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27 February 2004

Mr Chris Sayers
Assistant Commissioner
Inquiry into First Home Ownership
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

Dear Mr Sayers

First Home Ownership Discussion Draft

Thank you for the opportunity to comment on the First Home Ownership Inquiry discussion draft. The fundamental positions we outlined about local government's role in the planning system in response to the issues paper remain valid in the context of this draft.

Thank you also for the opportunity afforded Cr Maire Sheehan and Ms Carina Gregory to present evidence to the Commission on 2 February 2004 in Sydney. We appreciated this discussion, and have incorporated into this submission some additional material arising from that discussion.

Our basic principles about the local planning system are:

- elected representatives of local government and their communities must continue to be responsible for the planning process within their areas. Any proposed diminution of this role would be strongly resisted
- community consultation must remain a basic principle of the system
- councils must retain the right to levy developer contributions on a transparent basis
- councils support an effective planning process and subject to the above are happy to work with other spheres of government to achieve that aim.

Introductory Comments

We note your comment in the introductory section of the discussion draft that "industry estimates of potential savings from better charging regimes seem to be greatly overstated" (page xxv). This is a point which these Associations have made regularly.

We agree with your view that "Governments cannot prevent most of what happens to house prices and should not try…" (page xxvi). This is important context for the discussion about the role of local government in the cost of land and housing.

As indicated in our response to the issues paper, we continue to strongly support the aims of the first home owners scheme and support its retention.

We would like to offer the following comments on the discussion draft.

Taxation Issues (Chapter 5)

Local government access to the taxation system is through its ability to raise rates on the value of land. For that reason, we would oppose suggestions that there be changes to land tax which would potentially impact on the ability of councils to raise funds for their operations from what is basically the same source.

Land Release (Chapter 6)

The draft notes that there will always be a lag between availability of land supply and demand because of the long lead times involved. Rightly, the focus is on state government processes.

The paper does point to delays in re-zonings. Local government continues to be concerned about the time taken by the state government to approve re-zonings, particularly in large-scale developments. We acknowledge the importance of getting environmental and social controls correct, and also the physical constraints imposed by the geography of Sydney as a factor in the approval process.

We note also that councils have an important part to play in the process but so far as major development is concerned the state government has the lead role.

Planning Approvals (Chapter 6)

The paper discusses the impact of planning approvals on the supply of housing and states that the overwhelming view put to the inquiry is that the processes are becoming increasingly problematic. The paper makes a number of key points, which are discussed in detail below.

The Planning Approval Process

The report states that the process appears to involve excessive “red tape”, duplication, inconsistencies, unnecessary delays and lack of transparency which all warrant detailed review.

The Commission is aware of the detailed planning reviews currently progressing in NSW. In our view, there has been insufficient elected local government involvement in the initial review processes. This is a matter we have taken up with the NSW state government but the Commission needs to be aware of this concern.

The discussion draft skims over the purpose of planning approvals. In fact these are an integral part of the process which must take into account a myriad of social, environmental, and economic issues. They are central to ensuring the fabric of the built environment is compatible across a local area as well as providing a means to take into account the wishes of the community.

We agree that the planning system is becoming more complex particularly in densely populated areas such as inner Sydney. In such already crowded living conditions it is very important to ensure proper consultation processes with oversight by elected councillors to gain community understanding and support where possible.

The state government has also added markedly to complex processes through increased intervention such as new state planning policies. The introduction of private certification has been problematic.

Local government continues to strongly oppose additional state government intervention and the introduction of private certification.

Timing and Delays for Development Applications

The discussion paper provides examples of processing times by the Royal Australian Institute of Architects (RAIA) and the Department of Local Government (DLG). The DLG information shows no increase whilst the RAIA indicates substantial increases with no apparent explanation for the discrepancy.

Local Government Association Development Application Survey on Processing Times in NSW

Local government in NSW has been the subject of on-going and negative criticism over performance in development application (DA) processing. The Associations found that there was no readily accessible source of quantitative and qualitative data, which allowed an objective analysis. For this reason, the Local Government Association carried out a survey with results collated and analysed by an independent organisation. This study was in progress at the cut-off time for submissions on the issues paper so there were no results to feed into that part of the inquiry.

The objective of the DA survey was to provide high quality detailed data to establish trends in DA processing.

The survey collected information on all DAs which were lodged at councils between 22 April and 20 May 2003. It is important to note that DAs were investigated in terms of the median time for determination (not mean) and the proportion of applications determined within 40 and/ or 60 days respectively.

Fifty-six (56) councils participated in the survey, giving a total of 3,472 individual DAs to be analysed. Councils from Greater Metropolitan Sydney, North Coast, South Coast, Hunter Valley, and Central and Far West NSW participated in the survey. Responses from members of the Shires Association were received and were part of the survey analysis.

The survey captured the following types of DAs:

- Designated development
- Integrated development
- Advertised/ notified development
- Simple single dwellings
- Complex single dwellings
- Other development applications (such as changes of use, development associated with a dwelling house and so on)

The information collected was analysed to determine the true situation regarding DA processing and to establish:

A. Whether councils' DA processing times were reasonable; and
B. If problems existed, where did they arise and why.

Key findings

The survey data was collated and analysed by independent consultants. The key findings of the survey were:

- Two-thirds of DAs were determined within the relevant timeframe.
- DAs that took longer to process were four times more likely to be non-compliant with council policy and four times more likely to have provided incomplete information.
- DAs that took longer to process were twice as likely to have been referred to a state government agency and almost twice as likely to have required public notification and referral to a council meeting.

DA processing times:

- 63% of all DAs were determined within the 40 or 60 calendar day timeframe
- Median processing time for all DAs was 31 days

- For simple single dwelling DAs, which were 12% of the sample, the median was 29 days.
- For complex dwelling DAs, the median was 32 days
- For advertised DAs, which were 42% of the sample the median was 37 days
- For other DAs, which were 50% of the sample the median was 28 days
- For integrated DAs, which were 3% of the sample, the median was 69 days

Overall profile of DA characteristics:
- 42% of all DAs were non-compliant with councils' LEPs, DCPs, codes and policies and/ or had incomplete information
- 62 % were publicly exhibited in accordance with councils' notification policies
- 4% of DAs underwent extended notification, re-notification, special efforts etc
- 9% were referred to statutory authorities
- Only 4% of DAs were referred to a council meeting for consideration

Non-compliant or incomplete DAs and impacts on processing times
The DA processing time nearly doubled when there was non-compliance with council's codes and policies and/ or an application was incomplete. In these cases, the median duration for a DA was 56 days.

DAs referred to statutory authorities
The referral of DAs to statutory authorities impacted on council's DA processing times. The median duration for processing such DAs nearly doubled.

Conclusions

The survey results support the following conclusions:

- Negative publicity relating to councils' DA processing times relates to a minority of DAs.
- DAs which comply with council codes and policies and provide all the required information are determined more quickly than non-compliant or incomplete DAs.
- While public notification and referral to council meetings impact on DA processing times, they are an important part of the community endorsed planning process, and in any case, only 4% of DAs go before a council meeting.
- The statistical use of the mean does not reflect the true picture of DA processing, but gives a worst case scenario for councils. Use of the median reflects a truer picture.
- The performance of local government in relation to DA processing is a two-way street. The quality of development applications submitted to councils is a crucial factor in the time they take to be determined.
- The planning process would be improved if:
    - Applicants improved the quality of their DAs. Where a council code or policy is tested or required information is not provided, some delay should be expected; and
    - Councils used the 'Stop the Clock' provisions under the Environmental Planning and Assessment Act 1979 (EP& A Act) more effectively and ensured that the information required for an application was stated clearly.

Further survey details can be found on our website at www.lgsa.org.au

The above information further supports the points that we made in our earlier submission.

Urban Consolidation

Urban consolidation continues to be a major policy question for state and local government alike.

Our view is that approval of such developments must be the role of the elected members because of the often perceived negative impacts on the amenity of an area in terms of greater traffic, bigger footprint buildings,

pressure on public transport and infrastructure, and urban design issues. There is accordingly a higher need to ensure correct community consultation processes are undertaken.

As representatives of the community, councils must take into account the long term consequences of urban consolidation policies in terms of the look of the built environment. This objective is different to the short term view which is taken by the development industry.

The Associations question whether urban consolidation policies reduce the cost of housing for first home buyers.

Skills shortages

The paper addresses reports of chronic skills shortages in terms of under resourcing and lack of experience and training. As is noted in the discussion draft, the Planning Institute of Australia (PIA) have commissioned a National Enquiry into Planning Education and Employment.

The Associations support this inquiry and have made a separate submission to it. In summary, we recognise and are concerned about the shortage of planners and the inability of local government to satisfactorily recruit planners. This issue appears to be becoming worse and councils are suffering from the double situation of high turnover of staff coupled with difficulty in recruiting new staff with suitable experience. This problem appears to be statewide, if not nationwide.

While we acknowledge that the shortage of appropriately qualified and experienced professionals is a contributing factor to delays, we suggest this is a multidimensional problem. Councils have limits on how much of their budgets they can realistically allocate to the processing of applications as they have other key responsibilities such as waste management and road maintenance. Councils have also had to compete with the private sector following the introduction of private certification into the system in 1998.

Complex and demanding processes

The report addresses the issue of whether planning processes have become more complex and demanding.

It is likely that councils do request more information from applicants than in earlier years. This is in line with greater community demands for participation in the process.

We have noted earlier in this submission that the planning system itself is becoming more complex mainly due to excessive state government intervention in small applications and the plethora of plans. Local government supports a planning system which provides certainty, clarity and simplicity to the extent possible, provided that it is elected councillors who remain responsible for decision making across the local development approval process.

Use of ‘fast track’ fees

At the hearing Cr Sheehan made the suggestion that one way councils may be able to improve their DA processing is through a ‘fast track fees’ system for the engagement of external consultants to assess DAs within guaranteed timeframes.

The Regulation Review - Local Development Taskforce (chaired by Mr Neil Bird, reporting in November 2003) in its review of the local development process recommended that the planning legislation be amended to allow councils to charge fast track fees. The Associations generally support this recommendation.

The fee-for-service scheme for outsourcing DAs had been operating successfully in a number of Sydney councils. Indeed, in the experiences of both Leichhardt and North Sydney councils there were no apparent disadvantages to any party. The scheme was wholly transparent, with no direct relationship between applicant and consultant and the determination of all applications remained with Council. Importantly, the councils concerned have been cost neutral in the process.

The Associations also recognise that there are equity concerns associated with any fast track scheme, that is, a fast track service may disadvantage those who cannot afford the additional fee. We support development of a pilot of fast track DA fees to determine whether this is actually the case or whether applicants benefit from the removal of complex DAs from the assessment system.

Objections and appeals

The report states that objections to development applications can cause extensive delays. It is also suggested in relation to appeals that councils use the Land and Environment Court processes to determine applications that should be determined by staff or councillors.

The right of the existing community to have input to development proposals is of fundamental importance to the democratic process. Such consultation can lead to time saved in the long run because objections are aired from the beginning and can be dealt with as the application proceeds. The principle that the community should have their say and have access to information abut developments absolutely has to remain.

The Associations have had longstanding concerns about the operations of the Land and Environment Court in NSW, mainly being that the court is too adversarial, takes too long and costs too much. Whilst appeals may have increased in recent times this may be due to a number of factors such as the increased number of applications, the complexity of applications and increasing state government requirements. We strongly reject the claim that councils are deliberately letting applications go to appeal rather than themselves determining them. It could also be said that developers are prepared to lodge appeals a day after the statutory period has expired to place pressure on councils.

As the report states, many developments are now occurring in established areas with existing residents as opposed to greenfield sites. This potentially leads to conflict with established residents who will have a view on changes to an area where they may have lived for some time. It is important for there to be mechanisms for such concerns to be dealt with.

Governance

The report suggests that political representatives who devise rules should stand back from their application in particular cases.

Councillors have been democratically elected by the community to serve its needs. As can be seen from the Association's survey referred to earlier the number of applications determined by councillors is small (4% of applications). The reasons for this were due to public submissions or objections, non compliance with council's policies and site specific issues warranting referral to council. These applications by nature will be the most complex and controversial and will attract attention. In other words councillors are not involved at all in the determination of the majority of DAs as these are determined under the delegation policies.

An example of how the community is kept involved in the DA process after an application has been notified is found at Leichhardt Council. All applications that are reported to meetings of Council and/or Committee are available on Council's website seven days before the meeting. Applicants and people who made a submission are advised by letter of when the application they have an interest in will be reported to Council, how they can get a copy of the report and recommendation, and invited to attend the meeting. The Council meetings are open to the public and interested parties are able to address the Council and/ or Committee.

Councils in NSW determine staff delegations appropriate to local circumstances. There is a statutory process for doing this. We strongly oppose any change to the role of elected members in leading the planning process.

The Associations are increasingly alarmed at various proposals afoot to exclude local government representatives from the DA process. One of the forums where this appears to be happening is the Commonwealth Development Assessment Forum (DAF) where a national leading practice model for development assessment is in preparation.

Apart from issues around separation of powers, we are also concerned that the model does not build in adequate levels of community consultation. As it stands, the Associations consider that such a model is flawed when it fails to recognise the important role that elected representatives play in making decisions on DAs that accord with the expectations of their local communities.

We return to our opening principle in this regard. Elected representatives of local government and their communities must continue to be responsible for the planning process within their areas.

We note that the Chair of the Forum, Mr Peter Verwer, gave evidence to the Commission on 2 February. We ask that the Commission take particular note of our concerns about DAF matters.

Streamlining minor developments and certification

The introduction of private certification in 1998 was a major change to the planning approvals system. The aim of this process was to speed approval times and lower costs.

In NSW this system is known as exempt and complying development. The Regulation Review - Local Development Taskforce (the Bird Inquiry, referred to earlier) has proposed increased use of this process. The Associations strongly oppose this proposal as each local authority has unique characteristics. It would lead to a substantial reduction in public notification and consultation. There has been a low uptake of this type of development so far which would indicate extensive problems with the system.

The Associations have many documented cases of problems with the existing system and with individual certifiers. These examples show the system is not working to the benefit of the community as a whole. The objective of its introduction has not been realised and there are examples where higher costs, longer approval times, and poor quality work signed off by certifiers has been the result.

"Better Decisions Faster" – Review of Victoria's planning system

The report quotes Victoria's current review of its planning system as one which could provide a good model. We feel a number of the options under consideration would not result in a satisfactory system. For example:

- External pre-lodgement certification – This would remove one of the most important areas of the planning process from public scrutiny and potentially remove councils' approvals powers.

- Administration fee for objectors – This is contrary to democratic processes and discriminatory against low income earners. It makes the presumption that many objections are completely unfounded.

- Self-assessment opportunities – One of the more problematic aspects of the NSW certification system is the lack of auditing and control of certifiers. In NSW, the system can only be administered by qualified professionals and still problems are occurring.

Infrastructure Charges (Chapter 7)

The Associations agree with the points made in the report that these charges do not explain the price surge since the mid 1990s in house prices and that the claimed savings or improvements to affordability from reducing developer charges for infrastructure appear overstated.

By infrastructure charges in the NSW context we are referring to charges levied under section 94 of the EP& A Act.

We reiterate that as section 94 contributions are cost based rather than real estate market based, they have declined as a proportion of overall housing costs as housing prices have rapidly escalated. Land prices increase at a much greater rate and the amount of section 94 funds being used for land acquisition rather than an actual facility or service is increasing proportionately.

A reduction or removal of developer contributions will not necessarily be passed on to new home buyers as a reduction in housing costs. If market conditions allow, it is likely to be absorbed by the developer as additional profits. As stated in our earlier submission infrastructure charges are generally a very modest contribution given the overall benefits which are passed on to the community.

First home buyers do not necessarily purchase properties that have been immediately affected by recent developer charges. Many of them, especially in Sydney, will purchase established properties including multi unit housing. The report acknowledges that first home buyers are purchasing fewer new dwellings and are less likely to be purchasing at the urban fringe.

Reference has been made to councils unreasonably retaining section 94 funds.

Where such funds are to be used for land acquisition, councils are caught in the same cost squeeze as any other purchaser in that the cost of land continues to escalate. It may be necessary to aggregate funds collected until the purchase price can be reached. This may take time.

In other cases, the facilities which are to be built or upgraded may not be needed immediately. In that case it is entirely reasonable that the funds are retained until they can be used.

Some councils might have a three to four year time frame over which such funds are to be spent. In her evidence Cr Sheehan referred to an instance where a six year delay was caused because of a particular intractable issue.

In any case, the money is raised according to a transparent plan of which the developers are well aware right from the start of any process.

Other issues raised in this chapter include:

<u>Allowing appeals on infrastructure charges without jeopardising consent</u>

This matter has been suggested during reviews of infrastructure charges in NSW and has been strongly opposed by local government.

The quarantining of contributions appeals from the whole development consent process ignores that fact that contributions are an integral part of that process.

Adoption of such a recommendation would lead to an increase in appeals as developers try to minimise costs. It would also result in the fragmentation of the development consent process and would ignore all the matters council had to consider in the application's assessment.

<u>Removal of certain types of infrastructure from developer charges</u>

The report suggests that some types of infrastructure should be funded from general revenue.

The Associations oppose this suggestion. NSW councils prior to levying developer charges must produce a very detailed contributions plan which demonstrates the nexus between the charges and the service and facility to be provided. Each plan is designed for the local area and is determined by a democratic process. NSW has a long history of providing a variety of services and facilities as the need arises and this system has worked well.

Local government has very few options for raising money for new urban infrastructure and related services as well as infrastructure maintenance. This is the combined result of restricted revenue raising capacity principally through rate pegging, cost shifting from other spheres of government, increasing responsibilities and rising community expectations.

Rating is the only taxation measure available to local government and accounts for approximately 50% of its total revenue. It is a regressive tax and any nexus between property values and rates charged has long been broken due to rate pegging. Rate pegging severely limits any flexibility in local government revenue raising.

There are many examples of social infrastructure that has been provided through section 94 funding. Three examples are:

- In Bathurst the contributions have been used for the Hector Park wetlands and recreation area ($134,000 section 94 contribution, total cost of $320,000). Projects this financial year in Bathurst include a strategic access plan and a cycleway, both with about 50% funding from section 94.

- The Mount Annan Leisure Centre in Camden opened in July 2001, at a cost of $8.6 million. This cost was primarily generated by section 94 funding levied through contribution plans for new release areas.

- Section 94 contributions are expected to cover up to a third of the cost of the redevelopment of the civic centre and regional gallery sites to accommodate a performing arts centre in Hastings. This $15,000,000 project was a priority for the Hastings community for over a decade.

Conclusion

We congratulate the Productivity Commission on its work so far through the issues paper and discussion draft. We now look forward to receiving the final report at the end of next month.

Yours sincerely

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