



# UNFINISHED BUSINESS

## PROSPECTS FOR AN INTERGOVERNMENTAL AGREEMENT ON DEVELOPMENT ASSESSMENT

Joint Industry Submission to:

- Planning, Housing and Local Government Ministers
- Australian Council of Building Design Professions
- Housing Industry Association
- The Institution of Engineers Australia
- Master Builders Australia
- Property Council of Australia
- Real Estate Institute of Australia
- Royal Australian Institute of Architects
- Urban Development Institute of Australia

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## EXECUTIVE SUMMARY

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A wave of planning reform has swept through many jurisdictions in the last decade, but there is one outstanding challenge: establishing some consistency between the different development assessment procedures around the country.

The success of the Australian Building Codes Board (ABCB) in harmonising Australia's building controls points the way forward. It's time we addressed some unfinished business, using the same discipline to harmonise development assessment procedures.

Industry is united on this important issue. Our aim is to establish a regulatory framework for development assessment in Australia that is consistent from one jurisdiction to another.

The proposed framework would create consistency between jurisdictions and municipalities in the procedural and administrative aspects of the development assessment process.

This is not an assault on the policy-making powers of the various levels of government. In particular, we respect the right of local communities to agree on land-use policies that suit local circumstances.

Further, a harmonised development assessment framework need not be uniform. Our proposals envisage a regulatory system in which consistency is the norm, but within which there is an explicit capacity for choice and variation to suit local circumstances. For efficiency reasons we believe jurisdictions should keep procedural variation to a minimum, and be given incentives to do so.

To establish the harmonised system, we recommend:

1. That Planning, Housing And Local Government Ministers oversee the preparation of an intergovernmental agreement on development assessment, to be adopted by the Council Of Australian Governments (COAG) by the end of 1998.
2. That the COAG agreement establish a harmonised best practice framework for development assessment in Australia, that:
  - is cost-effective;
  - encourages a performance-based approach to regulation;
  - incorporates standard definitions and terminology;
  - allows more innovation and variety in development;
  - is streamlined, simple and accessible;
  - integrates all policies and assessments applying to a given site;
  - promotes transparency and accountability in administration.

3. That the COAG agreement establish a statutory board of management with significant private sector and local government representation - the Australian Development Assessment Board (ADAB) - to oversee the development and implementation of a harmonised national framework for development assessment and to produce model legislation and template planning instruments.
4. That the ADAB be given twelve months to provide COAG with a plan for establishment of a harmonised Australian development assessment framework within the subsequent five years.

Cupertino, knowledge sharing and agreement between our Planning, Housing and Local Government Ministers in a project of this kind is overdue.

Industry has taken the initiative to identify a consensus position and put forward constructive proposals for reform.

Implementation of our proposals would bring benefits to the whole country:

- greater responsibility for local government and more opportunity for councils to focus on policy-making, strategic planning, community consultation and urban design, rather than statutory drafting and scheme amendments;
- closer community involvement in strategic planning;
- more certainty for both business and the community about how developments will be assessed;
- a less costly, more efficient and effective public sector, less reliant on red tape;
- less delay and dispute in the determination of development proposals;
- more affordable housing and development, and;
- economic growth - the Industry Commission has estimated we would reap a \$1.1bn per annum dividend if reform were adopted nationally - which means more jobs.

Industry has prepared a submission explaining our proposals and defining the key elements needed to achieve best practice in our new national development assessment framework.

We urge all governments in Australia, local councils, and authorities, interest groups and the wider community to give their support.

# 1. INTRODUCTION: THE BENEFITS OF A HARMONISED APPROACH TO DEVELOPMENT ASSESSMENT

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## 1.1 AUSTRALIA'S EXISTING SYSTEM FOR ASSESSING DEVELOPMENT

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Australia's development assessment system is complicated.

In total, between governments in Australia we have nine different sets of rules about development assessment - one for each of the Commonwealth, state and territory jurisdictions - as well as countless sub-systems operating in more than 700 councils and local authorities.

Industry and community organisations have consistently voiced concern that this development assessment system is not working as well as it could. The system costs a lot to administer, yet is unpredictable and delivers outcomes that are often contentious.

We propose that a best practice, harmonised framework for development assessment be established by co-operation and agreement between all governments in Australia.

## 1.2 WHAT DOES HARMONISATION MEAN?

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Harmonisation is a co-ordinated, co-operative reform process by which Governments agree to review comparable legislation in a given field, and seek to achieve both:

- a common national purpose in the most effective way possible; and,
- a balance between the recognition of unique regional interests and broader goals.

Harmonisation improves a regulatory system by making sure that its component parts are designed to work together rather than in isolation. Harmonisation creates efficiency by simplifying control systems, eliminating inconsistencies and reducing overlap and duplication.

National consistency is not an end in itself. The success of national regulatory reform will depend on the quality of the development ASSESSMENT system that is established, but will be assisted by co-ordination and consistency between jurisdictions.

Therefore industry's aim is to harmonise Australia's development assessment framework around an agreed definition of best practice.

In our view this will involve:

- building on reforms pioneered in many States, Territories and local councils;
- cutting red tape;
- implementing best practice, not lowest common denominator reform;
- standardising decision-making processes involved in development assessment, not the content of development control schemes;
- eliminating unnecessary inconsistencies without compromising local autonomy;
- reducing duplication in government; and,
- creating a seamless regulatory system in which consistency is the norm, but within which there is an explicit capacity for choice and variations to suit local circumstances.

This is not an assault on the policy-making powers of the various levels of government. In particular, we respect the right of local communities to agree on land-use policies that suit local circumstances.

These are just a few concrete examples of the kind of harmonisation industry seeks:

- commercial activities have a similar character around the country, but hundreds of definitions are used for the purposes of zoning in different council areas. These variations can be radically reduced: the Victorian Government's new planning provisions, for example, cut the number of zoning categories from 2871 to just 25;
- most jurisdictions rightly require the public to be notified of development proposals through displays, letterbox drops, newspaper advertisements and so forth. Yet simple requirements vary - like the notification period. One standard framework would serve the purpose more efficiently and give all stakeholders (including the community) a clearer understanding of the process;
- some jurisdictions allow extensive rights of appeal against decisions on development, others are more limited (such as the ACT). We support a national agreement on appeal procedures in this area, so that businesses and communities all over the country will have consistent rights;
- there are often parallel processes to scrutinise development applications between spheres of government. The plethora of referral and concurrence requirements is an example. This duplication can be eliminated.

### 1.3 POTENTIAL BENEFITS OF A HARMONISED DEVELOPMENT ASSESSMENT FRAMEWORK

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We believe all stakeholders will benefit if industry's reform agenda is adopted. The benefits can include:

- greater responsibility for local government and more opportunity for local authorities to focus on policy-making, strategic planning, community consultation and urban design, rather than statutory drafting and scheme amendments;
- closer community involvement in strategic planning for areas, through earlier and more thorough consultation;
- more certainty about the development assessment process and its results for business and the community, through simpler regulation clearly focussed on achievement of recognised outcomes;
- a less costly, more efficient public sector, through elimination of overlap, inconsistency and anti-competitive administrative practices;
- less delay and dispute in the determination of development proposals through streamlined regulatory and appeal processes; and,
- more affordable housing and development, through a reduction in the cost of obtaining approvals
- economic growth (SEE BOX) and job creation, through removal of unnecessary impediments to investment in land.

These matters are explored in detail in section four of this report.

### 1.4 SUPPORT FOR NATIONAL REGULATORY REFORM OF DEVELOPMENT ASSESSMENT PROCEDURES

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Many industry and government studies have recommended a national approach to the regulation of building and development. For example:

- In November 1991 the Building Regulation Review Task Force, set up by the Special Premiers Conference on Micro-economic reform in 1989, recommended:  
*"... that land and building approvals reform be accorded priority status under the national Micro-economic Reform Program and endorsement be sought in the current round of Special Premiers Conferences for [a] 'Development Approvals Review' to establish the basis for national consistency in approvals systems with emphasis on a model approach to integrated development approvals".<sup>1</sup>*
- In June 1996 consultants to the National Office of Local Government prepared "An Evaluation of the Local Approvals Review Program". Their Final Report concluded:

*“... getting the approvals process right is about more than simply getting Councils to improve their customer service skills or build new “one stop” service desks. It is about integrating the activities and responsibilities of all three spheres of government. It is about recognising that major national, social economic and environmental goals ... are fundamentally dependent on getting the approvals process to work the way successive critics, commentators and analysts claim it should - integrated, seamless, responsive, streamlined and delivering quality outcomes for communities around the nation.”<sup>2</sup>*

... and recommended that:

*“A national framework for approvals reform is critical [and] will require a renewed and collaborative mandate for change that includes national, State and local government and the wider community. It will demand effective change at three different levels - the overall system (legislative change), the attitudes and professional structures which define the tone and focus of the system (cultural change) and in the practices and procedures of individual agencies (management change)” [emphasis added].*

- In August 1996 key stakeholders in the planning debate, including representatives from the private sector and all spheres of government, gathered at a Leaders Roundtable on Planning Reform organised by the Property Council of Australia, and agreed on the need for a single national integrated development control framework.

Growing support for a national approach to development control reform led the Prime Minister to include the following in his More Time for Business report in March 1997:

- To achieve systemic and long-term reform the [existing] concurrence agenda needs to be augmented to include urban and regulatory reform of development and building approval processes. [...] The National Office of Local Government will sponsor a national regulatory reform workshop with the view to reaching consensus with State, Territory and Local Governments for a new national regulatory framework [emphasis added].<sup>3</sup>
- This call received strong backing from the then Minister for Sport, Territories and Local Government, who stated: “a national strategy to streamline approval and planning processes is long overdue”.<sup>4</sup>

## 1.5 CONCLUSION

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A national approach to regulatory reform of our development assessment system is overdue.

The national regulatory reform now being urged by industry would bring benefits to the whole country, including:

- greater responsibility for local government and more opportunity for councils to focus on policy-making, strategic planning, community consultation and urban design, rather than statutory drafting and scheme amendments
- closer community involvement in strategic planning;
- more certainty for both business and the community about how developments will be assessed;
- a less costly, more efficient and effective public sector, less reliant on red tape;
- less delay and dispute in the determination of development proposals;
- more affordable housing and development, and;
- economic growth - the Industry Commission has estimated we would reap a \$1.1bn per annum reform dividend if reform were adopted nationally - which means more jobs.

## 2 PROBLEMS WITH OUR CURRENT DEVELOPMENT ASSESSMENT SYSTEM

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### 2.1 OUR CURRENT DEVELOPMENT ASSESSMENT SYSTEM PENALISES THE ECONOMY YET DELIVERS POOR OUTCOMES

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The built environment underpins almost every economic activity that takes place in Australia.

All Australians bear the cost impost of our current inefficient development assessment system:

- higher taxes, rates and charges are needed to support administration of an inefficient system; and
- the high cost of approvals is borne by property owners and investors and is then passed on to occupants and consumers.

To illustrate, the Small Business Deregulation Task Force identified the high cost of our inefficient regulatory framework and reported that:

*“The housing industry is characterised by some 150,000 small firms operating in a highly competitive environment and governed by a myriad of regulatory Assessments imposed by State and Local Governments which work against efficiency and interstate expansion.*

*“State governments set planning frameworks for medium and high density developments but almost every local government council has its own rules on such matters as the ratio of car parks to units, the number of units per standard lot size, building height and tree preservation. To cope with the variations in policy, developers buy in specialist expertise for each project with resultant cost increases of up to \$2,000 a housing unit [emphasis added].”<sup>5</sup>*

Further, the National Office of Local Government has estimated that delays and over-regulation in development approvals processes add an estimated 2.3% to development costs for a routine building development.<sup>6</sup> Reducing this would stimulate investment and jobs growth.

Such an impost would perhaps be justifiable if it did ensure that development accorded with reasonable community expectations. However, objections and disputes about development proposals are becoming more frequent.

Development assessment processes established by law are not the sole problem: elected politicians, business interests and community groups can misuse the current system to promote their own interests. But a best practice framework for development assessment would limit misuse rather than encourage it.

## 2.2 THERE IS TOO MUCH UNNECESSARY VARIATION BETWEEN JURISDICTIONS

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Even though most governments have embarked on major reform of development assessment procedures over the last decade, often with similar aims in mind, there is still little consistency between one jurisdiction and another.

In part, such inconsistency results from a lack of co-ordination between jurisdictions - reflected in the fact that (unlike other ministerial councils) state and territory Planning Ministers have not met for almost three years.

Yet much of the variation in our different development assessment procedures is unnecessary. It often serves no good purpose in public policy.

Unnecessary variation adds complexity and uncertainty to the system, undermines investor and community confidence, and retards economic growth. The consequences are felt by all Australians, even if the problem is only directly encountered by owners of land in more than one jurisdiction or where projects cross state or territory boundaries (the national gas pipeline, for example).

Industry's key recommendations are aimed at achieving an elimination of unnecessary procedural and administrative variation in our development assessment laws - and retention of those variations which exist for good reason.

## 2.3 OUR NINE SETS OF RULES FOR DEVELOPMENT ASSESSMENT STILL FALL WELL SHORT OF BEST PRACTICE

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The development assessment processes in each state and territory (and at Commonwealth level) can still be improved. here are some common problem areas.

### 2.3.1 Fragmented and incoherent

One reason our current development assessment system works poorly is it was never designed from first principles. new legislation has added more approval requirements and created new Government authorities to administer them, in a series of incremental adjustments to an old system.

The result has been unclear delineation of responsibilities and unproductive tension (or stalemate) within Government.

There has been no whole of government approach.

### 2.3.2 Too complicated

The system is far more complex than it needs to be. There are many overlapping legislative requirements and a single development can be required to go through many separate approval processes. This complexity makes public administration less transparent and accountable. It is difficult for citizens to act or comment on laws they don't know about or understand.

For example, with its new Integrated Planning Act the Queensland Government has been able to reduce 5,000 pages of process-related law to just 100 pages.

The development assessment system in most jurisdictions can be greatly simplified, and converted to plain English.

### 2.3.3 Too technical

In a similar vein, development assessment systems are too often couched only in technical terms. It is difficult to involve the public in a meaningful policy debate about setbacks, floor-space ratios, and so forth. These terms are a convenient shorthand for practitioners. They are not the only or the best available expressions of community expectations on development control.

### 2.3.4 Too prescriptive, stifling innovation

Over-reliance on technical specifications creates another problem. Our existing development controls focus on regulation of means rather than ends, as though correct technique is more important than getting the right outcome. This is known as a prescriptive, as against performance-based, approach to regulation.

Prescriptive specifications can date as technology improves, stifling innovation by discouraging techniques that were not available when the prescription was imposed, and which might achieve the desired outcome more cheaply or more effectively.

### 2.3.5 Anti-competitive

Most jurisdictions reserve to government the power to determine whether a development proposal complies with regulatory requirements.

This practice is inefficient and anti-competitive. It creates a public monopoly, because it restricts private practitioners from any involvement in the assessment of development proposals - even assessment of compliance with technical or non-discretionary requirements.

The necessary professional expertise could be obtained more cheaply and efficiently on an open market. Preserving an artificial monopoly costs tax- and rate-payers without resultant benefit.

### 2.3.6 Inadequate co-operation between local councils and authorities

Even within individual state or territory systems there is far too much inconsistency. Local planning is rarely regionally-integrated.

Investors in projects in more than one local government area can find that identical development proposals are considered straightforward in one locale and completely unacceptable in another. This variation cannot always be explained by differing local attitudes: sometimes the projects are on adjacent properties or on opposite sides of the street, but just happen to cross a council boundary.

### 2.3.7 No benchmarking or performance indicators

Governments in Australia do not know how well their development assessment systems perform or compare with one another. They do not have basic information - about approval times, local government costs, number of disputes, and so forth - available in a consistent format.

There is no attempt to measure the quality of the outcomes delivered by existing development assessments.

Without comparative data, it is hard to benchmark the performance of State and Territory systems - against each other or internationally.

Effective benchmarking could:

- improve the regulatory system through information exchange;
- create healthy competition between governments on regulatory reform; and,
- strengthen government accountability for planning outcomes.

## 2.4 CONCLUSION

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Australia's development assessment system penalises the economy unnecessarily, retarding investment and jobs growth.

It suffers from much unnecessary procedural and administrative variation.

constructive industry proposals follow which, if adopted, would address these problems and bring our development assessment system up to best practice level.

### **3 RECOMMENDATIONS: ESTABLISH AN AUSTRALIAN DEVELOPMENT ASSESSMENT BOARD TO CREATE A HARMONISED REGULATORY FRAMEWORK**

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To establish a best practice, harmonised framework for development assessment in Australia, the first step is for the Commonwealth, states and territories to agree on the need for co-ordinated reform.

Co-operation between our nine governments is the key to success. Industry is not proposing radical change to the workings of our federal system, or the kind of financial arrangements that underpin the national competition policy.

A clear precedent is the formation and implementation of a strategy to develop a consolidated Building Code for Australia. In the recommendations that follow, industry groups have acknowledged and drawn from the 1994 agreement of the Council of Australian Governments to establish the Australian Building Codes Board, while recognising the differences that exist between building and development control.

#### **Recommendation 1**

That Planning, Housing and Local Government Ministers oversee the preparation of an intergovernmental agreement on development assessment, for the endorsement of the Council of Australian Governments (COAG) by the end of 1998.

The development assessment reform we seek has cross-portfolio implications: in addition to planning it could, for example, bear upon local government, environment protection and heritage conservation functions.

Therefore, industry seeks an agreement on national development assessment that is signed by heads of government. Of the possible paths to COAG, we propose that the agreement be developed by Planning, Housing and Local Government Ministers and their advisers - the responsible parties - in consultation with local government, industry and community groups. This is in accord with the Prime Minister's More Time for Business statement.

It is critical that local government be a signatory to the intergovernmental agreement.

#### **Recommendation 2**

That the COAG agreement establish a harmonised best practice framework for development assessment in Australia, that:

- is cost-effective
- encourages performance-based approach to regulation;
- incorporates standard definitions and terminology;
- allows more innovation and variety in development;

- integrates all policies and controls that apply to a given site
- covers all procedural and administrative aspects of development assessment;
- is streamlined simple and accessible, and;
- promotes transparency and accountability in administration.

Harmonisation of development assessments will not be achieved unless all parties agree to common objectives. Industry proposes that the intergovernmental agreement enshrine certain overarching principles to bind all parties involved in the development and implementation of the new framework.

Our recommendation recognises that:

- the system must be cost-effective, having regard to the economic, social and environmental impact of development assessment processes, if we are to have a more efficient regulatory system;
- the system must allow for a performance-based approach, if it is to encourage policy-makers to focus on outcomes and enable industry to adopt advanced, innovative solutions;
- the system must incorporate plain english, standard definitions and terminology
- the system must encourage innovation and variety in development, rather than stock-standard development;
- the system must require integration of all policies and controls applying to a site, to facilitate strategic planning and to allow overlapping and inconsistent approval requirements to be reduced
- the system must be comprehensive, dealing with all procedural and administrative aspects of the development assessment process, if we are to gain the benefits of reform;
- the system must be streamlined, easy to understand, and easily accessible to the public, and;
- the system must be transparent and create clear accountabilities for administrators, including reporting requirements, if we are to have effective performance measurement and continuous improvement.

### Recommendation 3

That the COAG agreement establish a statutory board of management with significant private sector and local government representation, to be called the Australian Development Assessment Board (ADAB), to oversee the development and implementation of a harmonised national framework for development assessment and to produce model legislation and template instruments for assessment of development.

A dedicated, independent body is needed to drive the reform program.

Industry proposes establishment of an Australian Development Assessment Board (ADAB), as a joint initiative of the three spheres of government in co-operation with industry and community representatives.

Our aim is that the proposed ADAB emulate the administrative aspects of the Australian Building Codes Board - including efficient procedures and level of resources - while recognising that building and development control are distinct issues.

Once established, the ADAB would be responsible for developing the harmonised framework, subject to the guiding principles established in the COAG agreement.

The ADAB would be appointed by a ministerial council and manage a secretariat supported by the Commonwealth.

The Board would include representatives of the Commonwealth, States and Territories, local government, industry and the community. The ADAB would have an impartial, private sector Chairman, elected by the Board. Managers and staff of the ADAB would be appointed by the Board.

The ADAB's main functions would be to:

- oversee the development and implementation of a harmonised, national development assessment framework;
- codify development assessment laws and subordinate legislation,
- create model statutory provisions for development, and associated 'template' planning instruments;
- negotiate and create incentives for the gradual removal of State and Territory variations as necessary and appropriate;
- develop an agreed methodology for evaluating the economic, social and environmental impact of proposed development assessment laws and subordinate legislation;
- provide education, information, advice and interpretation on development assessment laws and subordinate legislation;
- consult community and industry in relation to implementation of regulatory reform of development assessment laws and subordinate legislation;
- encourage innovative development solutions through efficient, best practice regulation; and
- promote communication between governments in Australia.

Under the proposed agreement, the ADAB's model provisions would be given effect by Commonwealth, state and territory parliaments, with modifications and variations as necessary to ensure integration of the legislation into existing legal and administrative structures in each jurisdiction. Modifications and variations would be documented and consolidated by the ADAB.

#### Recommendation 4

That the ADAB be given twelve months to provide COAG with a plan for establishment of a harmonised Australian development assessment framework within the following five years.

The ADAB's first task would be to produce a budgeted and resourced five-year business plan for COAG approval.

The business plan would commit the ADAB to achievement of a harmonised framework for development assessment by the year 2005. It would incorporate performance objectives expressed as clear and measurable target outcomes. Performance would be linked to the appointment of board members including government representatives.

The ADAB business plan would be prepared after extensive consultation, including:

- production of a draft business plan
- a call for submissions, advertised nationally
- staging open consultative forums in each capital city to launch the draft plan; and,
- establishment of a dedicated web page

Once approved, the business plan would provide the framework for all ADAB activities. Progress against the ADAB business plan would be reviewed by COAG after five years.

## 4 BEST PRACTICE: THE INDUSTRY CONSENSUS

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Industry is united on the need for national regulatory reform of our current development assessment system.

To help define our reform agenda, we have taken the initiative and formulated proposals which, in our view, represent the core elements needed to establish a harmonised, best practice framework for development assessment.

To help define our reform agenda, we have taken the initiative and formulated proposals which, in our view, represent the core elements needed to establish of a best practice regulatory framework for development assessment.

The proposals have the full support of industry, and are intended to generate constructive debate about a new regulatory framework.

### 4.1 ESSENTIAL ELEMENTS OF A BEST PRACTICE FRAMEWORK FOR DEVELOPMENT ASSESSMENT

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(i) Industry proposes that Australia's new harmonised framework for development assessment be drafted to ensure delivery of five key community in a given locale:

- development that is consistent with the social, economic and cultural objectives defined for the region and for the local government area
- environmentally sustainable development
- development that ensures public health and safety of structures
- development that protects and where possible enhances amenity; and
- development that respects the rights of indigenous people

There is a limit to the policy objectives that development controls can achieve. If a given prohibition is not necessary to achieve at least one of these five outcomes, then it is probably redundant.

Development proposals should be assessed in terms of their ability to deliver five key outcomes defined by the local community.

Tight focus on defined outcomes will help governments rationalise regulation of land-use - clarifying responsibilities and reducing the confusing array of requirements (including referral and concurrence requirements).

(ii) Industry proposes that Australia's new harmonised framework for development assessment be regionally-integrated, and locally-administered

Local councils and authorities are best-placed to interpret and respond to community expectations about the use of local land. In particular, residents have a direct interest in planning outcomes in their locality.

We propose that responsibility for delivering quality planning outcomes be delegated to local councils as far as possible (with the qualifications given in discussion of major projects - see point (xii) below). Adequate resources should be made available to local government to discharge this responsibility effectively.

Greater delegation is the most effective way to eliminate unnecessary requirements for referral to or concurrence of State and Territory agencies. Presently, around 70% of referrals from councils to other agencies are redundant, being approved without modification.

Neighbouring councils can benefit by working together more closely on strategic planning. We propose that Councils frame local planning objectives in accordance with regional policy objectives set by voluntary regional organisations of councils (ROCs) or by the State or Territory Government.

An efficient, effective local government sector would be the single greatest asset to Australia's development assessment system.

(iii) Industry proposes that Australia's new harmonised framework for development assessment place responsibility for strategic planning on elected representatives - acting with the advice of appropriately qualified professionals in planning, architecture and urban design - and allow officials to focus on technical and compliance issues.

It is the role of locally elected representatives to set planning policy on behalf of the community. It is the role of council officers to administer the determined planning policy.

If adopted this recommendation would see a purchaser/provider model adopted at a local level. Under the purchaser/provider model one part of government has to become a purchaser of services and a range of government or private sector bodies may be engaged to provide those services:

"The move to a purchaser/provider arrangement not only improves efficiency but, if properly handled, can greatly strengthen the ability to deliver complex outcomes. The discipline of preparing a contract for the provision of services enhances the opportunity to concentrate on the outcomes to be achieved. Once someone has been given the responsibility for the achievement of an outcome a range of means to achieve the desired ends can be considered." <sup>7</sup>

Decisions should be delegated to those who are qualified to make them. This accords with the Small Business Deregulation Task Force's recommendation that decision-making be delegated to the lowest level practicable.

There is a clear need for councils to access a larger pool of professional and experienced personnel to administer the assessments they have established and introduce greater competition into the certification process.

One approach could be to establish Development Assessment Units (DAUs) within councils, with delegated authority to determine integrated development applications as a matter of State and Territory policy.

- DAUs would act as a pre-lodgement advisory panel for applicants, a clearing house for internal referrals of applications to other council departments, and a decision making body.
- DAUs would comprise administrative and technical representatives from town planning, health and building, engineering and other departments within council administrations when required.

(iv) Industry proposes that Australia's new harmonised framework for development assessment promote community consultation on desired local outcomes and community engagement in strategic planning, rather than ad-hoc public debate about individual development proposals

Defining desired outcomes for an area is a matter for the public through the elected council. Once defined, desired community outcomes can be incorporated into local policies or planning schemes.

We propose that local schemes be prepared within the framework of harmonised State/Territory legislation describing consultation processes, the format of schemes, their terminology and structure.

Schemes would be subject to periodic review to ensure that the system remains in touch with community expectations.

Better community consultation at the strategic or front end of the planning process would give more certainty to regulators and proponents of development. Under the current system, community interest and discussion is often only sparked by a particular application. It would be more sensible to debate desired outcomes for an area before adversarial contests are created over individual rights.

For example, the Victorian Government has moved to encourage greater community involvement in strategic planning by introducing a requirement that local councils prepare Municipal Strategic Statements.

Vancouver's "CityPlan" provides another model for this process. There, citizens were asked for ideas about Vancouver's future. Between 1992 and 1995 more than 20,000 people participated in developing a shared vision for Vancouver's future: CityPlan. On June 6, 1995 Vancouver City Council adopted CityPlan: Directions for Vancouver as a broad vision for the city to guide policy decisions, corporate work priorities, budgets, and capital plans. The city is now engaged in developing community visions at a neighbourhood level, with reference to the goals set in CityPlan.<sup>8</sup>

We propose that when a given application raises issues not contemplated by a strategic plan or local policy, the development assessment system must be sufficiently flexible to allow identification and interpretation of requirements for specific proposals.

Substantial variations from the strategic plan or policy may be significant enough to warrant amendments to the planning scheme itself. Amendments of a minor administrative nature could proceed under delegated authority. Proposals not contemplated by the strategic plan, or identified as particular cases warranting wider consultation or requiring substantial amendment of the planning scheme, would trigger full consultation.

- (v) Industry proposes that Australia's new harmonised framework for development assessment allow development without the need for approval, where this is consistent with the desired outcomes defined by council and the community.

Under this recommendation, the onus in development assessment law would be such that, where development is in accordance with planning scheme direction and requirements, it is presumed to be allowable unless an approval is expressly required.

- (vi) Industry proposes that Australia's new harmonised framework for development assessment allow for an outcomes- or performance-based approach (rather than a purely prescriptive approach) to control of land-use and development, as appropriate

Once desired outcomes are defined, planning policies, schemes and zoning classifications can be redrafted to contain performance objectives - as have been developed for AMCORD (the Australian Model Code for Residential Development).

It would be incumbent on the applicant to prove a proposed development achieves the performance objective established in the planning scheme.

To provide a safe-harbour where applicants prefer to have complete certainty, or where there is a common solution to a common problem, "deemed-to-comply" criteria that satisfy performance objectives should continue to be included in planning scheme documents.

- (vii) Industry proposes that Australia's new harmonised framework for development assessment be consistent with the national competition policy agreements, imposing competitive neutrality on the public sector at all levels and ensuring that competition is based on qualification and capability.

If the industry reform agenda is adopted, accredited certifiers will be able to compete with local councils and other authorities for work, thereby introducing competition into the certification process.

Suitably qualified professionals would be allowed to certify technical or non-discretionary aspects of the development assessment process that fall within the bounds of their technical competence.

Strict safeguards would be necessary to promote professionalism and penalise poor practices. Liability laws and levels of professional indemnity cover would need to be reviewed.

Industry envisages that local government would receive a financial benefit from removal of restrictions on competition, by sharing in the tranche payments to States and Territories under the National Competition Policy.

(viii) Industry proposes that Australia's new harmonised framework for development assessment create transparent and accountable approval processes.

Industry recommends that local councils be required to report publicly on:

- the number of applications received by type;
- the number of applications determined by type;
- the number of applications by type which were determined by delegated authority;
- the average processing time for applications determined by type;
- the number of outstanding applications and the age of those applications by type;
- the number of lapsed applications (i.e. breach of statutory time limits) by type; and
- a summary of matters currently under appeal - including cause of action (e.g. deemed refusal), costs to date, and the outcome where a matter is resolved.

Council reports would be provided to the relevant state or territory local government minister on a quarterly basis, and would also be included in the council's annual report. The minister would prepare and publish a quarterly summary of returns from all councils. Quarterly returns would be compiled onto a master database, accessible by the public on request.

Similar reporting requirements should be imposed on other consent authorities including commonwealth, state and territory agencies.

This information could be used to monitor aspects of the performance of all consent authorities, as well as the performance of the regulatory framework.

The information could also form the basis for improving interaction between regulators, business and community. For example, a recent consultancy commissioned by the Housing Industry Association compared approval times for specific development categories within Melbourne councils and led to a productive industry-local government roundtable on performance benchmarking.

(ix) Industry proposes that Australia's new harmonised framework for development assessment be written in plain English, using consistent definitions and terminology.

Plain English is crucial. Specialist language often renders planning law and instruments opaque to the community.

Where special terminology is necessary for administrative purposes, it should be clearly defined. Definitions should be consistent from one jurisdiction to the other, including the methods used to calculate plot ratios, floor-space ratios, and so forth.

(x) Industry proposes that Australia's new harmonised framework for development assessment involve no more than six steps in the assessment of development proposals:

- pre-lodgement
- application
- consultation
- assessment (including referrals and concurrence)
- decision (including appeals)
- implementation and compliance

Consistent with the findings of the Local Approvals Review Program (LARP), the steps involved in the process of obtaining development approval will be simplified and standardised around the country.

Additionally, however, it is proposed local government authorities establish formal pre-application consultation procedures to ensure they receive all necessary information to complete approval assessment procedures.

(xi) Industry proposes that Australia's new harmonised framework for development assessment integrate all approval requirements as far as possible, and eliminate unnecessary referral and concurrence requirements to create greater consistency

Existing approvals processes will be collapsed into one centralised system - a "one stop shop" covering applications for subdivision, development, building, and rezoning.

Key features of industry's proposed integrated system are:

- single approval pathways;
- one approval decision - all aspects of the development considered simultaneously;
- flexibility for applicants to obtain staged or sequential approvals;
- one consent authority;
- one administrative body; and
- assessment criteria located or referenced in a single document.

Requirements for referral and concurrence would be reduced according to the following program and principles:

- eliminate all unnecessary referrals;
- decision making at one level of government - local government;
- minimise the number of decisions required to approve an application by converting requirements for concurrence to referral only; and
- gain greater input from referral agencies up front to establish consistent assessment policies.

Statutory time limits would be imposed on all referrals - particularly referrals requiring concurrence. "Deemed" concurrence and referral should be granted where such time limits are breached without sufficient explanation from the referral agency.

State and territory agencies would specify up front all criteria they will use to assess development applications, for use by local authorities. All criteria should be specified or re-specified in performance based and deemed-to-comply terms.

(xii) Industry proposes that Australia's new harmonised framework for development assessment incorporate flexible procedures to recognise the unique nature of projects with national, state or regional significance (e.g. fast-tracking or ministerial call-in powers)

Projects of national, State or regional significance often experience the lengthiest delays. Proposals to construct new infrastructure, crossing council boundaries, are obvious examples.

If industry's proposals are adopted, the development assessment system in each State and Territory would incorporate formal procedures to allow the Minister for Planning to decide applications of national, state or regional significance, subject to an obligation to observe due process and consult with the public where this has not already been done.

Additionally, it is proposed that full-time development facilitators be employed by each Government to steward major project proposals through the approvals process - identifying and eliminating bureaucratic bottlenecks and logjams.

(xiii) Industry proposes that Australia's new harmonised framework for development assessment incorporate efficient appeals processes that allow for use of legal, non-legal and alternative dispute resolution mechanisms

An integrated system of planning and development appeals would be introduced in each State and Territory. The jurisdiction in such a system should enable the consideration of legal and merit issues, enforcement applications and prosecutions.

Industry proposes that the system include the following features:

- a specialist planning and environment court established at the level of a state or territory supreme or district court;
- comprehensive jurisdiction for all land and development appeals, associated enforcement actions and supervisory powers;
- a specialist tribunal available as an alternative to the court with a parallel jurisdiction to determine merit appeals, which is non-legal in nature and operation
- a pre-trial facility to resolve appeals;
- limited appeal rights from final determinations;
- a minimum of formality; and
- a fast-track forum to consider minor technical variations to and interpretations of planning codes and schemes.

Each jurisdiction should establish a specialist, non-legal tribunal as an alternative to legal forums. A good example is the Victorian Building Appeals Board which deals with appeal hearing or hearing technical amendment within a maximum 21-day turnaround. Alternatively, the board also has a fast track mechanism to determine disputes and technical amendments.

Alternative Dispute Resolution (ADR) including mediation or arbitration would be encouraged.

Parties would have recourse to an arbitrator authorised by the court and funded by the parties at their discretion. Arbitration would take the form of a preliminary or directions hearing. Attendance at the hearing would be compulsory. Resolutions of the arbitrator would be binding on both parties and final.

Broad scope would be given to justices and commissioners to award costs and damages in merit appeals and on issues of law.

(xiv) Industry proposes that Australia's new harmonised framework for development assessment exploit the vast potential of information technologies to make development assessment systems simpler and more accessible

If adopted this recommendation would encourage State and Territory governments to invest in the development of relational and integrated computerised land information systems.

The key purpose of such systems should be to:

- summarise all development constraints and conditions (schemes, plans et cetera) for all land within the State or Territory by lot;
- hold information on all pending, approved and declined developments applications for all land by lot; and
- any geological or technical information appropriate for development assessment and planning policy purposes.

The system would be fully integrated with the land titles register, and the goal is to have it on line in every council and consent agency in each State or Territory by the year 2000.

The system would also be used to track development applications through the approvals process.

Potential also exists to communicate local strategic planning objectives more directly to the public, through visualisation applications and the internet.

(xv) Industry proposes that Australia's new harmonised framework for development assessment provide that, where developer levies exist, they based on the principles of demonstrated need, nexus, equity and accountability

If adopted this recommendation would see State and Territory governments adopt the four core principles for the levying of development contributions recommended by the 1989 Simpson NSW Commission of Inquiry, namely:

- need - need for facilities must be clearly identified, including when the facility will be needed and how it will be provided;
- nexus - a reasonable nexus must be established between the proposed development and the required public facilities;
- equity - apportionment of costs must be fair; and
- accountability - moneys derived from levies must be used only for purposes for which they were generated.

(xvi) Industry proposes that Australia's new harmonised framework for development assessment be accompanied by a dedicated education and training program.

Industry recognises that the success of reforms to create a harmonised development ASSESSMENT system will depend on the level of education and training provided to practitioners in both the private and public sectors. In particular, the introduction of performance-based development ASSESSMENT, and private certification, will create demand for new skills.

An example is the progress to date with the implementation and training programs supporting AMCORD.

AMCORD was not intended to be applied as a mandatory or uniform design code, but it was intended to establish “a framework, principles and processes for a more consistent regulatory environment for those seeking approval for residential projects”, and “greater consistency in the regulation of development across State boundaries”.

AMCORD was formally adopted only in 1995, yet its interpretation, format and implementation and training program already varies significantly between the States and Territories. Some jurisdictions are pursuing statewide implementation, consultation and education programs. Other jurisdictions, such as NSW, are encouraging council variations to the NSW Code, and not extending education programs to industry (who must apply the Code's approach).

The ADAB should liase closely with all relevant tertiary education providers, professional and industry associations to ensure that adequate programs are in place to meet demand for new skills that reform will create.

## 4.2 NEXT STEPS

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Industry's proposals for national reform of development assessment processes are realistic and achievable.

To act on our recommendations, industry proposes that Australia's Planning, Housing and Local Government Ministers take the following next steps:

- participate in or ensure effective portfolio representation at a national regulatory reform workshop convened by the Commonwealth, to reach consensus with industry and local government representatives on a new, harmonised regulatory framework for development assessment in Australia; and
- hold a joint meeting of Planning, Housing and Local Government Ministers before June 1998, to prepare an intergovernmental agreement on development assessment for adoption by the Council of Australian Governments.

## APPENDIX - INDUSTRY

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### STAKEHOLDERS: WHO WE ARE

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Together, our coalition represents almost 170,000 large and small businesses within the property industry - from blue chip publicly-listed companies to professionals and tradesmen.

The Commonwealth Government estimates that in 1997 the Australian property industry had a turnover in excess of \$101 billion - greater than the mining, vehicle, construction and primary industries combined.<sup>9</sup>

A brief description of the industry groups supporting this submission follows.

#### **Australian Council of Building Design Professions**

The Australian Council of Building Design Professions Ltd (BDP) is the peak body for the design professions comprising the following members -

- Royal Australian Institute of Architects
- Association of Consulting Architects Australia
- Institution of Engineers Australia
- Association of Consulting Engineers Australia
- Australian Institute of Quantity Surveyors
- Australian Institute of Landscape Architects
- Royal Australian Planning Institute Inc.

The existence of BDP allows the development of a cohesive position to respond to Government and Parliamentary Inquiries for issues that are relevant to the design professions.

BDP member organisations still retain their individual identities, policies and positions but are able to promote a unified position when necessary through BDP. (Note that one member of the BDP, the Royal Australian Planning Institute, has restricted its support for this document to the four key recommendations and the executive summary.)

Member organisations which comprises BDP have a total membership in excess of 80,000 members.

## **Housing Industry Association**

HIA is a national peak residential, building and development industry association, with 30,000 members comprising all active areas of the building and development industry. In particular:

- Large building companies concentrating on higher density development in the capital cities;
- Builder developers catering for multi-lot volume and individual residential developments;
- Large, medium and small builders of custom-designed and project homes;
- Smaller builders relying on renovations and additions work;
- Trade contractors across all sectors of building;
- Building material manufacturers and suppliers;
- Legal, architecture, town planning, building and urban design, and other related professions supporting development and building procedures; and,
- Financial/banking organisations, including forecasting services.

HIA's mission is to promote policies and provide services that enhance members' business practices, products and profitability consistent with the highest standards of professional and commercial conduct.

## **The Institution of Engineers Australia**

The Institution of Engineers Australia (IEAust) is widely recognised in Australia and overseas as the key body representing the engineering profession in Australia, and as responsible for professional recognition and certification.

IEAust was formed in 1919. It has over 64,000 members and represents all disciplines and branches of engineering.

IEAust promotes and advances the science and practice of engineering, ensuring that the community is well served by its engineering resources. In addition, it encourages the development of Australia's technological capacity in a way that ensure sustainability and maximises its contribution to the economic growth of the nation.

IEAust accredits engineering courses in Australia, operates programs of continuing education and professional development for its members and involves itself in community debate on relevant issues.

## **Master Builders Australia**

Master Builders Australia was established over one hundred years ago, as a federation of state and territory Master Builders Associations. It represents over 17,000 member companies, covering 95% of all sectors of the building and construction industry including housing and commercial builders, major contractors and subcontractors.

One of the key objectives of the Association is to lift the standards of all facets of the building and construction industry, including the promotion of world best practice.

## **Property Council of Australia**

The Property Council of Australia is the leading industry association for owners of commercial property. It represents the interests of those who use land or invest in the built environment to generate economic returns.

Formerly the Building Owners and Managers Association, the Property Council was established in 1968.

The Property Council's 2,200 members around the country own and manage assets exceeding \$80 billion in value, including office buildings, shopping centres, industrial property, residential property and hotels.

## **Real Estate Institute of Australia**

Founded in 1924, the Real Estate Institute of Australia (REIA) is one of the longest established industry organisations in Australia, and is the peak industry organisation representing the real estate sector.

The REIA has eight state and territory member organisations with a national membership of around 6,500 businesses and 40,000 real estate employees.

Broadly, the objectives of the REIA are:

- To identify, formulate, encourage and promote public policies that contribute to an economic and political environment favourable to the real estate industry, and small business generally;
- To foster national uniformity in the areas of regulation, education, customs and standards of Australian real estate practice;
- To represent the Australian real estate industry internationally.
- Royal Australian Institute of Architects

The Royal Australian Institute of Architects (RAIA) is a national body which was established in 1929 by the architecture profession. Its mission statement is to unite architects to advance architecture. The principles which guide the RAIA in that mission are to:

- Represent and promote the interests of members;
- Promote the appreciation and advancement of architecture;
- Act as a politically non-aligned professional association;
- Undertake appropriate research and maintain high standards and reliability in the provision of RAlA programs and services;
- Provide a forum for discourse and fellowship;
- Encourage policies and practices which promote environmental responsibility and awareness and the principles of conservation and sustainable development;
- Enhance the standing of architects within the community; and,
- Ensure the maintenance of appropriate standards in architectural education.

Currently there are approximately 8,000 members of the RAlA.

### **Urban Development Institute of Australia**

The land development and housing industry makes a major contribution to the national economy and the Australian way of life.

The Urban Development Institute of Australia (UDIA) represents the major players in this industry.

Objectives of the UDIA include:

- To promote the advancement and improvement of the urban development industry;
- To secure the mutual support and co-operation of all urban developers and others concerned in the urban development industry;
- To present a common point of view on matters of mutual and joint interest to all authorities which may be concerned in urban development;
- To educate and conduct educational public seminars and conferences for the benefit of both the public and members on topics related to the development of industry; and,
- To secure a general acceptance of standards and principles conforming to requirements of good town planning, economic soundness, ecological sustainability, high ethics and public interest.

Continuing cost effectiveness and efficiency of this industry are crucial to the well being of many sectors of our community.

- 1 *Building Regulation Review Taskforce Final Report, Microeconomic Reform Building Regulation, November 1991, p.7*
- 2 *The Albany Consulting Group, An Evaluation of the Local Approvals Review Program (LARP): Final Report, prepared for the National Office of Local Government (June 1996)*
- 3 *More Time for Business, Statement by the Prime Minister, the Hon John Howard MP, 24 March 1997, pp.44-45*
- 4 *Hon Warwick Smith MP, Minister for Sport, Territories and Local Government, Media Release, 29 April 1997*
- 5 *Time for Business, Report of the Small Business Deregulation Task Force, November 1996, pp.69-70*
- 6 *ibid, p.70*
- 7 *J. Mant, Urban Management and Public Policy, Regional Planning Partnership for the Inner Metropolitan Region of Sydney (October 1997)*
- 8 *For more information see*  
*<http://www.city.vancouver.bc.ca/commsvcs/planning/cityplan/indexcp.htm>*
- 9 *Building for Growth: Foundations for Australia's Future, Department of Industry, Science and Tourism, February 1998, p.5*