

30 March 2011

Secretary  
Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616

Dear Sir/Madam

**Final 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.

As ALGA previously argued, whilst local government plays an important role in planning and development assessment, 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. This complexity has grown because of the need to address new and increasingly pressing problems, including changes in community preferences and demands, and diverse and at times conflicting policy objectives by the state and Commonwealth governments.

ALGA is pleased that the Commission's Draft Final Report acknowledges these facts and recognises the difficult, yet highly important, role played by local governments in all phases of the planning process – strategic planning, development assessment, planning enforcement, and most importantly community engagement.

In summary, whilst ALGA wishes to raise several concerns regarding some of the draft report's findings and methodology, we believe that the Commission has done a good job in describing the state of planning in Australia today, and identifying a range of sensible leading practices. The draft report reinforces our initial arguments that local government in Australia can not be held 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 processes.

ALGA's submission has been prepared from a broad national perspective. Any specific comment that relate to jurisdictional circumstances is best left to submissions made by the State and Territory local government associations and individual councils.

Yours faithfully,

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Chief Executive  
Australian Local Government Association

# **ALGA Submission on the Productivity Commission Draft Research Report (February 2011)**

## **Introduction**

Whilst ALGA wishes to raise several concerns regarding some of the findings and the methodology used to ascertain the data, it acknowledges that the draft research report does a good job in describing the complex state of planning in Australia and meeting the wide-ranging terms of reference from the Assistant Treasurer, the Honorable Senator Nick Sherry.

ALGA supports the Commission's intention that the final report to contain only key findings and not detailed recommendations. It also believes that identifying leading practices is both constructive and valuable in facilitating improvements to the operation of planning systems in Australia.

## **Overarching Comments**

Local government plays an important role in land use planning and development approvals systems in all state jurisdictions in Australia. Councils develop strategic plans for the future development of their municipalities, coordinate and provide a range of physical and community infrastructure, guide the application of land use and development zones through a planning instrument and administer the local planning instrument on a day to day basis.

Constitutionally, planning is a state responsibility and as such there is no single national planning and development system. Instead there exists a composite of state and territory systems and thus the 'experience' of the planning system by national developers or developers operating in more than one state varies from state to state.<sup>1</sup>

As the 'primary gateway' for those wishing to develop land, including the vast majority of occasional one-off builders or developers, local government provides an essential service to the community. The downside is that councils are held responsible for the performance of all parts of the system, some of which are not in their control, such as the responsiveness and requirements of state planning departments and referral agencies. It is the development assessment component of the planning systems that is the most confrontational and subject to greatest scrutiny and criticism, even though the vast majority of development applications across Australia are determined efficiently and effectively by councils (either under delegation or by full council).

The primary role of State or Territory Government is to establish a planning framework through legislation and monitor its operation. All planning systems have common elements such as state, regional and local policies, regulations that control the use and development of land and administrative processes that guide notification, referral to non-planning agencies and judicial review mechanisms. Significant complexity is added by a range of other legislation that interacts with planning systems, particularly with respect to matters of an environmental nature.

The key policy challenges that impact on all planning systems are:

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<sup>1</sup> A small developer, e.g. a small building company, land developer or an owner builder operating in one jurisdiction, only experiences the system at the local level and comparisons across state borders are not relevant.

- population growth and an ageing demographic;
- increasing rates of urbanisation, especially of existing metropolitan and key regional centres;
- the need for sustainable development and quality urban design;
- biodiversity and environmental protection;
- climate change and impacts of natural hazards – fire, flood, storm and coastal inundation, drought and heat stress;
- housing affordability and land supply;
- energy efficiency;
- maintaining and enhancing liveability,
- economic development and employment; and
- infrastructure provision, particularly transport, community facilities and broadband technology.

### **Community perception**

ALGA commissioned CPR Communications in August 2009 to survey community views about the inclusion of local government in the Australian Constitution and about perceptions of local government in general. The survey found that:

- local government was generally viewed more positively than state governments but less positively than the Federal Government, although this may have changed in recent times; and
- people living in rural and regional areas were more likely to support local government than their state and federal counterparts.

In Victoria a recent Roy Morgan survey showed that the majority of businesses are happy with their interactions with local government. The survey, carried out by the Victorian Competition and Efficiency Commission, as part of its inquiry into local government regulation, confirmed that most businesses seeking advice were treated fairly and provided with clear advice. There was however a poor public perception of the value of planning and its administration by councils.

Whilst planning generates considerable interest at the local level, the community at large is passionate about the rights of the community to retain an active role and involvement in the planning process.

Existing planning frameworks need support and adjustment to deal with such contemporary issues as rapid population growth, affordable housing and the impacts of climate change - particularly where the risks are increasing quickly. Good information is already available about climate change impacts but a national framework for action – for example adaptive strategies, such as resettlement, are always fraught with difficulties in implementation at the local level and need a national mandate, with tripartite support.

For communities to accept the impact of planning policies on property rights and the future use and development options of land, they must be confident that the process is both transparent and fair. Local government is best placed to enable community engagement and input to the policy decisions at a local and regional level.

### **Regulation and performance**

Councils' current reporting obligations at a jurisdictional level are extensive but can differ from council to council and state to state. Generally, the jurisdictional planning processes do

not aggregate well nationally. Costs of data collection and electronic transmission of data are high.

Councils have recognised the changing regulatory environment and are demonstrating a greater willingness to measure their performance in planning and many innovative approaches have been implemented.

While it is tempting to dismiss performance measurement as ‘big brother’ activities that should be avoided at all costs, the value of both individually producing and aggregating planning data (on volume, type and time) should not be underestimated. It can lead to much better management information being available to councils. Any discussion around benchmarking of local government should consider the following:

- How data collected will enable better management information for councils?
- How data collected will enable improvement initiatives and interventions to be well targeted and measured?
- How quality control issues around data capture will be managed?
- What accountability framework will be in place that includes the ‘whole system’ - applicants, referral and appeal jurisdictions and other State agencies?

In Victoria, the Municipal Association of Victoria is working with the Building Designers Association of Victoria to better understand the drivers behind planning applications, what constitutes good service and what applicants might do to aid their application.

The willingness of councils’ performance to be measured must not be interpreted as an acceptance of the ‘faster is better’ that is advanced by developer interests. The federal economic stimulus package for education and social housing cut through many established processes but has led to disenfranchised communities and less than optimal development outcomes. The true costs of poor planning are often not fully appreciated for many years after the decisions have been made.

State governments are both the architects of state planning systems and also key service providers within those systems. Measuring the performance of councils alone is only measuring part of the total system. Aggregating council data nationally does not provide a national assessment of system design and performance across state jurisdictions. The performance of state planning department and referral agencies needs to be included in any national level planning system benchmarking exercise.

Councils also need to be engaged at a state level in the development of ‘codes’ and the monitoring of outcomes as COAG pursues its agenda. At a national level, it is difficult to support the development of national codes if gaining national agreement leads to a generic, ‘higher level’ code that may compromise progress made in various states or territory levels, or may lack the contextual detail required to be of value and relevant across diverse local and regional environments. Ironically national codes work best when regional and local variations are incorporated.

## **Potential Benchmarks**

ALGA appreciates the difficulty faced by the Productivity Commission in developing a package of potential benchmarks to assess the performance of planning systems in Australia.

Given the role played by ALGA in representing the broad interests of local government nationally, it is not appropriate for the Association to propose specific benchmarks. ALGA

does emphasise however, that the criteria for selecting benchmarks must ensure that effectiveness as well as efficiency measures must form part of such consideration. Equally important is acknowledgement that the types of benchmarks that will be adopted are more than likely going to be those ones that attempt to combine a number of indicators, that can more accurately identify the complexity of the system and outcomes desired.

For instance, planning decisions that leads to employment generation can not just focus on crude short term numbers. Communities are also interested in knowing the type of employment generated, if wealth is retained locally or is exported out of the locality, what multipliers are involved and if the employment opportunities arising can be serviced by locals rather than needing to import workers with the necessary skills.

Finally ALGA wishes to emphasise that the use of benchmarks must not be adopted in order to punish or criticise local governments in the role they play in the planning process. Instead benchmarks must be promoted as a valuable means by which organisations can make beneficial changes to business cultures and systems. Continuous improvement must be the underlying reason for measuring system performance.

### **Findings and observations that ALGA is generally in agreement with.**

Given the complexity of the task, ALGA is pleased that the Commission has made the following observations:

- That the planning system in Australia is highly political and complex in nature;
- That this complexity has grown because of the need to address more pressing and new problems, including changes in community preferences and demands;
- That the planning is suffering from “objectives overload” and these objectives have been growing;
- It is extremely difficult to compare the planning systems of the states and territories and thus (any) quantitative comparisons must be heavily qualified.
- That ultimately it is the interrelationship between a number of benchmarks which reflects system performance. Local government has consistently argued that efficiencies criteria cannot be used in isolation of effectiveness or outcome based indicators;
- Planning systems at the local level are significantly influenced by the regulatory environment largely established by state governments and, to a lesser degree, the Commonwealth (ie EPBC Act);
- Acknowledgement that when “looking at how well our cities are functioning, it is important not to attribute all outcomes to planning” and that poor planning outcomes today may be the result of a lack of or poor planning processes in the past (eg transport corridors)
- That councils success in delivering timely and consistent decisions is both resource dependent and reliant on efficiency of internal business systems;
- The suite of land use plans are far from comprehensive or internally consistent and impact on decision making that can realistically occur at the council level ( poor state policies, regional plans, city strategic plans etc);

- A number of potential leading practices can be instilled to improve planning, zoning and development assessment including the importance of strategic plans, engaging the community fully and early, rational and transparent allocation rules for infrastructure cost and better transparency and accountability. The latter making reference to the value of greater use of cost effective electronic development assessment systems;
- Whilst local government would agree with the observation that the “complexity (of the planning systems) suggests the regulatory systems are in need of further reform”, it would do this only under the requirement that reform occurs only after a transparent evaluation of the existing system is undertaken. Local governments around Australia, and in particular NSW, are experiencing severe “reform” fatigue.
- That sound planning for major infrastructure – such as roads and rail, water and energy delivery systems – is fundamental to the outcomes of cities;
- That early community engagement is important and that good practice requires significant engagement through all stage of the planning process.
- Local government would strongly agree with the observation that “ the ways in which state priorities are communicated and implemented, measures and processes to evaluate council performance and political orientation – better relationships are more likely to deliver the overarching state goals in a more timely and effective way”; and
- ALGA is also pleased to see the Commission appreciates the impacts that existing referral requirements have on the system and we are equally pleased to see the Commission acknowledge the role played by the Commonwealth in the areas of planning and housing policy

### **Findings and observations that ALGA has concerns with.**

- The use of the local government survey needs to be highly qualified. Local government associations are best placed to provide specific comments regarding this concern;
- The case for consistency between the jurisdictions’ planning systems has not been made. Significant differences is not the problem per se, rather it is the failure of jurisdictions to learn lessons from each other;
- The success criteria for good planning decisions and outcomes at the local level apply equally to those at the jurisdictional level, eg resources available and efficiency of processes;
- De facto planning and ad hoc planning, however you wish to define it, probably occurs less at the local level than it does at the State level. Decisions at the local level at least reflect community concerns and wishes.
- Electronic Development Assessment (eDA) is not only a matter of local government concern. It is critical that all levels of Government engage in this space and this should be reflected as a key finding. In fact a leading practice should identify the importance of encouraging cost effective e-planning services in the context of

improving business processes and the delivery of more efficient planning services (this includes all aspects of planning and not just the development assessment end of the process);

- the land supply figures quoted (from one to six years to undertake rezoning and structure planning) are highly dependent on individual circumstances. The timing itself implies inefficiencies that does not necessarily reflect reality, especially when attributed to land that is subject to threatened species assessments or contamination;
- local government would strongly argue against the draft report's findings that leading practice includes 'broader and simplified zones', and 'tighter disciplines and time frames'. Given the geographic and socio-economic variation and diversity of communities and natural environments in Australia, it is difficult to support greater use of more broader and simplified zones. The current NSW template system is an example of the fallacy of such a proposal with councils having to significantly rework their local plans to 'fit' the template, rather than being able to select from a fixed menu of zones to suit local needs. It's not the total number or differences in what is permitted in various land use zones that is the issue, but providing certainty to developers, ensuring that the policy intent is explicit and the development assessments processes are transparent and can deliver on agreed community expectations;
- The draft report fails to adequately compare the quality of our built and natural environments, and overall livability with international comparisons. It is not unreasonable to conclude that something must be right if many of our largest cities still rank as some of the best cities in the world;
- ALGA would question the validity of the jurisdictional survey if it is true that most jurisdictions "consider planning has a moderate/minor impact on reducing traffic congestion" as per table 1 on page xxii.
- Housing affordability is without question a serious issue. However local government has consistently argued that housing affordability is much more than a question of the speed of releasing serviced lots or redevelopment sites (supply). The report fails to acknowledge the significant demand pressures and the need for housing to be delivered with adequate supporting infrastructure, particularly public transport and a range of community infrastructure;
- Calling for greater statutory time limits for planning is a double edged sword. Many strategic planning processes are not easily quantified in terms of time frames nor would they benefit from increased regulatory requirements. In a democratic society, should long term planning and community/stakeholder engagement be subject to an arbitrarily short time frame and legal appeal right?
- The issue relating to development contributions is open ended. Whilst it is true that there is little consistency across the jurisdictions in either the type or size of contribution, this in itself not a 'bad' thing. Previous PC enquiries have noted that development contributions if applied correctly are both an efficient and legitimate means of funding the delivery of much needed local infrastructure;

- It is disappointing that there is no commentary on the fact that the large majority of councils do not financially benefit from the business compliance costs imposed by the planning systems;
- The competition and gaming issues are indeed difficult policy questions to fully resolve. However for the sake of transparency and open governance, it is critical that stakeholders can appeal the validity of decisions;
- The draft report fails to fully appreciate the important role planning can and should play in understanding the spatial/geographic implications of public policy and wider societal benefits of quality urban design; and
- The Commonwealth impacts go beyond just the EPBC Act. There should be some acknowledgement that the Commonwealth impacts the planning sphere and housing markets through taxation and immigration policy, as well as through foreign investment decisions, funding of major infrastructure, control of major airports, indigenous policy, and use of Commonwealth lands including military facilities.

## **Conclusion**

Planning outcomes for communities and industry will be improved with efficient and effective delivery of planning services, clear policy and accountability frameworks and strong working relationships across all levels of government built on principles of subsidiarity.