



Australian Hotels Association

Submission in response to:

Productivity Commission Issues Paper

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

20 September 2010

Background

The Australian Hotels Association (AHA) is a federally registered organisation of employers in the hotel and hospitality industry. Its membership of more than 5,000 hotel businesses includes three, four and five-star accommodation hotels and pub-style hotels located in each state and territory. The AHA has branches located in every Australian capital city and a Canberra-based national office.

Hotels perform an important role at the centre of any Australian community. They offer a forum for social interaction, dining, entertainment, visitor accommodation and meeting facilities. More than 300,000 Australians are employed to work in Australian hotels and the sector.

Hotels and planning

The AHA's members are affected by state and territory planning laws in a number of ways. The hotel sector is highly regulated in comparison to other businesses. Liquor licensing, gambling, food hygiene, safety/security and noise are all subject to stringent regulation at state/territory level. The problem facing hotels is when planning, zoning or nearby developments lead to further restrictions in any of these areas. This can take the form of lower permissible noise levels, a reduction in trading hours or increased security costs.

Another area of planning which impacts on hotels is the inconsistent application and interpretation of the Building Code of Australia by council governments.

Hotels are a vital part of the fabric of the Australian social landscape, yet many are facing rising operating costs and more restrictive trading environments as a result of the requirements of local planning regulation. As commercial centres develop and grow with their local communities, it is important to maintain a planning regime that allows both existing and newly developed hotels to remain a central part of the overall planning mix.

Order of occupancy principles

The AHA's principle concern in this area is the increasing problem faced by many hotels across Australia, particularly in urban areas subject to residential infilling. The development of residential apartments and other housing in close proximity to existing hotels requires urgent attention. Order of occupancy principles must be observed when considering the inevitable disputes that arise in relation to the noise emitted by music and events held at hotels. It must be remembered that people willingly pay a premium to live in close proximity to shopping centres, services and entertainment options including nightlife. It is a lifestyle choice. People who choose to live near hospitality venues or in entertainment precincts do so in the knowledge that noise is a part of that environment. Developers specifically promote proximity to local restaurants and pubs as an incentive to purchasers.

The AHA is aware of a number of separate circumstances involving several of its members in which a licensed hospitality venue has been established for many years and suddenly faces noise complaints from residents of newly-constructed nearby residential dwellings. The venues are merely going about business as usual, but face the prospect of business failure if their trading conditions are restricted as a result of the complaints.

Hoteliers invest significantly in their businesses, employ a significant amount of people from their local area and provide a social meeting point for the community. It is understandable that many people seek to live close to hotels as part of a lifestyle choice. High density housing is part of a sustainable planning system that assists in the efficient provision of services such as public transport, but the hotel industry deserves to be protected from the introduction of harsh trading restrictions as a result of developments beyond their control.

The AHA notes a recent ACT Legislative Assembly planning committee report which considered the impact on live music venues of residential development and recommended that order of occupancy principles be considered by the regulators in determining noise complaints made against hospitality venues.¹

The Committee also recommended that the ACT Government legislate to require the developers of residential accommodation located near hospitality venues or business precincts to include appropriate soundproofing measures in the construction. This could take the form of double-glazing of windows, additional wall and/or floor insulation, etc.²

The AHA also notes that South Australia's *Liquor Licensing Act 1997* includes conditions that must be met by complainants lodging noise-related complaints against a licensee³. The conditions do not ensure appropriate consideration of first occupancy in any given situation and require strengthening in this area to protect hotels from restrictions brought about by complaints made by newcomers to the area.

NSW Planning – 'Reviewable Conditions'

Recent legislative and procedural changes in New South Wales aimed at streamlining the planning and approval process have been helpful in certain types of developments. Hotel developments, however, remain subject to inefficient and inconsistent interpretation from local governing bodies to the frustration of many in the industry.

The introduction of 'reviewable conditions' for hotels effectively means councils can provide an approval for a relatively short and specific timeframe before final approval is granted. This arrangement reduces the worth of a business undertaking as it generates commercial uncertainty, instability and provides an unfair advantage to any competitor not faced with similar reviewable conditions. This is an area that the Commission's review should highlight.

Notwithstanding the NSW Government's attempts to streamline the planning process, it is felt that some councils have made it a practice to adopt the harshest assessment and approval conditions when determining local Development Control Plans and processing development applications for hotels. In some cases it is felt that a council may have a pre-determined view that a hotel (or even a hotel refurbishment) is not a project that should be welcomed into the local community. This has resulted in hoteliers needing to incur considerable expense in appealing council decisions in the NSW Land and Environment Court.

¹ Standing Committee on Planning, Public Works and Territory and Municipal Services (ACT Legislative Assembly): *Inquiry into Live Community Events, Final Report – August 2010*

² Ibid.

³ *Liquor Licensing Act 1997* (SA), s106

The recent NSW Planning Department Draft Centres Policy: Planning for Retail & Commercial Development endeavoured to provide a consistent framework for the consideration of development applications by councils. Unfortunately the policy did not make specific provision for the unique nature of hotels and is of little comfort to the AHA.

Over-regulation by councils

In addition to industry concerns over the treatment of development applications, over-regulation of hotels by councils extends to the imposition of onerous conditions on footpath leases for al fresco dining areas; on noise conditions which are impossible to meet, and more recently reductions in trading hours permitted by state licensing legislation. The formation of Development Control Plans by councils in NSW specifically restricts the trading ability of affected hotels and therefore restricts competition. The AHA submits that the relevant state/territory liquor licensing authority should have sole responsibility to determine trading hours for licensed premises. This process would ensure all businesses in the industry can operate on a level playing field, remove unnecessary red tape and provide certainty for investors that will help to facilitate improvements in existing venues to the benefit of local amenity.

While the AHA accepts there must be planning control and that the amenity of all local communities needs to be taken into account during the assessment process, the continuing and increasing interference by local council, especially in relation to trading hours, means that hotels are less likely to embark on development projects because they fear that an application to those councils for development approval will result in the imposition of a series of unrelated and unwarranted operating restrictions or conditions. The effect of this is to stifle building development in the hospitality industry.

Application of the Building Code of Australia

Another factor impacting on the day to day operations of hotels is the inconsistency of the application of the Building Code of Australia (BCA) across different jurisdictions. The BCA exists to provide a nationally consistent framework for developments. In practice, however, the BCA is interpreted differently by state planning and licensing authorities, particularly in relation to floor space ratios. When the same type of business operation is treated differently from one jurisdiction to another, some businesses will be unfairly disadvantaged.

Conclusion

While this submission provides examples from New South Wales, South Australia and the Australian Capital Territory, similar issues face the hotel industry in all jurisdictions. The experiences of hotels highlight the inevitable inconsistencies that arise from providing hundreds of local government bodies across Australia with the power to interpret planning and assessment guidelines. Often the process is left open to political bias to the detriment of local investment, job creation and preventing improvements in amenity.

The AHA is of the view that it is most often the interpretation of planning laws, rather than the laws themselves, that are the source of obstruction to the desirable improvement of licensed premises which serve the local community.

As population centres across Australia grow and develop, there will be demand for both new and improved hospitality venues and opportunities for investment that will benefit local economies. The role of hotels as providers of refreshment, meals, social interaction, employment and accommodation should be embraced to a greater extent than is currently demonstrated in some areas.

Hotels are highly regulated businesses requiring significant investment. Some reasonable protection of this investment is required through consistent application of relevant laws and regulations across the country.

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