

30 August 2010

Secretary
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Sir/Madam

**Submission to the Productivity Commission's Inquiry into Performance
Benchmarking of Australian Business Regulation: Planning, Zoning and
Development Assessments**

The Australian Local Government Association (ALGA), as the peak national body for Local Government in Australia, is pleased to provide the attached submission to the Productivity Commission's inquiry into the performance benchmarking of Australian Business Regulation as it specifically relates to planning, zoning and development assessments.

Whilst local government plays an important role in the activity known commonly as planning, it does so within the legislative directions given to it by the state jurisdiction. Planning in Australia is a highly political and complex public policy activity. Given this fact, both planning and the perceived role of local government in this area have suffered from the criticism that many of the structural problems facing our urban and natural environments are somehow associated with poor planning processes and the political interference by some elected officials at the local government level.

ALGA does not accept these assertions and its submission highlights the important role played by local governments in all phases of the planning process –strategic planning, community engagement, development assessment, planning enforcement and integrated planning systems.

Urban and regional planning, also known commonly as town planning, contributes significant social, economic and environmental benefits to all local and regional communities. For this reason, ALGA joins other State and Territory local government associations and individual local government authorities (LGAs) in responding to the extensive terms of reference given to the Productivity Commission by COAG and the Business Regulation and Competition Working Group (BRCWG) and highlighting a range of arguments that should be considered in providing advice to Government.

ALGA's submission responds to many of the questions raised in the Productivity Commission's Issue Paper and also comments on the volume of work that has taken place at the national level relating to planning, affordable housing and business regulation more generally.

In summary, whilst ALGA appreciates the wide scope of issues related to planning, and development activity in Australia, we do not accept that local government is responsible for adding unnecessary complexity or costs on businesses in the way in which it undertakes planning or the decisions or non-decisions it subsequently makes in dealing with development proposals. Local communities understand and demand that planning should be undertaken in a rational and transparent manner and, subject to potential impact risks, should involve the community in such a process.

Given the extensive nature of the task facing the Commission, ALGA is willing to provide further input to the Inquiry if required. This submission has been prepared from the

perspective of ALGA, and should be read in conjunction with submissions made by the State and Territory local government associations and individual LGAs.

Yours faithfully,

Adrian Beresford- Wylie
Chief Executive
Australian Local Government Association

Performance Benchmarking of
Australian Business Regulation:
Planning, Zoning and
Development Assessments.

Australian Local Government
Association

Submission

Introduction

The Australian Local Government Association (ALGA) welcomes the opportunity to provide this submission to the Productivity Commission's (PC) inquiry into the performance benchmarking of Australian business regulation as it relates to planning, zoning and development assessment.

ALGA articulates the collective national and international interests of over 560 Australian local governing bodies. In discharging this responsibility, ALGA represents local government on national bodies and ministerial councils, including the Council of Australian Local Governments (COAG), the Local Government and Planning Ministers' Council (LGPMC), Housing Ministers Conference the Development Assessment Forum (DAF), the Planning Officials Group (POG) and the Australian Building Codes Board (ABCB). More recently, in recognition of the important role played by local government in housing policy, ALGA was co-opted to participate on the Ministerial Council on Federal Financial Relations, in its expanded role of examining the challenges of improving housing affordability.

ALGA appreciates the opportunity to make a submission to the Commission on the Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment Issues Paper, circulated in May 2010 and the opportunities to meet with the Commissioners to discuss this matter in detail.

The Commission's Issues Paper provides a good starting point for this important benchmarking project and highlights some of the complex issues in regards to planning, zoning and development assessment in Australia. It also does an effective job of capturing the importance of planning in achieving multiple and sometimes competing objectives, whilst acknowledging the different roles played by all levels of governments, the business sector and the broader community.

Local government supports the need for improved government coordination and cooperation in planning, zoning and development assessment. This is particularly important at the strategic and regional planning level to ensure that an appropriate level of integration and coordination of government and private sector services and that the right amount of infrastructure is delivered when and where it is needed.

ALGA's submission focuses on those aspects of the PC's Issues Paper on which ALGA is able to provide comments reflecting the collective concerns of state and territory local government associations. To this extent, ALGA's comments concentrate on the overarching concerns and focus on the key issues that require specific attention and ideally form the basis of the Commission's recommendations in the draft report that is now intended to be released in early 2011.

Background

In Australia, local government is established under state/territory legislation and its structures, powers and functions are determined by such legislation. In all jurisdictions in the last 10-15 years, the 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 this has been the first time that the legislation creating and regulating local government had been substantially reviewed and modernised in the past fifty years.

These changes have generally enabled local governments to provide a wider range of services or to undertake functions to better meet the needs of their local communities. Local government is an elected sphere of government, representative of and directly accountable to local communities. The fact that it is democratically elected and responsible for a broad range of services in a clearly defined geographic area means that local government is well placed to understand and meet local needs and to respond to those needs in ways that are appropriate to local conditions

These characteristics of local government also raise some dilemmas in the management and planning 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. These differences simply reflect the geographic, historic and socio-economic variability that exists in Australia.

The diversity of local government reflected in differing powers and functions, the level of financial resources, population size, geographic area, location and availability of human resources. Any consideration of local governments' role in planning and development assessment regulation must be cognisant of the diversity of roles and functions and the multiplicity of issues confronting local governments, and the communities they represent throughout Australia.

Planning and development assessment systems

The Issues Paper correctly outlines the institutional arrangements governing planning activity and regulation in Australia. 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 (except for the Northern Territory) are required to prepare a range of statutory planning documents that are legally binding. At the local level, these include planning schemes, 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 and public lands in order to achieve agreed local, regional, state and sometimes national objectives and are an integral part of contemporary development approval processes in advanced economies.

Footnote a in Table 1 – Key Legislation and supporting regulations on page 9 of the Issues Paper does not adequately address the true extent of the extensive and additional range of other legislation in each jurisdiction which impacts on the operation of planning systems and the ways in which land can be used.

Planning, especially as practiced at the local level, is often criticised for its regulatory impact on business, but governments have introduced a range of public policies and regulation that seek to address and deliver on community and business expectations. These complementary legislative requirements are extensive and range from Commonwealth requirements concerning telecommunications, native title, biodiversity and disability access, to more extensive and overlapping state legislation that deals with liquor licensing, and the protection of matters of heritage, threatened species, mineral resources, major road access and general flooding and bushfire management.

These additional and separate legislative requirements that deal with planning related matters, have significantly contributed to the existing complexity and confusion surrounding the operation of planning in Australia. It is regrettable that critics of the planning system often attribute this complexity only to local government when in reality local government provides a portal for the majority of planning and development at the local level. The complexity of the planning system and the role of transactions between levels of government needs to be recognised and understood when attempting to measure the efficiency of the planning system.

Having said this, it should be noted that not all development is subject to planning approval. Advice from local government associations and some of the jurisdictional planning agencies annual DA performance reports (such as Victoria's Planning Permit Activity Report), indicates the vast majority of development proposals either do not require consent approval or if they do, are dealt with efficiently and within the existing jurisdictional statutory timeframes.

When delays are encountered there are usually a number of contributing factors at play including the submitting of incomplete or poor development applications. There is also a problem with the number of experienced planning officers able to be employed by local authorities and the extent of external referral advice that is required when assessing certain types of development proposals. The latter two factors are significant given the professional staffing constraints experienced by many local councils, highlighted by a review undertaken by the Planning Institute of Australia into the planning profession in Australia in 2004, and the statutory requirements of some jurisdictions to seek third party assessment and or approval for certain development activity.

Government Coordination, Cooperation and Leadership

Good coordination and cooperation in planning, zoning and development assessments is critical to delivering a range of social, environmental and economic outcomes desired by communities, including those of business.

Local government is often heavily reliant on the state and to a lesser extent the Commonwealth, for resources and policy directions that impact on the timing, sequencing and the coordination of public infrastructure to service the needs of local and regional communities.

Better government coordination and cooperation can deliver a variety of benefits to many stakeholders. It can facilitate new and desired development, increase the marketability of projects; reduce holding costs; increase the liveability experience of residents and minimise community angst and the negative impacts which arise when government departments work at cross-purposes. Increasingly it may also lead to less litigation as a mechanism to deal with planning related matters. Conversely, poor government coordination leads to unnecessary delays, confusion and significant inefficiencies.

Table 3 - Matters that may require coordination and cooperation between governments on page 15 of the Issues Paper identifies a range of important government interface points. ALGA would support further examination of both qualitative and quantitative measures of these 'interface points'. That is, relevant criteria that would measure the efficiency of the regulatory transaction/process, as well as the quality of the outcomes resulting from the planning decision that is ultimately made. ALGA acknowledges the difficulty of such a task but believes that 'speed of transactions' or 'centralised decision making' should not be the only factors that are considered when evaluating the value or 'planning'.

ALGA reiterates the earlier argument that whilst processes should always be as efficient as possible, (commensurate with a reasonable level of professional and

administrative resources), it is equally important to also adequately capture the resulting outcomes arising from the zoning or planning application process. The input costs for business need to be weighed against the broader and longer term benefits that derive from planning decisions, both for the business in question and society more generally.

It should not be forgotten that the overall purpose of planning is to ensure land use and development activities are able to meet the present and future needs of the broader community and can be undertaken in the most appropriate spatial context. Without a planning framework, development activity would be unregulated and haphazard, minimum community standards of health, safety and amenity would not be achieved and society, especially business, would be susceptible to a range of other externality costs including additional traffic congestion, environmental degradation, loss of amenity, and increased risks associated with a range of natural hazards. The land use planning system also plays a major role in providing a stable property market.

One matter however that is not addressed in the Issues Paper relates to government leadership in the planning space. Inappropriate subdivision, and land speculation has increasingly had serious negative implications for our cities and towns. State and Commonwealth governments must bear burden of responsibility in this regard, given the over emphasis on maximising financial returns rather than considering long term urban design and spatial benefits of given developments. This has been the case with the sale of major airport leases, defence and other public lands, including green belts and major utility reservations.

Without strong Commonwealth and state leadership in urban policy, increased government coordination and cooperation there will continue to be underperformance in the development of Australia's cities and towns.

Planning and development for the betterment of local communities

The Issues Paper identifies that most states and territories have or are undertaking reviews of their planning systems and/or development assessment processes to improve their transparency and efficiency. The activities of the Development Assessment Forum (DAF) – in developing a leading practice model for development assessment are also acknowledged.

Unfortunately, many of these planning 'reforms', under the guise of simplifying and making the planning process less complex and costly, have had the reverse impact on the capacity of local government to meet the needs of local communities in the

delivery of better built and natural environments. Examples include the creation of additional referral agencies or expanding the call-in power of state planning ministers.

Added complexity to the planning system has arisen as a consequence of the jurisdictional pre-occupation with amending planning regulations on an ad-hoc and regular basis. It is not surprising that the planning system has slowed down, given the additional confusion this has generated for not only for those seeking development approval, but also those that have referral advice responsibilities or are the actual determining authority (as most local councils are).

Rather than constantly amending planning regulations or introducing time consuming monitoring systems, local government believes that states, and to a lesser extent the Commonwealth, should place more emphasis on improving the existing planning processes. In short, it is often not the planning system that is at fault but how the system is actually used. This has recently been the focus of attention in Victoria, where the Municipal Association of Victoria, with support from the Victorian Growth Area Authority and the Victorian Department of Planning and Community Development has worked with selected Victorian councils in conducting a planning process improvement project.

A recurring focus on local governments' role in planning and development assessment has seen undeserved criticism of the way in which development applications are processed by councils and also on the quality and aesthetics of developments approved by local government. Such criticisms and further moves to diminish local government's control over planning and development have been strongly refuted by ALGA and its state local government association members.

ALGA's current advocacy in support of local government's role in the planning process was initiated in response to the DAF Leading Practice Model for Development Assessment. The Leading Practice Model remains highly contentious in that 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 approach has subsequently been introduced in certain circumstances in South Australia, N.S.W. and is proposed to be introduced in Queensland and Western Australia.

This intervention 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 or 'independent' bodies. The argument supporting the proposed separation of roles suggests that it is inappropriate for elected councillors to both set policy 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 urban and natural environment.

ALGA's position in relation to town planning and DA decision making is to support 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 respond to their communities needs through setting and maintaining minimum standards for the health, safety and amenity of the built environment within state agreed planning directions.

The wishes of the local community are not as parochial as is often reported in the media. The vast majority of local communities are interested in ensuring economic growth, as well as in protecting the physical environment or heritage and social amenity of a locality. Planning is a critical mechanism that allows communities to work towards and achieve a balance in meeting those goals.

Meeting the needs of local communities and applicants through planning

As previously noted, it is important to recognise that through effective local government, planning schemes are responding to the needs and demands of the local community, within the legal framework and direction given to it by the state.

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

Many local governments have introduced their own internal systems to meet the needs of their community, whilst responsibly carrying out their statutory duties with regard to efficiently and effectively dealing with applicants. These interventions including the availability of pre-application lodgement meetings, information sessions for building/development professionals, enhancing council's planning capacities, delegating approval powers, engaging contract staff to deal with complex development proposals or busy periods, training or employing para –planning staff, and effective community consultation systems.

The planning system is complex and highly political, but critically important in the functioning of democratic society. Strong strategic guidance and leadership from the state and Commonwealth governments is important. The focus on micro process issues that has recently seen state governments remove given developments from requiring planning assessment or worse, introducing yet more levels of regulation or bureaucracy in the form of 'independent DA panels' or land development agencies

has done little to improve the planning systems operating in Australia. Both the NSW and South Australian local government associations would be able to provide localised examples to support such a view.

Local government and land supply and housing pressures

Local government has been cognisant of the housing pressures facing many Australians for decades.

The majority of councils seek to ensure through their planning responsibilities that their communities' housing needs are considered within a sustainable planning context. Consistent with this approach, councils seek to ensure that the needs of residents are met regarding housing choice, public transport, footpaths, community facilities, parks, drainage, and the delivery of a range of services that are expected in today's society.

In addition, with the potential impacts resulting from climate change, land supply planning needs to consider a range of natural hazards such as bushfire, flooding, land slip and erosion activity. These considerations impact on how quickly local government is able to release land for future development, given the statutory and legal responsibilities it has in undertaking such assessments and the fact that much of Australia's developable land is owned privately.

Aside from the physical considerations, councils also need to consider the social and economic needs of their community, and the financial ability to provide the associated services and facilities. Land is used for more purposes than just residential housing. It is largely local governments that must identify where employment uses may be permitted, or future schools or recreational parks. This is made more difficult given that the state government in many instances needs to fund the delivery of such key infrastructure, but has its own separate 'planning' cycle. This lack of coordination impacts on the ability of local government to zone future land releases, let alone approve major residential land subdivisions or housing developments.

As for the sustainability of residential housing more specifically councils, often in conjunction with state governments and the Australian Building Codes Board have responded by introducing new measures to improve the overall energy and sustainability of residential design, building construction 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. These measures, while aimed at improving the overall sustainability of urban development, have cost implications. In some areas local governments may have some discretion

in introducing new requirements, in other areas it does not. In most 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 funding. 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;
- state government restrictions or opposition to the collection of development levies and
- growing and insatiable demand from industry for faster decision-making processes.

Adequate resourcing for local government is essential for the effective ongoing provision of infrastructure and services fundamental to planning and development at the local level. There is considerable acceptance that the cost of delivering services and facilities is more expensive after the development has commenced than if this was provided upfront.

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 was acknowledged in the report of the House of Representatives Standing Committee on Economics, Finance and Public Administration; *Rates and Taxes: A Fair Share for Responsible Local Government (The Hawker Report)* tabled in Parliament in November 2003.

The issues of cost shifting needs to be resolved fully to ensure a financial future for local government, but fixing cost shifting, while critically important, will not 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.

Competition and compliance costs

ALGA agrees with the Commission's observation on page 15 of the Issues Paper that "some adverse impacts on competition and business compliance costs are almost inevitable to ensure that public benefits, such as the amenity of urban areas, are considered in land use decisions". We do not agree however with the preceding statement that the "planning , zoning systems and DA processes are intended to impact on the operation and outcomes of the market place in order to move market outcomes toward those which are socially optimal". As previously argued, local government has legislative responsibilities that move beyond those that would be considered only 'socially optimal', and includes cultural, economic and environmental concerns.

Planning at the local level is about delivering and working towards greater levels of sustainability. This means that planning decisions relating to long term strategic plans, zoning schemes or development assessment are aimed at delivering multiple objectives including economic ones. Environmental and social benefits are important, and there are numerous examples of planning initiatives such as the national Healthy, Spaces and Places project that are designed to assist with the provision of healthier (both in a physical and mental sense) communities. Equally, planning at the local level seeks to ensure that the economic vibrancy of a locality is maximised to ensure people have the opportunity to access a diverse range of well paid local jobs, goods and services within reach of good transport links and supporting infrastructure. This is delivered through various centres policies and land use zoning provisions.

Councils are required to take into consideration the issue of competition when undertaking their strategic or statutory planning responsibilities, if it is not a stand alone planning consideration, then as part of the all encompassing "in the public interest" test.

An assessment of competition is not based on a review of the operator of a particular business but rather the land use impacts of the proposal in question. For example, many developments have significant implications for the provision of publically funded infrastructure or better use of existing publically provided infrastructure. Major commercial and retailing developments are carefully considered, and are subject to wide ranging assessments on the likely transport, infrastructure, urban design and economic impacts.

Given the impacts that all large developments have on a community, it is understandable that the costs associated with assessing such proposals are reimbursed through either development application fees or charges relating to the costs of related development studies. In many instances, local governments costs are not totally covered by the fees charged and the true compliance costs are subsidised by the council in question. In some instances the development application is called in by the State Government, as is the accompanying development application fee.

Australia's freehold land and legal systems make it very difficult for local governments to address anti-competitive practices in the planning, zoning and DA systems e.g. gaming between competitors or new entrants in to the market. There is a considerable tension between disallowing third party appeals and ensuring an open and transparent opportunity for the community to have its say in the planning process. Local government is often caught in the middle of such disputes and at times spends considerable resources in defending decisions from parties with potentially anti-competitive motives. Whilst any attempt to manipulate the legal system should not be tolerated, there is general acceptance that in a democratic society there should be adequate avenues for community and private business to seek review of planning decisions and/or conditions.

Concluding comments

Local government is committed to regulatory and institutional reforms that will deliver more sustainable built and natural environments to their local communities. Through ALGA, local government continues to work closely with other spheres of government, the DAF, 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 has strong and effective capacity to address community expectations, both through improved regulation and through adequate resourcing.

Local government is concerned by the continuous political pressure and blame it receives in the role it plays in planning, development assessment and zoning. The assertion that the planning process itself is simply a regulatory burden should not be accepted. Australia's planning systems have delivered considerable value for society but all levels of governments put little resources into evaluating the benefits of past planning decisions, or communicating how the planning system operates in practice.

Local governments must remain central to the planning process, and continue to be supported in their commitment to engage the community in delivering more sustainable and resilient communities. Any evaluation of planning must seek to measure the resulting outcomes and not only the components of the actual process.