Urban Taskforce
AUSTRALIA

12 November 2012

Mr James Cox PSM
Chief Executive Officer
Regulation Review – Local Government Compliance and Enforcement
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

Dear Mr Cox

Re: Regulation Review – Local Government Compliance and Enforcement

The Urban Taskforce represents Australia's most prominent property developers and equity financiers. We provide a forum for people involved in development and the planning of the urban environment to engage in constructive dialogue with government and the community.

The Urban Taskforce has reviewed the *issues paper Regulation Review – Local Government Compliance and Enforcement ("the issues paper")*. We find the issues paper to be a well researched and drafted document that clearly outlines the regulatory burden placed upon the community and industry, by excessive local government regulation. We strongly support this review and appreciate the opportunity to provide further input for your consideration. In this regard, our comments are focused primarily on the additional cost placed on the development of land due to:

- inconsistent advice resulting in a lack of certainty;
- excessive delays in the determination of development applications;
- duplication of assessment processes; and,
- requests for unnecessary investigations and reports.

In addition to the comments provided in this correspondence, the Urban Taskforce submits a recently completed study into improving local government efficiency. This research was assisted by Percy Allan and Associates and copies are enclosed for your consideration as part of this review. Additional copies may be downloaded from:

http://www.urbantaskforce.com.au/liveability-crisis/

You will note that our investigation has revealed that significant savings and efficiency gains can be achieved by:

- adopting a regional approach to governance;
- implementing independent planning assessment; and,
- forming local government shared services centres.

I am sure that you will find our submission and enclosed research informative and robust, worthy of further consideration as you continue with this very important review of local government regulation.

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1. *Inconsistent advice to applicants causes uncertainty and costly delays*

One of the most common complaints members of the Urban Taskforce have with local government regulation is the inconsistency of the advice provided to applicants. The inconsistency mostly relates to differing interpretation and application of local planning laws such as local environmental plans and development control plans. It is not uncommon for different council officers, within the same organisation, to apply controls in differing ways. This causes the applicant additional cost due to delays in the:

- design process;
- preparation of documentation; and
- ultimately delay in the determination of an application.

Even where an applicant attends council for a pre-lodgement meeting and provides concept plans of a proposal and briefs the council officers on the key aspects of the proposal, council advice cannot always be relied upon. In fact, the council, when providing the advice will always include a disclaimer absolving the council of any responsibility. In this regard, an applicant is unable to confidently make investment decisions based on advice provided by local councils.

However, there is a relatively simple solution to this problem. We strongly believe that the predictability and consistency in decision-making can be achieved by dramatically reducing the number and breadth of strategies, policies and guidelines that are considered in development assessment. Decision-makers should only be allowed to consider final policies either; approved by the state government or expressly provided for by an environmental planning instrument in relation to a specific area (e.g. a master plan). Legislation, statutory instruments and policies should be designed so that the vast bulk of development envisaged is capable of being approved without the need for a subjective judgment by a consent authority.

2. *Delays in the determination of applications kill development feasibility*

The Urban Taskforce is aware of councils wilfully ignoring the current legal benchmark for the determination of development applications. This benchmark is forty (40) days to determine development applications. Even straightforward development proposals take significantly longer than the statutory 40 day determination period.

We understand that these delays can increase the cost of building new homes and business premises by 15 per cent through extra interest payments on debt and through the money tied up in unproductive capital.

The only alternative the applicant has is to go through the expense of seeking a court determination if not prepared to wait for the council. We believe this to be unfair and stacked in favour of the council.

We advocate the introduction of "deemed-to-comply" or "deemed approval" periods rather than "deemed refusal" periods. Deemed approval periods are a vastly superior method of ensuring that consent authorities allocate the necessary resources to (and appropriately manage) their development assessment functions.

Without deemed-to-comply periods, consent authorities lack incentives to quickly deal with development applications. A 'deemed-to-comply' period for development applications means, a development consent is deemed to be given if no refusal has been issued in a set period. For most applications an appropriate timeframe would be in the order of 40 days.

3. Duplication of assessment processes wastes time and money

Significant development proposals are subject to review and assessment by various authorities, in addition to the Council assessment. It is argued that where an authority has assessed a proposal for suitability, the council should not carry out a further assessment of that matter. For instance, where a proposal has been referred to the Roads and Maritime Services (RMS) for assessment of traffic impact, road/intersection upgrade and suitability of access arrangements, the council traffic engineer should not be making a further assessment. Apart from the time wasted in duplicate assessment, the applicant can also be subject to conflicting development design requirements.

We are advised of a proposal to develop a highway light industrial and retail development in western Sydney. The proposal was referred to the Roads and Maritime Services for detailed assessment. The applicant was required to expend considerable funds on detail traffic modelling and intersection design, over a period of approximately ten (10) months, to satisfy the RMS.

The Council, while informed of the assessment process and RMS requirements remained disengaged and contributed nothing to the process. When the proposal finally received RMS approval, the council was of the view that the same proposal should then be assessed by the council traffic engineer. While this applicant accepts that the council engineer is entitled to review internal parking layout and traffic circulation arrangements, it is considered inappropriate for the council to carry out its own assessment of intersection layout and capacity after the RMS has issued its concurrence. In this instance, this duplicate and uncoordinated assessment between the RMS and the local council has added at least four (4) to six (6) months to the determination time, exposing the applicant to additional holding costs and loss of tenants.

Another example of duplicate assessment extending the time of a determination and also giving rise to conflicting determination relates to a proposal which was subject to an architectural design competition; assessed by the council and also determined by the Joint Regional Planning Panel. The potential for conflicting assessment and differences of opinion was demonstrated by the final determination. In this example of duplication, that applicant was required to submit three (3) design proposals for the consideration of a design jury, comprising representation from the local council and state Department of Planning. After a considerable amount of time, the design jury agreed to a final design. Based on the support of the jury, the applicant prepared a development application for determination by the local council, noting that the council, being part of the design jury supported the proposal. Even though the council had already signed off on the design, the council development assessment team conducted a further assessment and also referred the proposal to councils own independent design panel, further delaying the assessment of the proposal. However, while the time delay due to duplicate assessment was a cause for concern, the conflicting opinions and requests for amendment in design is of greater concern to the applicant.

If this was not bad enough, when the applicant and council had resolved all design issues, and was of the mind to support the proposal, when referred to the Joint Regional Planning Panel, the proposal was not supported by the panel and was subject to further time consuming and expensive design amendments. It is estimated that this duplication of assessment added at least twelve (12) months to the determination timeframe.

We would argue that where an application has been assessed by a design competition jury, comprising state and local government representatives, the proposal should not be subject to further design review. Furthermore, the Joint Regional Planning Panel should be properly briefed and should not be permitted to make changes to a proposal where such proposal has been subject to extensive design review and is supported by the council and applicant.

4. Conservative culture and lack of expertise results in requests for unnecessary and costly studies and reports

The Environmental Planning and Assessment Regulation states the information that must be submitted with a development application, to enable the authority to make a determination of the development proposal. A development application does not seek consent to construct a building, it is simply a request for permission to develop the land as stated in the application, not a request for approval to construct. However, what we find is that applicants are being asked to spend increasing amounts of money on detailed hydraulic, engineering and building compliance reports as if the applicant was seeking permission to construct. Councils often argue that they need this level of information at the development application stage, as the construction certification process may be controlled by other parties, not council. Hence, the council takes it upon itself to go beyond the requirements on the regulation and request much more detailed information to be submitted as it does not have faith in the private certification process. This is clearly inappropriate. The private certification process works well and whether the council has faith in the system or not, it should not be permitted to request endless detailed reports and designs akin to construction level detail as a means of assurance against private certification.

Notwithstanding council lack in confidence of the private certification system, we suspect that council assessment staff are also motivated to request infinite detailed reports as a means to support their assessment and justify their determination.

Unfortunately, many local councils lack expertise in assessing complex development projects and look for assistance/support from other professionals. The Urban Taskforce is not opposed to councils filling skills voids with external professional contract staff to assist in complex development assessment; however, this should not be at the expense of the applicant. The applicant should not be footing the bill for complex hydraulic or traffic modelling or paying for urban design expertise to assess their application. The applicant should definitely not have to pay for third party reviews of their submitted development details and reports. If the council is not confident with its assessment capabilities, it is up to the council to buy in those skills.

While there are many competent and hardworking officers in local government planning departments, most council planners do not often have the opportunity to assess projects in the $20 million to $100 million range. The lack of familiarity with projects of this scale, and the inevitable involvement of state government agencies as concurrence/referral authorities, makes the assessment process convoluted and time consuming.

Unfortunately the skills void in local council cost the applicant dearly. The applicant has to pay for additional studies and reports and also has to endure the time delay caused by the need to complete additional studies and then the inevitable further assessment by the council or a third party.

The Urban Taskforce argues for the regionalisation of planning/assessment staff. Bringing a larger number of professional staff together in a shared services centre will improve the sharing of skills and knowledge amongst staff and expose assessment staff to a wider range of projects. Furthermore, a regional shared services centre will have access to a larger pool of funds to attract more skilled and experienced staff. Further information on this proposal can be found in the enclosed Urban Taskforce reports and also accessible from:

http://www.urbantaskforce.com.au/liveability-crisis/

We are always willing to provide a development industry perspective on planning policy and we would welcome the opportunity to discuss these issues with you in more detail. Should you have any further enquires in relation to this submission please feel free to contact me on telephone number 9238 3927.

Yours sincerely
Urban Taskforce Australia

Chris Johnson, AM
Chief Executive Officer