

March 2011

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

**Submission from the City of West Torrens**

165 Sir Donald Bradman Drive  
Hilton SA 5033

Thank you for the opportunity to review and respond to the draft report on the Performance Benchmarking of Australian Business Regulation, produced by the Productivity Commission.

Please note that these comments are provided having not read the entire report. Comments are restricted to key areas of interest, which the Council Administration believes attention is required.

The comments expressed in this submission are those of Council Administration.

## **SUPPLY OF LAND**

As an inner city council, the City of West Torrens is faced with the challenge of providing for population growth within an existing urban framework. Land for residential growth is restricted to existing residentially zoned land or potential rezoning of disused commercial or industrial areas.

At present, the demand for residential land is provided through simple subdivisions (i.e. one into two, one into three etc). This form of 'sub-division cancer' is often not favoured by the community, as it is seen as a loss of local character. In addition, *The 30 Year Plan for Greater Adelaide* anticipates rezoning to facilitate a higher density of residential development. State Government also sets targets for population and hence dwellings growth, to which local government must have regard when developing policy.

The challenge is to provide for more broad scale redevelopment of areas. However, within West Torrens land ownership is highly fragmented (private ownership) meaning that it is difficult to achieve suitable holdings to gain collective outcomes. State Government ownership within the council area is also relatively low compared to other adjoining council areas.

Mechanisms for land banking need to be explored and developed to allow councils or development authorities to 'store' land for future redevelopment, and thus assist in achieving the State Government's target of 70% infill development. This target can be further assisted in ensuring the Urban Growth Boundary is maintained as a means of restricting greenfield development.

## **INFRASTRUCTURE**

Greater emphasis has been made between land use planning and infrastructure provision with the introduction of *The 30 Year Plan for Greater Adelaide* and the recent review of the State Infrastructure Plan.

Structure planning has been promoted as a means of highlighting infrastructure requirements for development areas. Notably, the State Government has promoted structure planning as a mechanism to influence government spending on key infrastructure such as public transport.

As part of the implementation of the 30 Year Plan, the Government has established a Government Planning Coordination Committee to coordinate government agency

activities and budget provisions. The Committee may also be an opportunity for local government to air concerns or seek support for local initiatives.

A recent amendment to Section 30 of the Development Act requires that a council's Strategic Directions Report set out priorities for the integration of transport, infrastructure and land use planning.

It should be noted that most of these initiatives have not been in action long enough to see results. A long term commitment of all stakeholders and levels of government is required.

The report notes that there is provision of 'developer contributions' to infrastructure within the Development Act as well as the Local Government Act (i.e. Service rates as indirect development charges). It is perceived that there is opportunity to utilise these provisions more widely than they are currently.

## **COMPETITION**

In South Australia, planning for appropriately located activity centres is undertaken by both State and Local Government through the review of planning policy and zoning contained within a council Development Plan. It is intended that Development Plans are kept up to date with best practice policy and maintain consistency with the State Government's Planning Strategy.

The City of West Torrens is currently reviewing its system of centres hierarchy as well as appropriate residential land uses as a response to the findings of its major strategic planning document 'Vision 2025' (a holistic review of the Development Plan as required under Section 30 of the Development Act).

It is recognised that the regulation of development through the zoning/development assessment process will potentially affect market supply and demand.

### ***Hierarchy of Centres***

Direction from the State Government with regard to activity centre development has changed significantly over the years.

In the past, the Planning Strategy emphasised the importance of a hierarchy of centres across metropolitan Adelaide. These centres ranged from the CBD, Regional Centre, District Centre, Neighbourhood Centres down to Local Centres. Commercial/retail development along arterial roads was highly discouraged by the Government.

This form of zoning sought to separate the level of services that were provided within each of the centre levels – noting that the CBD would provide the greater level of services compared to a local centre. Competition within these centres was often stimulated through floor space restrictions.

Past experience has shown that rezoning associated with activity centres attracts interest from competitors. Amendments or expansion of Regional Centre Zones had been subject to judicial review by competitors as a means to delay the Development Plan Amendments either during or after the consultation period, hence retaining their existing market share for as long as possible.

With the release of the 30 Year Plan for Greater Adelaide (the current iteration of the Planning Strategy), the Government has taken to promoting a new urban form that consists of Transit Oriented Development and Growth Corridors as a means of curbing fringe/Greenfield development. This seemingly pursues a *laissez faire*

approach, in which a broader range of land uses are allowable along corridors and the emphasis on centres is less important. Mixed use development is promoted along the growth corridors, with retail/commercial at ground level and residential above. It is perceived that these retail/commercial activities are intended to serve the local residents rather than the broader community.

Zoning traditionally sought to separate land uses into compatible uses (i.e. residential, commercial, industrial). Once an area is zoned, the number and type of compatible uses was not a major contributing factor to the assessment of a development proposal. Therefore, it was perceivable that multiple applications could be received for a bakery within the same zone; each would be assessed on its land use merits and given approval. Whether all proceeded to operate viably is subject to other contributing factors.

### **West Torrens Case Study**

In October 2009, Woolworths Petrol lodged an Application to build a petrol station adjacent (next door to) a site of an existing family owned independent petrol station. The independent station operator and some local residents vehemently opposed the proposal, citing, inter alia, unfair competition.

It is generally regarded that commercial competition is not a matter that can be given consideration in the determination of a development application.

In March 2010, the Council's Development Assessment Panel (DAP) resolved to defer further consideration of the application pending, amongst other things, receipt of legal advice regarding its ability to consider 'commercial competition' as a relevant matter in the determination of the application.

The DAP received legal advice that competition may be a legitimate planning consideration. This advice was based on case law that establishes that there is a limited sense in which the economic impact of a development on businesses in the surrounding area may be considered.

This was outlined by the High Court in the case *Kentucky Fried Chicken Pty Ltd v Gantidis* (1979) when Stephen J stated that:

*"If the shopping facilities presently enjoyed by a community or planned for it in the future are put in jeopardy by some proposed development, ... and if the resultant community detriment will not be made good by the proposed development itself, that seems to me to be a consideration proper to be taken into account as a matter of town planning".*

However, it was determined by the DAP that the claim of commercial competition and its effect would not be a sustainable basis upon which the application could be refused. Consequently, Woolworths Petrol was granted development plan consent.

Previously, effort was made within Development Plans to restrict the ratio of commercial land uses within certain zones or policy areas. This is done by either restricting the types of land uses, restricting the size (floor area) of shops, or in some cases, limiting the total amount of space dedicated to particular uses. These approaches are problematic in that they are difficult to enforce and prevent new business into existing zones. As part of the Better Development Plan program set up

by the State Government (adoption of 'best practice' from a policy library), these restrictions will be largely removed as they are considered to be outside of the scope of what the Development Plan should control.

On the other hand, the absence of such measures can also have the effect of restricting competition by allowing large chain retailers (petrol stations, supermarkets) to locate close to existing independent retailers, who cannot compete on a level playing field and may fail because large chain retailers are unwilling to operate a short term loss.

The role of planning in relation to encouraging or discouraging competition is not well defined and there remains the unanswered question of 'what should planning do?'.

## **GOVERNANCE**

In South Australia there has been a clear undertaking to separate the planning and development assessment functions. The advent of the Council Development Assessment Panels (CDAP) sought to separate the decision making role from the policy making role that is retained by a council.

The CDAP is established under the Development Act as the planning authority for a council area, and is made up of independent members as well as Council Members. This model is consistent with the planning reform promoted by the Development Assessment Forum.

The intended benefit is to allow councils to take a more proactive approach to the strategic and policy planning for the area, and thus ensure a level of currency within the planning instruments.

However, the relationship between State and Local Government within the planning process remains contentious. While the South Australian system calls on local government to administer a high percentage of the planning system (policy and assessment), there is still a strong emphasis on State direction being reflected within local Development Plans. The Development Plans remain the property of the Minister for Planning and Urban Development, which means that local policy is still at the discretion of State Government.

### ***Best Practice***

Section 122(1) of the *Local Government Act 1999* requires that "A council must develop and adopt plans (which may take various forms) for the management of its area, to be called collectively the **strategic management plans**".

Strategic management plans should address the strategic planning issues within the area of the council, with particular reference to (and in a manner consistent with) the Planning Strategy; and set out the council's priorities for the implementation of planning policies.

In fulfilling this requirement, the Local Government Act allows a council to refer to its most recent *Strategic Directions Report* prepared under section 30 of the *Development Act 1993*.

In 2008, the City of West Torrens adopted a Strategic Directions Report that addresses the key strategic planning issues for the council area, acknowledging the Key Directions contained in the Council's Community Plan 2004-2009.

It is considered that planning systems should be focused on the strategic planning of a region and its community, whereby the long term aspirations of the community and businesses are reflected through strategic plans. Support is given to the Commission for emphasising the importance of strategic planning over development assessment as a tool for resolving land use matters.

Despite supporting the Commission's call for greater emphasis on community engagement in the planning process fully and early, it is noted that there are limitations to achieve this (i.e. time, money, knowledge and political will).

## **CONSULTATION**

### ***Strategic Directions and Policy formulation***

Consultation on planning policy reviews and changes is governed by Section 25 and 30 of the Development Act 1993.

As a minimum, councils undertake the normal statutory requirements for public consultation, which seek the opinions of the public and business *after* policy has been drafted. There is a case to suggest that increased community engagement, including the business community, should occur much earlier in the policy formulation process. While West Torrens is dedicated to community engagement, the costs of intensive community engagement are high.

Often it is difficult to engage the community in conceptual ideas associated with strategic/policy planning and how they might see their community develop over long timeframes, compared with the immediacy of a development proposal next door.

In South Australia, *The 30 Year Plan for Greater Adelaide* has generated more public debate on urban and regional planning than any previous versions of the planning strategy. Consequently, there is an opportunity for local government to harness the public energy that has been generated when preparing regional or local plans.

### ***Assessment***

During the assessment process, a system of notification (not necessarily consultation) will often take place. Depending to the type of development and its location, etc, an application will be assigned a category of notification, which determines how the assessing authority (usually Council) will notify the public.

In the case of Category 3 development, anyone in the state of South Australia may make a submission and may be afforded third party appeal rights. Although not a common occurrence, there is the potential for a third party to restrict, or at least delay, the entry of new business into existing areas and markets.

Policy modules currently being developed by State Government for new urban infill areas suggest a trend towards more extensive Category 1 lists, resulting in fewer Development Applications being notified during the development assessment process. For example, if residential flat buildings are permissible in a zone and they are designated Category 1, they will not be notified to potentially affected neighbours, even if they do not conform to Development Plan policy such as height, setbacks and the like. This situation reinforces the importance of high quality strategic planning processes and early community engagement.

## **DEVELOPMENT ASSESSMENT**

### ***Costs to councils***

The report rightly points out that very little of the cost of assessment is recouped by councils via monies received from application fees. In South Australia, these fees are set by the State Government and are generally lower than those of other states. In order for councils to better pay for development assessment, fees should be increased to better reflect the cost to Council of development assessment.

### ***Assessment timeframes***

The report also points out that South Australia on average recorded the fastest DA 'turn around' times in the nation.

In 2010, West Torrens made 1,251 planning decisions. West Torrens has a planning team of six, meaning that on average each planner made 208 planning decisions in 2010. Of these decisions, 1,096 (87%) were for approval or relevant consents. Of these decisions for approval, 956 (87%) were made within statutory time frames.