

9 September 2010

**Business Regulation and Benchmarking
Development Planning and Zoning
Productivity Commission
PO Box 1428
CANBERRA CITY ACT 2601**

Attention: Christine Underwood

Dear Christine

Issues Paper Development Planning and Zoning

In reference to the public enquiry on the above matter, I advise that Council has endorsed a submission being made in accordance with the following comments on the Issues Paper. I apologise for the lateness of the submission.

Regulatory systems for planning, zoning and development assessments

On page 13, various factors are described as influencing costs imposed on businesses by the various planning systems in Australia, including the following circumstances

- *Factors allegedly taken into account in planning decisions including competition and market power*
Council considers that competition is not used as a basis for planning policy or development assessment in South Australia. This is well established planning law following a decision of the High Court in 1978. The only instance where the concept of economic viability can be taken into account is as a proper planning ground, e.g. where it would be community detriment, e.g. a new retail centre rendering existing centres unviable.
- *Administration of controls in a "strict letter of the law" versus a discretionary approach*
The South Australian system is based on the discretionary approach in development assessment, as enshrined in statutory and case law. This has produced a robust and transparent system of development assessment.
- *Prohibitive Fees for development assessment*
Fees do not play any material role influencing business decisions in South Australia in Council's view. The fee structure is considerably lower than equivalent systems interstate, and a long way from the "user pays" principle as in New Zealand.
- *"Gaming" of appeals*
Appeals are limited to applicants aggrieved with the development assessment decision either as applicant or objector to a publicly notified proposal. Given

that the scope for public notification is constrained by regulation, the system is not onerous for business, and only proceeds to trial where the merits of the decision are open to debate or questionable. In relation to retail centre development, zoning for local, neighbourhood, district and regional centres generally precludes appeal rights to third parties (per Schedule 9 of the Development Regulations 2008). In this way the system cannot be regarded as encouraging “gaming” of appeals.

Government coordination and cooperation in planning

In relation to matters which may require cooperation and coordination between governments, Council considers there are a number of examples where coordination needs to be greatly improved e.g:

- *Major Land Use Allocation in State Planning Strategy*
The City of Whyalla has been sidelined in shaping the boundaries of the Cultana Defence training area expansion 15 kilometres to the north of the city. The expansion area excludes a large area of industrially-zoned land ideally suited to major industrial developments requiring extensive site areas. Better coordination between the federal, state and local government levels would result in all parties needs being satisfied; this has not happened to date and threatens diversification of Whyalla’s economy and its negotiations with potential end users.
- *Coordination of Community Development*
The dismantling of the former South Australian Urban Land Trust has inhibited the timely planning and provision of community services in urban fringe expansion and development. As a model of productive integration of service delivery in new urban areas, this approach should be instituted as a blueprint for proper planning of new communities in areas undergoing urban expansion.

Developer Contributions

South Australia is one of the few states where there are no formal powers for contributions towards infrastructure headworks outside of the development site by developers. Some recognition of this would assist state and local agencies to provide such services on a programmed basis.

Impact on competition

Impact on competition caused by planning, zoning and DA systems is discussed, but few specifics are offered as to how this has occurred. Council considers this is an ill founded criticism. In South Australia councils are occasionally presented with representors’ objections to competing proposals on competition grounds inter alia. This ground is never given any weight in arriving at planning decisions.

The discussion paper suggests that there is potential for anti competitive practices where there is a need for land assembly before a large scale development can be put together. Council considers that this should not be considered as a failure of the planning system; this is more a failure of project management by the proponents.

Issues raised in the discussion paper question if there are ways in which planning policies and processes are restrictive. Council considers that:

- The very basis of land use zoning is restrictive in operation, but with long term public benefits of minimising land use conflicts and stabilising values.

- In South Australia the zoning provisions are not tied to a specific proponent, but are essentially generic. Zoning provisions are simply written to encourage the most appropriate form of development in that zone, irrespective of the proponent.

In South Australia whilst a proponent may request a rezoning that request may or may not be successful. The process is managed between the local and state agencies only to ensure that the process is transparent and in the public interest.

Please contact Jason Willcocks on (08) 86403456 for further information in relation to this submission.

Yours faithfully

Jason Willcocks
Planning Manager