professional staff work together to identify and achieve community goals for the future built environment.

ALGA's position in relation to the draft Model DA clearly articulates the importance of elected representatives and local government in being able to effectively implement the wishes of the local community. In this context it is equally important that local governments are able to further respond to their communities needs through setting and maintaining minimum standards for the health, safety and amenity of the built environment.

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<sup>2</sup> Local Government and Shires Associations of NSW. February 2004. *Response to Report of Local Development Taskforce*. Sydney.

<sup>3</sup> ALGA. February 2004. *ALGA launches campaign to protect community from open slather planning*. < <http://www.alga.asn.au> >

<sup>4</sup> It is important to note that although the draft Model DA is being taken to public consultation, it does not have the full support or endorsement of DAF itself.

## Meeting the Needs of Local Communities

The issues paper questions the need for greater accountability for changes to building regulation through the actions of local government. In particular, the ability of individual local councils to add to or amend building requirements above those contained in the BCA, is challenged. In response to these questions, it is important to recognise that through effective local government, planning schemers are responding to the needs and demands of the local community.

Through effective community partnerships, local government has the ability to develop innovative, best-practice solutions to local requirements. This process ultimately leads to better built environments, tailored to community needs and should be encouraged, not restricted through further regulation.

The issues paper also questions the availability of additional resources required for the implementation of changes to building regulation. Local government is well aware of the fact that changes in regulations and minimum requirements can impact on resources and that these costs can ultimately flow through to the community. Changes made to regulations to improve the sustainability of the built environment is a particularly relevant example (see box).

### Local Government and Sustainable Development

Through the Cities for Climate Change Program facilitated by the Australian Government, local councils are being encouraged to reduce greenhouse gas emissions, and one of the ways this can be achieved is to improve the energy efficiency of new and existing buildings and residences.

One of the areas where there has been considerable change in standards and specifications, is that relating to energy use and the subsequent generation of greenhouse gas emissions. Through initiatives such as the Australian Model Code for Residential Development (AMCORD), Australia's Guide to Good Residential Design (DES & T and NOLG n.d.), and Healthy Homes: A guide to indoor air quality in the home for buyers, builders and renovators (DH & A 2002), and a range of other initiatives there is a growing community awareness of the need for more sustainable development.

Local government is responding by introducing new measures, often with the backing of the appropriate utility agency, infrastructure provider or industry bodies, to improve the overall energy and sustainability of residential design, building and renovation. For example, through requiring the installation of water-saving devices such as dual flushing toilets or water saving shower roses; and the installation of water tanks to catch stormwater run-off from roof tops for external or grey water uses. All of these measures, while aimed at improving the overall sustainability of urban development, including housing and renovations in the existing housing stock, have cost implications. In some areas local government may have some discretion in introducing new requirements, in other areas it does not. In most if not all cases, the changes in standards or requirements aimed at improving energy consumption and overall sustainability are being introduced in response to community expectations.

However, despite the expanded expectations of, and responsibilities for, environmental management at the local level, there has been no commensurate expansion of local government powers, nor funding opportunities. This is despite the fact the States are shifting more of their responsibilities to local government, and the community is demanding more competitive, cost-effective customer service, together with developments that are more sustainable in the longer term.

Further to the example above, there are increasing resource pressures on local government planning systems that significantly impact on the ability of local government to comprehensively satisfy community expectations. These pressures include:

- continuing shortages of experienced planners;
- severe pressure on local government finances restricting councils' ability to employ more staff and upgrade management systems;
- increasingly complex legislative requirements imposed by other spheres of government; and
- growing demand from industry for faster decision-making processes.

Adequate resourcing and financial assistance for local government is essential for the effective ongoing provision of infrastructure and services fundamental to planning and development at the local level.

Current funding arrangements between governments have seen a substantial cost-shift of more and more unfunded tasks to councils, impeding the ability of local government to deliver services and maintain infrastructure. This has most recently been acknowledged in the Hawker Report; *Rates and Taxes: A Fair Share for Responsible Local Government* tabled in Parliament in November 2003.

The issues raised in the *Fair Share* report must be pursued to ensure a more secure financial future for local government. But fixing cost shifting, while critically important, will not in itself resolve the overall financial crisis facing local government. The *Fair Share* report recommends a new funding system for local government based on access to a fair share of national taxation revenue, backed by an intergovernmental agreement and effective compliance mechanisms to stop cost shifting.

## **Concluding Comments**

Local government is committed to regulatory and institutional reform to ensure sustainable built environments that meet the needs of local communities. Through ALGA, local government continues to work closely with other spheres of government, the community and industry groups to examine ways in which the processes governing planning, building and development may be improved.

Local government is in a unique position to shape the built environment to reflect the aspirations of local communities. In this context, it is important to ensure that local government's capacity to address community expectations is maximised both through improved regulation and through adequate resourcing.

Local government is represented on the ABCB by ALGA and at present ALGA is of the view that there is no pressing need for change in the structure and membership of the Board.

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