Urban Taskforce
AUSTRALIA

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

8 July 2014

Regulation Review – Local Government
Independent Pricing and Regulatory Tribunal
PO Box Q290
QVB Post Office NSW 1230

Dear Sir/Madam,

Local government compliance and enforcement: Regulation review – Draft Report October 2013

The Urban Taskforce has reviewed the issues paper *Regulation Review – Local Government Compliance and Enforcement*. We found the issues paper to be a well researched and drafted document that clearly outlined 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 comment on the *Local government compliance and enforcement: Regulation review – Draft Report October 2013* ("the draft report"). In this regard, our comments are focused on the draft recommendations that we consider relevant to addressing 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.

We are pleased to note that the draft report acknowledges the work that the Urban Taskforce has completed on improving local government efficiency. In particular it is encouraging that IPART supports our argument that significant savings and efficiency gains can be achieved by adopting a regional approach to governance and forming local government shared services centres. We argue that the formation of such centres of planning excellence would contribute to:

- improved development assessment processes;
- improved development assessment staff culture;
- the up-skilling of development assessment officers; and,
- addressing the resource shortage experienced by some local councils.

Our detailed comments outlining how the draft IPART report responds to our original submission is provided below.

1. Inconsistent advice to applicants

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.

In our original submission we advised IPART that 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. We suggested that 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. 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.

IPART's recommendations in the areas of:

- A new partnership between State Government and local government; and,
- Improving the regulatory framework at the State level,

may go some way to addressing our concerns with inconsistent advice. That is, IPART's recommendation for the Department of Planning and Environment to take on a mentoring and stronger guidance role to local government may assist in identifying unnecessary or inconsistent development assessment processes and policies. However, we argue that ***IPART's final report needs to make a stronger commitment to abolishing non-statutory local government strategies, policies and guidelines that are considered in development assessment and require that consent authorities only consider policies approved by the state government or expressly provided for by an environmental planning instrument.***

2. Delays in the determination of applications

We previously advised IPART that we are aware of councils wilfully ignoring the current legal benchmark for the determination of development applications. Even straightforward development proposals take significantly longer than the statutory 40 day determination period. 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.

However, IPART has not expressly made a recommendation on deemed approval, but will rely on draft recommendation 1 that could result in improved assessment times. That is, the recommendation suggests that a Partnership Model between the Department of Planning and Environment and local government will enhance the capacity and capability of councils to undertake their regulatory functions which we assume includes development assessment. We see this as a step in the right direction, but we argue that more would be achieved with a regulatory system that makes provision for "deemed-to-comply" or "deemed approval" periods.

Furthermore, we say that development assessment quality and assessment times would be vastly improved with enhanced regulatory collaboration amongst councils. In this regard, the ***Urban Taskforce supports draft recommendation 10 which suggests the amendment of the Local Government Act to remove impediments to shared regulatory services.*** Shared regulatory services could also assist in the improvement of consistency and quality of advice provided to applicants within a region.

The quality and assessment times of development approvals would also be improved with the development of a standard set of conditions of development consent. ***The Urban Taskforce supports draft recommendation 16 which suggests the development of standard conditions of development consent to be used by local councils for different forms of development.***

Furthermore, ***the Urban Taskforce supports IPART's draft recommendation 20 which discourages councils from imposing conditions of consent above that of the Building Code of Australia.***

3. Duplication of assessment processes

In our previous submission we advised IPART 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.

While we support IPART recommendations to remove the need for duplicate approvals for some activities, we say that the final IPART report needs to look more closely at needless duplicate assessment and also at opportunities within the existing legislative framework for the streamlining of concurrences. That is, we support the principle that development applications that require concurrence, referrals and approvals should be subject to one stop referral system. We don't believe that we can rely on the introduction of a new Planning Act to introduce such a streamlined referral system. The planning system review has been significantly delayed and its introduction can no longer be used as an excuse to delay the making of much needed planning reforms. We are advised that the same could be achieved by using section 28 of the existing Environmental Planning and Assessment Act. Section 28 may not have been intended for this purpose, but we have it on good authority that it could be used to great advantage.

The final IPART report should investigate the streamlining of concurrences and referrals and make recommendations for the implementation of a one-stop-shop system within the existing legislative framework. The final IPART report should also recommend that multiple assessment of the same aspect of a proposal by different government authorities must not occur.

4. Conservative culture and lack of expertise

In our previous submission we advised IPART that the Environmental Planning and Assessment Regulation lists 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's lack in confidence of the private certification system, we are advised that council assessment staff are also motivated to request infinite detailed reports as a means to support their assessment and justify their determination. Furthermore, 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 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.

The Urban Taskforce argues for the regionalisation of planning/assessment staff to address these concerns. 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.

IPART's recommendations in the areas of:

- A new partnership between State Government and local government; and,
- Improving the regulatory framework at the State level,

may go some way to addressing conservative culture and skills/resource shortage. However, we argue that ***IPART's final report needs to make a stronger commitment to addressing local government skills and resource shortages and commit to a regional approach to planning regulation.***

Notwithstanding any of the above, many of our concerns regarding excessive delays and cost burden placed on the development industry because of the NSW planning system have been acknowledged by IPART, but not pursued in the draft report. IPART says that these matters are to be addressed in the comprehensive planning system reform process being pursued by the NSW Government. At the time of drafting the IPART report, this may have been a valid argument. However, the planning system reform process has been undermined and has ground to a halt. It is for this reason that IPART needs to consider the possibility of implementing planning system reform under the current legislative framework as a means of reducing red tape and costs to development. As a start we suggest the **implementation of Code Assessable development without a new Planning Act.**

We strongly support Code Assessment and believe that Development Assessment Codes would significantly reduce red tape and cost upon development. Recently the Government embarked on a review of State Environmental Planning Policy 65 and the Residential Flat Design Code. We believe that the review of the existing SEPP and Code provides the potential for the establishment of a:

- reduced set of guideline controls and rules of thumb; and,
- a development code for certain types of building in defined locations.

For instance, the SEPP already states that an application for a residential flat building cannot be refused on the grounds of apartment area or ceiling height if the proposal meets or exceeds the rule of thumb for minimum apartment area or ceiling height provided in the Residential Flat Design Code. This approach could be expanded to include other relevant rules of thumb which if complied with could not be used as grounds for refusal. This is not to suggest that more rules should be included in the Residential Flat Design Code, rather we suggest that a reduced, more targeted set of rules be produced and these form the platform of a development code.

If used effectively, the revision of SEPP 65 and the Design Code could deliver similar outcomes to Code Assessment. That is, the applicant could choose to comply with the rules of thumb (elevated to development standards) and be afforded a streamlined development assessment pathway, without the need for further public exhibition, or choose not to comply with the rules of thumb and have their application be merit assessed in the normal way.

The Government could choose to not amend the existing SEPP and draft an entirely new State Environmental Planning Policy which could include development standards for certain types of

buildings which if satisfied could not be used as a reason for refusal and similar to the existing Codes SEPP not require further public consultation.

Alternatively the Government could expand the Codes SEPP to include say residential flat buildings not exceeding 25 metres in height within appropriate zones and locations to be considered as complying development. The Government may wish to consider this approach as it could also remove the need to engage the community at the development assessment stage. That is, because such buildings would be considered complying development, further community consultation is not required.

Notwithstanding any of the above, we also argue that the Environmental Planning and Assessment Act 1979 already provides for something similar to code assessable development, in the form of "non-discretionary development standards".

We strongly supported Code Assessment and this should be in a new Planning Act. However, if this is not to eventuate in the very near future, then consideration must be given to other means of using existing legislation to provide the same level of certainty and streamlined development assessment process.

We are always willing to provide a development industry perspective on government 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