SUBMISSION BY THE

Housing Industry Association

to the

Productivity Commission

on the

Business Regulation Benchmarking - Role of Local Government

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1. About HIA

HIA is Australia's peak residential building industry association, representing over 42,000 members nationally.

HIA members comprise a diversity of residential builders, all major building industry manufacturers and suppliers, residential developers, small to medium builder members, contractors and consultants to the industry. In total, HIA members construct over 85% of the nation's new housing stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building and development industry.

2. Local Government Regulation and the Housing Industry

Housing is a highly regulated industry. With legislation and regulation in place at all levels of government, HIA has, in this submission focussed on the components that are delivered by local government and affect the performance of the housing industry.

Home builders must comply with legislation, regulations and codes from all levels of government. Regulations typically relate to Federal and State building, planning, environmental and occupational health and safety. These are overlaid with local laws, policies, fees and levies.

Whilst many of the regulatory requirements on housing are applied by Federal and State governments, local governments are often responsible for implementing these requirements.

In addition local government can influence residential development through the development of local policies and associated frameworks as well as being a key player in both building and planning compliance.

The activities of local government in carrying out duties as specified in state and federal legislation and through implementing local requirements can affect the ability of the housing industry to perform well.

2.1 Regulatory Structure

2.1.1 Planning

State planning legislation is administered through local government and affects the housing industry. Typically state planning controls include subdivision requirements for new residential estates, along with siting and design requirements for new homes. Whilst not all single dwellings require planning approval, all subdivisions and multi-unit residential developments, including apartments do. The process to be followed by local government planners in exercising their judgement about a planning application is set out in state legislation and reflected in local planning schemes and documents.

Local Government has the ability to vary state planning measures and tailor solutions to meet their own local requirements. Usually a process is outlined in the state legislation to dictate how this is done (Planning Scheme Amendments, Development Control Plans, etc). Typically it requires consultation with local communities, approval of the Council and at times approval of the Planning Minister but not always.

Local Government typically controls local zonings and general community layout. They have the ability to incorporate tailored solutions for their own communities into planning schemes through the development local policies and planning scheme overlays. Local Government's develop and incorporate these into their planning schemes to guide decision making on applications.

2.1.2 Building

In terms of building a home, the Building Code of Australia (BCA) provides national building requirements to ensure that a home is safe and technically sound for habitation. The BCA protects homebuilders and homebuyers alike which means that homes can be purchased with the security that the construction meets a set of nationally agreed standards. The BCA is subject to state variations which erodes the national consistency of the code.

The BCA is applied by local government and private building surveyors. This occurs differently across Australia, but includes both the issue of building approval and the undertaking of inspections before occupation, to ensure that the house is built to the approved plans and is safe for habitation.

In building, the role of local government is largely that of an enforcer – and issuer of appropriate documentation to certify that home designs and homes when built conform to standards set by all three tiers of government. HIA will make comments in the submission about the way in which local government functions in this area.

2.1.3 Environment

Local government also has a key role in implementing federal and state environmental laws. In the main, these laws relate to protecting sensitive areas, vegetation or places of significant value, such as heritage items. These laws are applied through the planning and building process.

However there are additional environmental laws that are applied by local councils depending on how individual states manage issues such as air, noise and water pollution, native vegetation removal, and the like.

Local government is generally responsible for monitoring and enforcing these laws including taking responsibility for the issuance of fines and enforcement action.

There are generally limited local laws applied in this area, but from time to time this could occur.

Environmental laws affect residential development and building work in relation to designating areas of land available for development, affecting the actual design of development projects, the design of houses and the ongoing management of construction.

2.1.4 Local Laws

Other areas where local government play a role in the building process include the development and administration of "local laws" These are developed by individual councils in response to a local need or requirement. Matters covered by local laws affecting the housing industry include many common building site control measures such as provision of temporary fencing, site signage and allowed hours of operation on a site.

2.1.5 Other matters

Many local governments also administer fees for development assessments applications as well as fines and undertaking proceedings in relation to enforcement of planning and building matters on site.

2.2 Impact on housing supply

The residential development and building sector is subjected to requirements from all three levels of government - Federal, State and Local. Excessive control and regulation over and above the technical requirements of the BCA, delays in the processing of applications at a local level and excessive local requirements in planning, along with onerous local laws and fines associated with non-compliance present as the main barriers to the delivery the supply of housing.

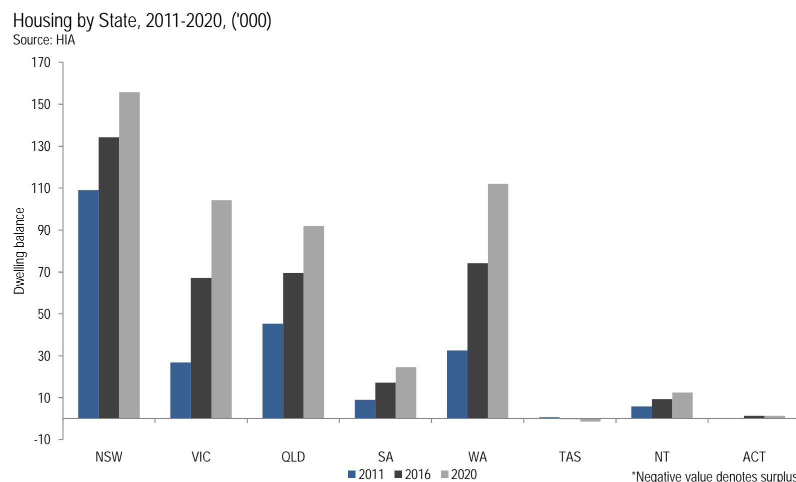
The appropriate administration of these matters is critical as the housing industry is constantly battling to deliver sufficient housing supply to meet the demand. Each year there is an underlying demand for new housing which is not met in most states and territories.

HIA estimates that Australia will require in the order of 1.6 million homes over the nine years to 2020, but if we build at the average rate of the last 20 years, many areas of the country will have a critical housing shortage by 2020. Under such a scenario the cumulative national shortage could approach 500,900 dwellings.

Under the same scenario, the projected dwelling shortages at 2020 in the other states and territories are: 104,200 dwellings in Victoria; 112,000 dwellings in Western Australia; 91,800 dwellings in Queensland; 24,600 dwellings in South Australia; 12,500 dwellings in the Northern Territory; and 1,400 dwellings in the ACT. Tasmania could reach a projected surplus of 1,300 houses by 2020.

Seven of the twenty LGA's with the largest projected housing shortfall by 2020 are in Western Australia, six are in Queensland, five are in NSW, and two are in the Northern Territory.

The greatest housing supply challenge is in New South Wales which, under HIA's medium build-rate scenario, could reach a dwelling shortage of 155,700 dwellings by 2020 in the absence of sustained policy reform. Arguably, the greatest impact of local government regulations on housing development exists in NSW which may explain this chronic shortfall.



HIA anticipates, however, that the amount of regulation affecting housing will take a step up in the coming years. Further national policy changes are envisaged in areas such as climate change, life cycle assessment, broadband and accessibility. The implication is that there will be further costs to new housing relative to the price of established housing. The risk to the industry is that underlying demand for new housing will be pushed into the established housing market.

It’s a delicate balance that is not well understood by any level of government, but even less so by local governments.

As legislation and regulation is a key part of the industry’s ability to perform well, HIA argues that substantial policy reform is required, and can be achieved, to ensure Australia begins reducing its shortage of dwellings.

It is critical that local government, which operates within this complex legislative framework, is performing well and that HIA’s comments on the “regulatory activities of local government that materially affect costs incurred by business” (p5) are considered.

3. Key Issues for Housing

As identified in the Issues Paper, local governments, whilst declining in numbers as a result of amalgamation processes, are essentially established and controlled by the states.

The Paper rightly identifies that the role of local government is "broad and varies substantially between jurisdictions"[1]. Yet it also identifies that the "range and scope of matters covered by local government and the extent to which local governments' regulatory activities can materially affect business costs is potentially significant, especially for small business".

The Paper states that local governments are responsible for the delivery of a broad range of services and delivery of outcomes on behalf of other levels of government. The Federal Government largely provides funding for which it expects local government to deliver certain outcomes. This is particularly relevant to the delivery of large road projects – which are filtered through state and local governments for delivery.

> "currently the main way the Commonwealth Government influences local government outcomes is by funding particular service provision activities (notably the construction and maintenance of local roads and other types of local public infrastructure"[2]

In the section titled "Scope of Regulatory Activities" it outlines that state legislation is also administered through local government - so most of the activities, actions and requirements of local officers is predetermined by what is in state acts or regulations.

It also outlines in the same section of the report that:

> "Local Governments also have varying capacities to make 'local laws' provided they are consistent with 'good governance' and are not precluded by other legislation."[3]

The issues paper also identifies that "The main areas where local governments have a substantial regulatory involvement include:

- Planning and land use including open space and foreshores
- Building and construction
- Environmental issues, including native vegetation protection and control of pests, animals and plants
- Waste management
- Community health services and public safety, including some environmental monitoring in areas with potential for broad averse community impacts."[4]

HIA notes the Commission's use of the term "regulatory involvement" rather than identifying local government as the regulator in all of these areas – in many cases they are carrying out actions set by another tier of government.

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[1] Australian Government Productivity Commission, *Business Regulation Benchmarking – Role of Local Government Issues Paper,* September 2011, p.3.

[2] *Ibid*, p.10.

[3] *Ibid,* p.12.

[4] *Ibid,* p.13.

The Issues Paper also looks at possible sources of unnecessary regulatory costs. In respect to the possible sources of unnecessary regulatory costs, HIA has focused on the following aspects:

- inconsistent application of regulatory requirements which triggers changes in the operations of a business in order to achieve compliance
- excessive time delays in obtaining responses and decisions from regulators and
- unnecessarily invasive regulator behavior, such as overly zealous information requests.

HIA considers these to be the most common experiences for many of our members who interact with local government.

Many of the problems faced by builders when dealing with local government relate to the plethora of planning requirements and delays in the administration of the planning and building system. Particularly in planning there are long delays experienced in processing applications and local governments are frequently unable to meet statutory deadlines.

With so much legislation and regulation in place, and so many seemingly minor matters requiring planning approval, staff are generally overloaded which contributes to the inability to meet statutory deadlines. Whilst there are mechanisms to appeal these delays in some jurisdictions - this is often a costly and time consuming process of itself, therefore infrequently used.

This response seeks to provide the Productivity Commission with an outline of how the industry interacts with local government in its planning and building functions – along with substantial comment on the role and experiences with local laws which are generated by individual local governments.

HIA will also cite examples of local councils duplicating regulations - taking on responsibility for issues which are covered by other state or national legislation, adding undue delays and complications to the local approval process.

As outlined the performance (or similarly underperformance) of local government in both planning and building substantially and materially affects the outcomes of the housing industry. It directly affects the industry's ability to meet demand for housing. Any moves to improve the performance of local government by either benchmarking certain aspects or reducing overlap in regulation would be welcomed.

4. Regulatory Activities undertaken by Local Government

4.1 Planning Regulation

All Australian jurisdictions have overarching state planning legislation which is administered by local government. The Productivity Commission's recent study into Planning, Zoning and Development Assessment study highlighted a number of differences in state based legislation along with the variances in local governments dealing with planning and zoning. It also looked at the possibility of benchmarking performances across local governments.

The Productivity Commission identified that "the regulations and agencies involved in planning, zoning and development assessments constitute of the most complex regulatory regimes operating in Australia."[5]

State Planning Acts generally dictate planning requirements as well as the overarching planning processes to be followed by local officers to process applications. Also many of the states set a framework in their planning legislation for charging applicable application fees as well as set up the charging mechanisms for infrastructure required to support for housing development (development contributions).

So whilst state government legislation sets the broad framework for planning and decision making, local governments carry out the day to day decision making in planning.

Local Government has some ability to tailor local planning schemes to meet specific local conditions through the implementation of local zoning controls, planning overlays and local policies which form part of planning schemes and must be taken into consideration by local government planning officers when making decisions.

Whilst all homes in Australia require building approval, not all housing requires planning approval. This requirement varies from state to state and is often in the control of local governments. For example under Victoria's Residential planning code - which forms part of all planning schemes, a planning permit is required if an allotment is under 300 square metres, and councils have the ability to vary their own planning scheme to require a planning permit for houses on allotments of less than 500 square metres. The requirement is varied by planning scheme amendment, which ultimately requires the approval of the Minister for Planning, but the provision is there for the variation to be made.

Once a house application is in the planning process, local government generally has control of the process. When a house requires planning permission it adds more time and to the process and generally more building and other requirements than for those houses that only require building approval.

Until recently, in NSW the over 80 per cent of housing applications required both planning approval and building approval. They were subjected to locally developed standards for their design and construction, removing much of the ability for the volume building process to function. The introduction of the NSW Housing Code through a state planning policy has dramatically removed these impediments with the number of houses able to take advantage of the single approval process (complying development) increasing year on year.

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[5] Australian Government Productivity Commission, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment: Productivity Commission Research Report*, April 2011, p. 26.

In South Australia, the planning legislation has the capacity to apply a state based residential code. However, the state government has given local government the authority to determine when they will permit dwellings to be 'code assessable'. No councils have provided for this in their planning schemes therefore all dwellings still require a planning permit.

Delays in the planning process have a significant impact on the residential building industry, in particular the operational competitiveness of small to medium sized building companies. When poorly administered, local councils planning and building processes do negatively affect the cost of housing. Building companies and the land owners face compounding holding costs whilst awaiting the necessary approvals.

4.1.1 Planning Issues for the Commission's Consideration

The following factors influence the ability of local governments to operate as a regulator and make efficient planning decisions based on state planning legislation:

- Each State and Territory has its own planning legislation, much of which is administered by Local Government.
- Variances between the various state legislation means that local governments in each of the states are generally operating their planning decisions under slightly different types of processes including advertising of applications, statutory timeframes and so forth.
- Despite each of the State's Planning Acts having many similar guiding principles, there is generally little consistency between the triggers for town planning applications in respect of new housing. Planning permission for single dwellings is considered to be a disadvantage as the process is lengthy and therefore more costly than if a building permit only is required.
- Local governments have the ability under most state legislation to develop their own standards - through local planning schemes - which can vary state based or set development standards to meet so called "local" requirements. These are enacted through planning scheme amendments or other planning documents, both statutory and non-statutory. Many do not require the endorsement of the state Minister or agency.
- While some differences in policy between local government areas might be justified due to special geographical or local characteristics, in many cases the reasons for policy differences are not clear and are hard to justify.
- There is often conflict between the State Government's strategic development plans (such as Melbourne 2030 and the 30 year plan for Greater Adelaide) and growth policies and local housing strategies administered by local government.

  An example in relation to the recently released State Government 'blueprint' for Adelaide – the '30 Year Plan for Greater Adelaide' which amongst other things seeks to increase the ratio of infill development to fringe development from 50%/50% to 70%/30% over the next 30 years by increasing housing densities in the built-up areas generally and by a focus on corridors and TODs to accommodate the city's growth. However unrealistic this target may be, the objectives of Government as espoused in this strategy are constantly challenged by some local governments with the result that development policy and attitudes of the authorities are often inconsistent. This results in frustrations to the industry, delays in development approvals and leads to significant costs in some cases.

- Adjoining Councils may have different “local” development requirements and implement these through planning scheme amendments and local policies - which has cost implications for housing companies and will vary the potential for housing development between municipalities.

- Local Governments also exercise control over developments through planning permit conditions - which are often onerous, extend beyond the requirements of the Building Code of Australia and are costly to implement. Planning permit controls often request items which are not legislated for elsewhere and often involve more cost for the construction of a home.

- State based legislation also sets the parameters for Local Governments to determine and collect development levies which contribute to the funding for local development infrastructure to support housing development. Many councils seek funds from developers and homebuyers for facilities which are considered to be well beyond the basic development infrastructure the levies should fund. The charges have increased dramatically with sometimes very little effort from state governments to either limit or cap the charges. Variations in these costs across local areas is greatly affecting housing affordability. (Appendix 2 case study 2 highlights this problem).

- Local Government also tend to implement their own planning policies by stealth. Although not regulated or part of the planning scheme they have been known to present to applicants what the industry terms “*under the counter”* polices. These policies often detail a desired outcome from a Council perspective rather than what is in the planning scheme. They promote the policies to applicants that are usually higher than the minimum requirements – often costing more and placing more onerous requirements on developments. This also leads to confusion within the building industry as applicants are unclear on what the minimum development requirements are for any given project until they commence the application process.

- Some local policies which are inserted into planning schemes are considered to be cumbersome unwieldy and open to interpretation. The SA Planning System (comprising the Development Act, Planning Strategy and State & local policy contained in the Development Plan), remains a difficult set of requirements to follow despite attempts in the past and more recently to ‘reform’ it and create greater consistency in expression and content. It remains a difficult document to follow especially for the lay-person or small builder who will often need to retain professional planning advice in order to ascertain what might be permitted and what might not.

- Some local governments though planning policy or planning conditions aim to impose affordable housing quotas on developments. This might be that a developer is to provide 20 per cent of units in a new development as “affordable housing”, possibly due to Commonwealth and State Government funding of public and affordable housing is not keeping up with community needs. Governments are increasingly shifting the burden of funding new affordable housing to the private sector rather than confronting the matter issue as a broader community issue requiring funding from general rates and taxes. Planning legislation should not be seen as the mechanism to impose social objectives such as affordable or public housing into the development process. Approaches such as inclusionary zonings and housing quotas imposed on new developments through the planning system are a tax on new housing as the costs incurred by developments in subsidising a particular form of housing must invariably be borne by the new home-buying public and not the general community and other options should be considered.

4.1.2 Time delays

Local Governments also regularly fail to meet statutory time frames set out in state legislation for the processing of planning applications. This has dire consequences for the housing industry. Every day of delay adds to the cost of the development through "land holding costs" that is the cost of financing the property as the applicant obtains permission. Despite some Councils being poorly resourced compared to their workload, in most cases Local Governments appear to have a blatant disregard for maintaining statutory deadlines and there is little penalty or comeback for failing to meet regulatory timeframes.

In terms of applicants having recourse in relation to planning delays, in South Australia, applicants can lodge an appeal to the ERDC (planning appeal court). This process is not only time consuming but costly with the outcome not being certain. In Victoria a similar situation exists - if a Council has "failed to determine" an application within the statutory time frame – an appeal to the Victorian Civil and Administrative Tribunal (VCAT) can be made. But this is a timely process with delays of up to 9 months in some instances to be heard. In NSW, a deemed refusal application can be lodged with the Land & Environment Court after the statutory time has passed. Queensland recently introduced a 'deemed approval'

In relation to the request in the Issues Paper about "unnecessarily invasive regulator behavior, such as overly zealous information requests", Victoria's Planning Act allows for Councils to request further information up to 28 days after a planning application has been made. Multiple, duplicative and unnecessary requests for information are often presented to applicants which appear in many cases to be a delay tactic. In many cases the information is already presented in the application.

Requests for "further information" from local government officers often require expensive consultants' reports and planning officers may not always have skills to assess these reports. For example reports on sustainable building practices, coastal hazard vulnerability assessments, native vegetation and threatened species assessments, green transport plans and the like.

In relation to pre-lodgement meetings often held between councils and applicants, HIA members have found that requests for specific information tend to be made verbally and are not always backed up in writing, as either a file note or a formal advice. This creates a 'to and fro' situation whereby the applicant thinks they understand all that is required by the local council but it is open to the council to request more information at a later date or completely alter their position, for example where staff change during the assessment.

4.2 Building Standards and Approvals

There are two key elements to the regulation of building approvals by local governments:

- Building standards
- Building approvals including building construction management

In the main, local government is not responsible for regulating building standards or the building approval process.

The Federal Government, through the Australian Building Codes Board, in conjunction with State and Territory administrations, is responsible for the development of building standards. These are delivered through the Building Code of Australia (BCA) but may be supplemented by state building legislation. There is an Inter-Governmental Agreement which facilitates the development and implementation of the BCA in this manner.

States and Territories are solely responsible for the development of building legislation that sets out the manner in which the BCA is referenced and sets out the building approval and construction process.

Local Government plays a key role in administering both of these elements. Local government and private building surveyors operate under the State building legislation to carry out the functions related to building approvals. The role of the building surveyor is to ensure building will comply with the requirements of the BCA and any accompanying state variations. In addition they administer state building requirements for the granting of building approvals and they oversee on site construction, again to ensure compliance with the BCA and building legislation.

In some states, local government has a direct regulatory role on building sites through the application of local laws.

4.2.1 Local government overriding the BCA

The BCA is a national document which provides a suite of technical building standards for all types of buildings including housing.

Local government is essentially the *enforcement agency* being the body responsible for checking that various building regulations and standards have been met, in tandem with private building certifiers to varying extent, except WA where private building surveyors will be introduced under the new Building Act 2011.

4.2.2 Building approvals and inspections

HIA has observed that where private certification has been implemented in building surveying significant improvements in the time frames for building approval and therefore overall cost of building have been realised. For example in Victoria, private certification of building saw the process for achieving a building permit for a new dwelling drop from about 24 weeks to a week or less immediately.

Local government competes with private certification in every state of Australia, apart from Western Australia where it will be introduced in 2012. From a local government perspective, this has created competition in the application fees, inspection fees, processing times and response times for inspections. Each state has a different scope in what actions are solely the responsibility of the local government authority and what can be undertaken by the private sector.

In South Australia, and the proposed Western Australian scheme, highlight the less efficient operation for private certification. In these states, a private building surveyor can prepare a building approval (permit) however they are required to then pass this to the local council who is responsible for issuing the actual approval. This double handling of an application underutilises certification and adds time and costs to the building approval process.

The concerns arise where the two groups have an overlapping function or where they compete for the same function. For example, in NSW local government's authority overlaps that of the private sector during construction. In theory, where an accredited certifier is appointed to oversee building inspections, the local government has no role 'onsite'. But they retain responsibility for 'offsite' activities, for example damage to public property, noise controls, sediment and erosion controls or water pollution. These responsibilities fall under the local government's public responsibility. However, the exercise of these functions is poorly managed by many local councils. They have taken on a 'policeman' role focused on both the building work 'on and off site' and of the work of the accredited certifier.

This ultimately plays out in costs being added to the process, whether through fines or levies. For example, Parramatta City Council and Ryde City Council each have a policy of charging an 'Environmental Enforcement Levy', which covers the costs associated with potential investigations of complaints or conducting audits linked with development under construction or after completion, regardless if the site is or was under control of a private certifier. This policy assumes the applicant/builder will carry out activity that is non-complying with the development consent.

Builders are often faced with fines for infringements outside their construction site. The structure of penalty infringement notices is that once issued they cannot be unissued by a local council. However HIA has numerous examples where the builder can show evidence that another party was responsible for the infringement – such as waste or sediment control. The complexity of fighting these penalties means that many simply pay the fine.

4.2.3 Building Issues for the Commission's Consideration

At the same time, there are factors affecting the ability of local governments to efficiently undertake their role as a building regulator due to variations by state and territory governments that override the BCA.

The number of state based variations is a threat to the national consistency of the BCA, making it more difficult for building surveyors to keep up with the changes and undertake assessments at a local level.

Deficiencies in the process for some state based variations to building regulation include:

a) The lack of consideration of net benefit of any new requirement: many variations to the BCA emerge from State Government and whilst a cost benefit may have been carried out, the requirement proceeds even when a negative cost benefit is shown to exist. There is usually a State Government imperative to proceed,

b) An apparent disregard for who bears the cost of variations in building standards, being the building industry and the homebuyer,

c) Poor problem identification – state variations often proceed as a state government has a policy to implement rather than the matter in hand being of importance from a health and safety perspective for every new home,

d) No real consideration of non-regulatory alternatives - often government's first response is to regulate rather than find another way forward; Regulation should only be considered as a last resort once all other avenues have been thoroughly explored.

e) Inadequate lead-in times for industry to familiarise itself with the practical detail of regulation impacting on design and construction.

4.3 Environmental Management

Whilst both Federal and State governments rely on local government to deliver an increasing number of services, particularly in the areas of health and community services, one of the areas that Councils themselves seem to have taken a great deal of interest in expanding their area of jurisdiction relates to environmental policies and procedures.

4.3.1 Waste management

Councils have long wanted to reduce the amount of waste to landfill and have successfully introduced household recycling procedures. Unfortunately it is not as easy for the housing industry to readily recycle due to the lack of a "holding yard" for unused items and also the fact that many waste items from small building sites are not sufficient in quantity to be able to be recycled. Councils and state governments continue to push for less and less waste to be produced from building sites - and in many areas control the prices paid by builders for depositing waste in council landfill facilities.

4.3.2 Sustainability and climate change

Councils also appear to implement many of their sustainability requirements for new homes in the absence of any formal legislation or regulation. Councils are increasingly adopting policies and standards that *exceed or pre-empt* national and state building codes.

Sometimes these requirements are implemented through planning schemes, though often they are set as permit conditions that require the lodging of further information or are set out as 'voluntary applicant programs' or 'Environmentally Sustainable Development' (ESD) requirements.

A number of Melbourne Councils, (including Manningham, Yarra, Moreland, Bayside and Hobsons Bay) impose sustainability requirements on new housing. These include water sensitive urban design, best practice storm water drainage, universal design, sustainable building (energy & water efficiency, material selection). They are all applied through planning permit conditions which also duplicate and conflict with obtaining a building permit. It also can include requirements to use a particular "rating tool" to determine how green a development might be. However the "rating tools" are not found in any form of legislation or regulation and therefore have not been subject to the checks and balances that a regulatory measure would have.

The requirements are difficult to satisfy as they are often applied at the planning permit stage before the house design has been finalised and an energy rating has been produced. Also, clients haven't yet decided on products, materials, fixtures and fittings that councils request be included in sustainability assessments.

In other environmental issues, a number of coastal councils throughout the country are developing and implementing their own policy approaches to climate change and sea level rise. This is despite the Federal Government having yet to declare any national benchmark for coastal vulnerability or any mapping around the anticipated rising seas.

Further, councils view planning decisions in areas identified as potentially affected by sea level rise as future liability risks, albeit 40 years or more into the future. With a preference to zero (liability) risk, councils are starting to apply more stringent, higher sea level rise scenarios on new development when compared to existing development.

Any increased burden on the development industry through a myriad of responses to climate change, including sea level rise benchmarks, will have a long term effect on residential subdivisions, housing design and the approval process including:

- increased cost of construction;
- changed construction methods;
- change in current housing designs and products;
- greater setbacks from foreshore areas;
- increased costs associated with consultant studies;
- increased refusals of development applications; and
- lose of developable land as there is an increase in the amount of land zoned vulnerable to coastal hazards.Development controls

Under the current legislative framework, local councils have developed a range of local policies and development controls for matters such as storm water management, landscaping, driveway design and construction, erosion and sediment controls, waste management and demolition processes, to name a few. Whilst there is a high level of consistency in these policies across council areas there are also variations which remove the consistency and certainty for residential development.

The preparation of state based guidelines for these matters would facilitate two significant improvements in the planning system.

Firstly, local councils would be freed up from having to prepare individual sets of controls, which simply mirror the adjoining council's codes with minor amendments. This would allow more time to focus on higher level strategic planning by local councils.

Secondly, if the guidelines are appropriate referenced through the legislation, then they can be applied effectively through a condition of development consent requiring compliance with the relevant guidelines. Rather than requiring full details as part of the development application.

An example of this approach would be the preparation of a state guideline for sediment and erosion control during construction. There are a simple set of standards which are already adopted by local government and understood by the residential building industry. The application of these through a state guideline, which is appropriately referenced by state or local planning instruments, removes the need for a council specific code.

The consent authority can then manage the application of such guidelines in two ways. Where the site is considered sensitive, they could request the preparation of a plan showing the ways the site will be controlled as a condition of consent to be met before work commences. Alternatively the consent authority can apply a condition of consent requiring the work to be undertaken in accordance with the guidelines and no plan be required.

Both options provide the consent authority with a legal power to enforce compliance should the work not be completed in the appropriate manner. Ultimately, it is at this point that the council requires adequate ability to remedy a breach. The use of standard guidelines, rather than council specific guidelines in no way reduces the ability of a local council to seek such a remedy. The application of the condition of consent gives the council authority to intervene when needed.

4.3.3 Environmental issues for the Commissions Consideration

The following environmental factors are presented for the Commission's consideration as they are implemented at a local government level and affect the housing industry:

- The current push by state governments towards "zero" waste on building sites has been driven by two mechanisms – waste levies (tip charges) and council codes (local laws) requiring waste management plans and conditions on planning or building permits. Builders often have small amounts of waste that need to go to landfill – the separation of waste on site for these small amounts is unwieldy and in most instances it is more appropriate and cost effective for the builder to collect waste on site and remove it to a waste transfer facility to complete the sorting and separation.

- The time taken to prepare management plans for planning or building permits has become onerous and is disproportionate with the outcome on site and the benefit local government is seeking to achieve. These issues can be better managed through state based codes and standard conditions provide enforcement authority.

- Local government use their powers to place penalties and fines on builders for single waste incidents - such as an accidental spillage of soil into the waterways following heavy rain or the scattering of waffle pods during high winds, sediment on footpaths and roadways.

- Councils rely on and implement onto a variety of voluntary (for profit) rating tools such as the Green Building Council of Australia's Green Star rating tool which are not adopted in legislation or regulation. Other examples include requesting a Green Transport plan as part of the planning assessment – even for small developments and single dwellings. These are costly measures - particularly in small developments and affect housing affordability.

- Councils are making independent planning decisions in the absence of any guidance from other tiers of government on issues of state significance - disadvantaging some land owners by rendering their land as undevelopable. All levels of Government should only pursue practical and sensible approaches to the issue of climate change using risk based approaches to ensure that the response is commensurate with the threat. HIA's views is that until such time as a Federal benchmark are properly established, State and Local Governments should not be making their own individual requests on industry and land owners.

4.4 Local Laws

Local Governments have the provision to develop their own local laws. Many of the issues set out above touch on this ability.

Local laws are developed by individual local governments. According to the Queensland Local Government web site: (www.dlgp.qld.gov.au/local-government)

"A local law is a law adopted by a council that reflects community needs and ensures the good rule and government of the area."

Through local laws, local governments can establish permit or license regimes for activities they want to regulate, to create offences for unacceptable behaviour and to allow for the issue of compliance or abatement notices."

The type of local laws that are typically made by Councils include restrictions on the hours of operation at a site, site signage requirements, requirements for temporary fencing, rubbish control, sanitation during the building process and so forth.

The same Queensland Local Government web site holds a data base of some 3000 local laws that have been created by local government in Queensland. There are some 1300 subordinate local laws adopted in Queensland that are "under their local laws to provide additional information to assist in the operation of those local laws."

The main issue for the housing industry in relation to local laws is that each local government has its own set, the details of which will differ slightly from those adopted by other local governments. The variances often add cost to the building process and non-compliance on even simple matters can cause fines which must be covered by the builder.

4.4.1 Local Laws Issues for the Commission's Consideration:

- Local laws create minor yet significant inconsistency between local government areas and leads to a duplication of regulation and the need for constant variation in design and processes by builders.

- Local laws are not currently subject to any form of regulatory rigour prior to their introduction to demonstrate any net benefit.

- Local government is not 'subject to' the provisions of best practice regulation under the COAG guidelines. Local government is therefore not compelled to comply with the concepts of cost benefit assessments and how they should be applied if they are considering the introduction of local laws.

- Some local laws requirements are not considered relevant to local conditions - site fencing is an onerous requirement in many Greenfield locations as there are no residents nearby - it is simply a cost for the builder to bear and provide only minor improvements in security and safety for the home during construction.

- The cost and application process for obtaining asset protection permits varies between local councils. These should be standardised to save confusion and time in the interpretation of these variations.

- A capped application fee and bond structure and a consistent application process for asset protection permits across all local councils would be a benefit.

- Non-compliance with some local laws can result in an "on the spot" fine of between $200 and $1000, in respect of numerous matters, including fencing, stormwater, builder's refuse, sanitary facilities and site identification. HIA members increasingly questioned whether these fines reflect the status of the issue at hand, or whether they seek to enhance revenue. Their questions are valid - in a number of instances members have been fined because of litter emanating from an adjoining property. The cost to appeal an "on the spot" fine is normally prohibitive, leaving the builder to incur the cost, which is ultimately passed on to consumers.

- HIA believes there is a role for State Government to play in the development of practical and flexible local laws requirements which could be developed appropriate to the general location of development (eg greenfield, infill, regional). HIA supports a state based 'deemed to comply' arrangement for site management where builders have options that take into account particular development circumstances, i.e. options for greenfield development versus infill or options for different trades. Also to avoid duplication of existing state based legislation and over regulation, a centralised vehicle could be developed to provide site management solutions that complement existing site management legislation, such as

some Occupational Health and Safety requirements and Environment Protection Act requirements, which contain broad objectives for protecting public safety minimising noise impacts and limiting windblown litter

5. Conclusion

The housing industry recognises the importance of the local government and the significant role it plays in administering both national and state legislation and regulation as well as administering local laws and policies within its own boundaries.

Equally it recognises that poor administration of building and planning measures at a local level is costing the housing industry and consumers dearly. Delays to housing development generate significant costs not only for the residential building industry but for home owners and home buyers.

Local government regulators need to be cognisant of the fact that any delays to the processing of building and planning applications place unneccessary cost burdens of the planning and approval system to business.

The effective use of 'private certification' nationally for routine planning and building applications warrants consideration as a mechanism to reduce the load of routine development applications that local government staff are required to address.

There should be a greater determination by the State to regularise, harmonise and standardise planning policy and procedures for all local governments. This can be achieved partly through the developments of residential codes which clearly set out building and planning requirements for new dwellings.

Local governments need to be consistent in its application of policy and make it more accountable for delays in the timely processing of development applications. Local Government have shown considerable willingness to modernise their work methods and work more efficiently. Yet the introduction of onerous requirements in relation to housing developments such as environmental measures and other constraints continues to hamper efficiency efforts.

HIA looks forward to the opportunity to comment in the next stage of this inquiry.

6. Appendices

Appendix 1
Impact of local government interventions on housing

Australian Building Codes Board

Impacts on Housing Affordability

Local Government Regulatory Measures that Exceed the
Requirements of the Building Code of Australia:
Results of Preliminary Analysis

2008

SUMMARY

This paper examines the impacts of regulatory measures imposed by local government councils through their planning processes that exceed the minimum necessary regulatory requirements of the Building Code of Australia.

The COAG Reform Council has recommended to COAG that the 'Business Regulation and Competition' and 'Housing' Working Groups *"consider further the impact of local government interventions, including in relation to building regulation and development assessments, on the cost of housing and advise COAG of further measures that might be taken to address this situation"* (18 April 2008).

The preliminary analysis discussed in this paper prepared by the Australian Building Codes Board, clearly indicates that such interventions significantly impact on housing affordability and the analysis suggests that many of the issues regulated would be best left to market mechanisms. The paper proposes that further analysis is required to determine the full extent of local government regulatory intervention on a national basis.

BACKGROUND

Under the Inter-Governmental Agreement (IGA)[1] which establishes the Australian Building Codes Board (ABCB)[2], all potential changes to the Building Code of Australia (BCA)[3] must be considered in accordance with COAG best practice regulatory principles[4] and subject to a regulation impact assessment. This means the initial presumption is not to introduce new or increased regulation and instead, investigate alternative means of achieving the desired result. The BCA therefore sets minimum regulatory requirements that are proportional to the issue being addressed.

The problem of Local Government regulatory interventions over and above the minimum necessary requirements of the BCA has been well documented. The concerns centre on the cost impacts on housing affordability in particular and whether the regulatory interventions have been subject to COAG Principles. The subsequent erosion of national consistency that results from such interventions is also a significant concern for industry.

The Productivity Commission report *Reform of Building Regulation* (2004), found that "*local governments, through their planning approval processes, are imposing regulations on building. While this may offer benefits, there are concerns about the resulting regulatory inconsistencies across Australia and a lack of rigorous regulatory assessment*". The Commission recommended "*the future work agenda for the ABCB should include an examination of ways to reduce the scope for the inappropriate erosion of national consistency of building regulation by local governments through their planning approval processes*".

The "Banks Report" *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* (2006) recommended that "*State and territory governments should, as a matter of priority, implement measures to ensure local governments do not undermine the Building Code of Australia through planning approval processes, and report on their progress to COAG*."

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[1] The IGA sets out the mission, objectives, functions and powers of the ABCB (agreed to by Governments in April 2006).

[2] The ABCB is a joint initiative of all levels of government in Australia, together with the building industry. Its mission is to address issues relating to health, safety, amenity and sustainability by providing for efficiency in the design, construction and performance of buildings through the BCA and the development of effective regulatory systems.

[3] The BCA sets the minimum requirements for design, construction and performance of new buildings and new building work throughout Australia.

4 *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies* (October 2007).

In response to such concerns, the joint Commonwealth, State and Territory IGA calls for the *"consistent application of the BCA across and within each State and Territory"* and requires States and Territories to *"seek similar commitments from their local governments where they have any administrative responsibility for regulating the building industry"*.

Much of the work so far has focussed on finding a common framework to delineate planning and building processes. In its report to COAG in 2008, the Building Ministers' Forum noted its mutual obligation with the Local Government and Planning Ministers' Council to "*ensure clear separation between building and planning regulation and that where regulation is required, COAG Principles will apply, including the need for regulation impact assessment"*. This would ensure consistency with COAG's National Reform Agenda.

A Joint Working Group (JWG), consisting of officials from the Ministerial Council on Energy, the Planning Officials Group, the ABCB, the Australian Local Government Association and industry has been established and a framework developed to delineate planning and building regulations.

The other stream of work undertaken by the ABCB in this area relates to determining the impacts of Local Government interventions into the building space. At the ABCB Board's Strategic Planning Day (November 2006) it was agreed the ABCB undertake an empirical study to quantify the costs and benefits of additional Local Government building regulations. From a list of 16 Local Government interventions identified by the JWG, nine were selected for analysis, relating to issues such as increased ceiling heights, reduction of external noise, and improved access requirements for people with a disability (the full list of interventions is at the end of this paper).

The ABCB commissioned a leading firm of construction management consultants to analyse the impacts of the nine interventions, with the cost presented as a percentage of construction cost over and above the minimum necessary requirements of the BCA. Subsequent analysis was undertaken to determine the total cost in the Local Government area where the intervention applies, and to quantify the benefits to determine whether the intervention can be justified.

Cost data was obtained from a number of sources including the Australian Bureau of Statistics, the relevant local government, and two independent consultant reports. Where the data was not available, assumptions were made after discussions with economic consultants familiar with the building industry. The benefits of the interventions were determined through a survey to determine building owners' *willingness to pay* for any increased amenity.

ISSUES

The table at **Attachment A** provides an estimate of the costs and benefits in the local government area where the intervention applies. The analysis identifies increases in costs ranging from one per cent to 14 per cent, with a total increase in construction costs of around $66M p.a. for the nine interventions. Five of the nine interventions returned a hypothetical financial benefit over a 10 year period. The remaining four would eventually return a benefit (assuming no major capital cost refurbishments) after 18 to 58 years.

While the costs may be matched by the hypothetical financial benefits, this does not imply the interventions are justified or that they comply with the COAG Principles. Simply demonstrating a level of desirability for the intervention does not mean the interventions are suitable for regulation. In addition, because respondents indicated they are prepared to pay extra for the intervention, this suggests the matters could be better left to market forces, and should only be considered for regulation if it can be justified in accordance with the COAG Principles.

As most of the interventions apply to residential buildings, there is significant impact on housing affordability. For example, the intervention applying to houses (increased room sizes, ceiling and floor heights, circulation dimensions, and termite protection) results in a cost increase of around $21,000 per house, or 6.4 per cent of construction cost. Another intervention increases the cost of a unit in a residential apartment building by 10.8 per cent.

The issue is whether it is appropriate for Local Governments to mandate building standards over and above the minimum standards of the BCA, leading to increased construction costs, even if people are willing to pay for the increased standards. This has the additional hidden cost of eroding national consistency of building regulatory matters, a significant burden for industry.

The preliminary analysis undertaken so far suggests that many of the issues regulated would be best left to market mechanisms. The paper proposes that further analysis is required to determine the full extent of local government regulatory intervention on a national basis.

LOCAL GOVERNMENT INTERVENTIONS LIST

Below is the preliminary list of Local Government interventions identified by the JWG. It does not represent an exhaustive list of such inventions. The nine shaded items are the subject of the analysis.

ID	Jurisdiction	Regulated area	Issues
1	NSW	Residential buildings and serviced apartments	Acoustic privacy, ceiling heights
2	NSW	Access Development Control Plan 2004	Adaptable housing for people with a disability
3	NSW	Child Care Centres Development Control Plan 2005	Increased amenity, fire safety
4	NSW	Development Control Plan No. 56 – Dwelling House Development	Ceiling heights, location and size of balconies, aircraft noise attenuation, energy efficiency and building design, water heaters, dual flush toilets, water saving devices, building materials and whole of life termite protection
5	NSW	Development Control Plan No.72 - Mixed Use Premises	Ceiling heights, solar design and energy efficiency, noise attenuation, access for people with disabilities, and rainwater tanks for gardens, car washing, toilet cisterns and washing machines
6	NSW	Development Control Plan No.35 – Residential Flat Buildings	Ceiling heights, room sizes, requirements for lifts, noise attenuation, number of exits, fire rating of exit doors, widths of corridors, orientation, and location of windows
7	NSW	Development Control Plan – Part C.7 Bushfire Protection	Sprinkler systems and other protective measures
8	NSW	Development Control Plan – Part C.1 – C.6 General Development Guidelines	Energy efficiency, hot water systems, rainwater tanks, access for people with disabilities and adaptable housing
9	TAS	Planning Scheme – Schedule L – Bushland Management Schedule	Protection from bushfire
10	VIC	Planning Scheme requirements	Energy and water efficiency
11	QLD	Residential design – single unit dwelling code	Location and size of balconies, , verandas and decks
12	QLD	Rainwater tanks for bushfires	Protection from bushfire
13	SA	Development Plan 2003	Older and/or disabled persons requirements
14	SA	Apartment Building – Multi level (specific requirements)	Ceiling heights, minimum floor areas, other amenity issues
15	WA	Planning Scheme No. 2, Development and design policy	Universal access, noise transmission between dwellings, external noise, natural light and energy efficient design
16	WA	Health Local Law, room sizes	Ceiling height, minimum floor areas

ATTACHMENT A

Summary - Cost/Benefit impact of a selected no. of Local Government interventions

ID	Description of Intervention	Construction Cost Percentage Increase	Cost Increase per year in the Local Government area	Benefit Net Present Value in the Local Government	Overall Percentage Variance [1]	Rationale / benefit *(Content in italics provided by the Australian Local Government Association ALGA. Input provided to ALGA by the relevant Local Governments)*
1	Residential buildings and serviced apartments (Apartments < 4 levels, medium standard. Walk up apartments with undercroft parking)	4.12%	$26,460,000	$27,130,000	0.10%	Dwelling provided with greater privacy by limiting airborne noise between units. Provided greater amenity by increasing the minimum ceiling heights. *Controls developed and adopted following public consultation, and reflected community concerns with previous amenity standards and quality of development being achieved through application of BCA minimum requirements. Comments made on improved marketability and increased consumer satisfaction in a local government area that is dominated by high density living.*
2	Class 2 dwelling (Apartments < 4 levels, medium standard. Walk up apartments with undercroft parking)	1.53%	$8,505,000	$23,513,000	2.70%	Increased options for people with disabilities to access and use facilities with Class 2 dwellings. *As ID 1- as well as changes to meet changing market demand due to demographic changes e.g. ageing population. Also needed to address equity and access requirements that were not adequately reflected in the BCA.*
3	Child Care Centres (Childcare centre, single storey only, with play rooms, meeting room, office, kitchen, reception, hallways and staff room)	4.60%	$176,000	$1,206,000	26.85%	Additional protection for life and safety for occupants within child care centres. *Alternative measures chosen to provide increased level of building/safety requirements to facilitate childcare services that may otherwise have been prohibited under planning controls if safety, access etc could not be addressed. Also issues of Local Government liability and desire to provide quality of care were considered paramount. Local government intervention was seen to be in a unique set of circumstances where application of the BCA was seen to be unrealistic or inappropriate to achieve considered and safe outcomes.*
4	Dwelling House Development (Apartments < 4 levels, medium standard. Walk up apartments with undercroft parking)	6.40%	$2,125,000	$776,000	-4.06%	Provide greater amenity by increasing minimum ceiling heights. Improved energy / water efficiency. *Arose from desire by Council to achieve improved quality of development, particularly units, however some controls had then been extended to dwellings. Had initially been a 3m height proposed but professional staff recommended reduction. Political origins – however consultation also undertaken. Internal development unit discussion to review controls – particularly in light of BASIX and Section J in BCA. Staff examining incentive options as an alternative. Councillors acknowledge BCA as a minimum only but believe that seeking a higher standard to achieve better quality is appropriate. Acknowledge cost implications but argue benefit*
5	Mixed Use Premises (3 storey block of flats. Basic standard. Includes 2 x 2 bedroom, 6 x 1 bedroom, 8 x studio).	13.62%	$2,086,000	$362,000	-11.26%	Provides greater amenity by increasing minimum ceiling heights and room sizes. Improves energy efficiency. Improves access for people with disabilities. Improved termite protection. *Same as ID 4.*

6	Residential Flat Buildings (Mixed Use Premises (3 storey block of flats. Basic standard. Includes 2 x 2 bedroom, 6 x 1 bedroom, 8 x studio).	10.82%	$20,982,000	$4,582,000	-8.45%	Provides greater amenity by increasing minimum ceiling heights. Improves energy efficiency. Improves access for people with disabilities and increases fire ratings for safety of all occupants. *Same as ID 4.*
7	General Development Guidelines Mixed Use Premises (3 storey block of flats. Basic standard. Includes 2 x 2 bedroom, 6 x 1 bedroom, 8 x studio).	4.05%	$829,000	$482,000	-1.70%	Requirement provides extra assistance for people with disabilities in regard to the design of the building. Improved energy efficiency. Improved water efficiency. *Originally developed to provide sustainability benchmarks that were not previously available through BCA or State legislation etc. Following the introduction of BASIX the Council has been amending it to remove areas of "cross-over" so that controls will only supplement where there are gaps that are perceived to be important at the local level outside the scope of BASIX.* *Access and adaptable housing controls were developed having regard to existing standards such as AS2499. The Willoughby DCP was prepared with funding from NSW DoP to develop a model for Adaptive Housing. This work was completed with community, interest group, govt and industry input (incl. HIA and others). Council comment that access and adaptability standards at national level have not been responding fast enough to meet demand and expectation.*
8	Apartment Building – Multi level (Multi storey apartments, medium standard, investor grade with 2 and 3 bedrooms. Includes penthouses, lobby, bar, gym, sauna and steam room)	0.93%	$973,000	$2,562,000	1.51%	Provides amenity by increasing minimum ceiling heights and natural lighting requirements. *Controls provided to create a higher standard of development with improved amenity for residents and improve sustainability through solar access etc. It is interesting to note that these "over and above" requirements have been included as part of an overall "trade-off" scheme where Floor Space Ratios and height requirements are relaxed as an incentive to achieve higher building outcomes. There has been overall developer acceptance according to the Council and development rates are at an all time high. The inability and slowness of the BCA to respond in a similar manner was also raised as a reason for pursuing these options under planning controls.*
9	Health Local Law, room sizes (4 bedroom house, block walls, colorbond roof, ensuite, lounge, dining, family room, study, double garage, pergola, balcony, medium standard fittings).	1.59%	$3,858,000	$4,627,000	0.32%	The requirements to have 14 m3 of air per person contained within a bedroom will provide greater amenity and well being. *Advised that this is not applied as such and that BCA controls would now have over-ridden this older control.*
TOTAL for the 9 interventions			**$65,994,000**	**$65,240,000**		

Note 1: The Overall Percentage Variance is the Cost Increase minus the Benefit (Net Present Value), divided by the original Building Cost.

Appendix 2 - HIA Case Studies

In addition to the issues raised in this paper HIA provides below some case study information to assist the Commission.

Case Study 1 - Variances between Victorian Councils - Notification Procedures

Issue
The Victorian Planning and Environment Act provides Councils discretionary powers as to how parties potentially affected by a planning proposal are to be notified about it.

Outcome
This varied process usually results in key differences between Councils in the *extent* of notification required which in turn can affect the *type and number* of objections received.

This in turn has a direct effect on the proponent who may be faced with lengthy delays and land holding costs as a result of some non-specific or non-planning based objections which, under current arrangements must be considered. For example overshadowing as a grounds for objecting is generally not relevant to a property which is located 10 houses away from a proposal. Giving notice to those who are truly affected by an application gives the opportunity for these matters to be considered and possibly amended prior to a decision being made.

If objections are received and the matter proceeds to appeal there is generally a lengthy wait, fees for planning professionals to represent both Council and the applicant - all while the land owner pays holding costs on the land until a decision is made. It can be a difficult and costly process that could be minimised with better direction on who should be notified about an application. It is a given that this will vary depending on the nature and scale of the proposal, but HIA's view is that only those directly affected by the application should be notified. For the majority of development types, potentially affected parties can be identified with a high degree of certainty. And if there are issues with the design then these could usually be dealt with by the development of amended plans.

As mentioned HIA members projects are often delayed significantly and politicised Councils direct a wider community groups form and prepare pro forma letters for people to use as objections even if the person is not directly affected by a proposal.

Another anomaly is that currently Victorian Councils usually accept objections up until a decision is made, even if this is after the stipulated notification period under the state legislation (usually 14 days) or the day of a Council meeting where the matter will be considered. This can result in objections being lodged after consultation has taken place between the applicant and objectors and an agreement reached.

To ensure transparency in this process, it is recommended that submissions be made public in all instances. This can assist in reducing vexatious submissions that have no planning basis. Other jurisdictions, such as NSW, have many councils using online application tracking systems to facilitate this.

Also HIA considers that council officers should be able to rule out objections if they are considered to be irrelevant, vexatious or non-planning based.

Case Study 2
Local Government's Variances in Infrastructure Charging – NSW, Victoria and Queensland

Issue
Under state legislation, local governments can develop charging mechanisms to cover the cost of development specific infrastructure or that which is considered necessary for housing development within a new subdivision.

Outcome
Many local governments are seeking large amounts of funding for housing infrastructure items – and many of the costed items are well beyond what is considered *necessary* for housing development.

Development specific infrastructure establishes a nexus with the services necessary for the provision of the allotment or building, whilst *community, social and regional infrastructure* establishes a nexus with the needs of the population who will occupy the premises from time to time, going beyond the first land owner.

Funds are covering items from which the whole community benefits not just the new residents of a subdivision which should be provided by other funding sources – either state taxes or local rates.

In many cases developers are "giving in" to the requests for higher contributions rather than fighting them through a tribunal/panel process - as it is too expensive to go down this path using consultants and legal representation and the delays cause increased land holding costs are high.

In ***Victoria*** a review of local levies and charging is currently underway but under the system in place:

- A Ministerial Direction sets out the types of infrastructure that councils can seek funds for and the actual amounts of the contribution are then set out in a Development Contribution Plan (DCP).

- The DCP is developed and administered generally by local government. The amount of development contributions can vary wildly between municipalities and in the Growth Areas of Melbourne - the state "Growth Areas Authority" administers the process through a "Precinct Structure Planning Process". This process can take up to two years and essentially arranges the layout of a new area and apportions the cost of infrastructure to the various parties involved and what this will cover.

- A Ministerial Direction states "basic improvements to public open space" such as earthworks, landscaping, fencing, seating and playground equipment can be funded by a Development Infrastructure Levy as part of a prepared Development Contribution Plan.

- But many Councils and the GAA are seeking infrastructure contributions that are considered to be excessive and are beyond the scope of this Ministerial Direction. Items which HIA has questioned include regional sporting facilities, lighting of grounds and associated pavilions.

- In the Growth Areas of Melbourne developers must also contribute to items of state infrastructure through payment of the Growth Areas Infrastructure Contribution (GAIC).Administered by the State Government. There is concern that some of the items

being requested as part of local development contributions should be covered by GAIC or other State funds.

In ***New South Wales***, under section 94 of the Planning Act, local governments were given the ability to charge levies to 'even out' the cost burden due to zoning of open space land as part of new residential projects. This provided for the owner of land zoned open space who was required to dedicate that land to the local government authority and hence the broader community, to recoup the value of that land, through payments from the other land owners within the project.

The increasing value of land in the late 1990s had a major impact on the estimated costs for community infrastructure, with many councils finding themselves with a shortfall in funds under section 94 plans at that time. This led to higher land costs being incorporated into amended and new plans, resulting in individual allotments being subject to a section 94 levy in the order of $50,000 in many greenfield locations in metropolitan Sydney.

Section 94 contributions and section 94A levies are often referred to as 'development contributions' or 'developer contributions'. Yet, they are more accurately charges on the land purchaser to facilitate some type of community infrastructure in and around the project.

In ***Queensland*** local government has been responsible for setting and levying infrastructure charges. In recent years the quantum of charges has given rise to significant concern from the development industry in relation to the fairness and equity of the infrastructure charges system, including the negative impact the charges were having on the viability and affordability of development projects.

In 2010 the Queensland State Government established an Infrastructure Charges Task Force to review the infrastructure charging regime in Queensland and make recommendations to the government.

In 2011 the Infrastructure Charges Taskforce reported back to the Queensland State Government outlining a number of recommendations aimed at establishing "an infrastructure charging framework that stimulates supply, provides transparency and certainty to developers, and ensures long term financial sustainability for local governments".

Amongst the recommendations adopted by the Queensland State Government was the introduction of a cap on the charges that local government could impose on new development and a moratorium on the collection of local function (state transport) charges for three years.

Investigation is ongoing into the ability to postpone the timing for payment of charges on residential developments from when the local government endorses the plan of survey until settlement on the purchase of the allotment occurs.

HIA's View

State legislation should recognise that there are two types of infrastructure required in the residential development process.

The first is *development specific infrastructure* which accounts for those items which are directly attributable to new development, and defined as those items that are necessary to create the allotment and without which the development could not proceed. Examples of development specific infrastructure would be:

- local roads;
- local drainage;
- local stormwater;

- provision of utility services;
- land for local open space; and
- the direct costs of connecting to local water, sewerage and power supplies.

The second is *community, social and regional infrastructure* which should account for items of broader physical, community and social infrastructure which are ancillary to the direct delivery of housing within a new development and the increased population from that development. Examples of community infrastructure would include:

- headworks for water, sewerage and power supplies which may be part of a specific contributions plan;
- community facilities such as schools, libraries & child care;
- district and regional improvements such as parks, open space and capital repairs;
- public transport capital improvements;
- district and regional road improvements;
- employment services;
- subsidised housing; and
- conservation of natural resources.

Essentially *development specific infrastructure* establishes a nexus with the services necessary for the provision of the allotment or building, whilst *community, social and regional infrastructure* establishes a nexus with the needs of the population who will occupy the premises from time to time, going beyond the first land owner.

It is HIA's view that an up-front charge against development is the least efficient manner in which infrastructure costs may be recovered and that any broader community social and regional infrastructure should be borne by the whole community and funded from general rate revenue and borrowings

Any State legislation enacting local development contributions that allows charging for community infrastructure should ensure that the following key elements are addressed:

- the infrastructure to be funded through a charge or levy must be clearly identified and accurately costed,
- the cost (whether a levy or charge) must be fixed from the earliest point in the project, being the zoning of the land for the relevant purpose,
- the manner of accounting for inflation must be specified (by the Act) and applied consistently in all cases,
- a proponent should have the option to meet an infrastructure obligation via either monetary payment or works in kind,
- the timing of any payment should be at the last possible stage in the development process,
- developments that embellish existing uses or replace existing uses should not be captured e.g. a knock down rebuilt home, or a first floor addition to an existing dwelling,
- the responsible authority for delivery must be held accountable for the expenditure of all funds collected in a fixed time period.

Case Study 3 - Development Assessment Fees in Queensland

Whilst some states prescribe development assessment fees in state legislation and regulation, in Queensland, local councils hold responsibility for setting their own.

It is HIA's experience that in many regions the systems Local Governments use to levy Development Assessment fees is neither transparent nor representative of the quantity/quality of input into the assessment process.

Therefore there is a high degree of variation between the level of fees Councils charge, the disparity in components of fees charged and the value of the service provided by some Councils highlights this point.

The table below lists the actual fees charged across the country for town planning applications lodged over the last twelve months on behalf of a national company hoping to establish regional franchise outlets for the business.

The applications are all for a single (same) use, all of a similar floor area and all comprised a change of use in an existing building, not new construction. All the applications were approved.

SCRC Maroochydore	Impact	$7584.60
SCRC Beerwah	Impact	$5223.00
SCRC Coolum	Impact	$6146.45
GCCC Burleigh Heads	Impact	$6035.00
LRC Logan Central	Code	$5942.00
BCC Chermside	Impact	$6000.00
Tea Tee Gully SA	Code equivalent	$ 577.50
Unley SA	Impact equivalent	$ 715.00
Burnside SA	Impact equivalent	$ 754.00
Yarra VIC	Impact equivalent	$1052.70
Port Phillip Vic	Code equivalent	$ 502.00
Casey Vic	Code equivalent	$ 502.00
Sydney City NSW	Code equivalent	$1115.00
Wollongong NSW	Code equivalent	$ 456.00
Kogarah NSW	Code equivalent	$ 310.00
Stirling WA	Code equivalent	$ 270.00
Armadale WA	Code equivalent	$ 270.00
Mandurah WA	Code equivalent	$ 270.00
Launceston TAS	Code equivalent	$ 330.00

The obvious question the figures contained in the table above raises is, why is it more than 10 times more expensive to get the same approval in South East Queensland as it is in New South Wales or Victoria and 20 times more expensive than it is in Western Australia. It should also be remembered these fees do not take into account the costs associated with engaging a consultant to lodge the application with Local Government.

While all the above examples were approved it should also be remembered that despite the risk that the proposal will not receive approval the fee has to be paid up front and there are no refunds if the application is refused.

The variation in fees creates a significant challenge and disincentive for this national company as it attempts to make commercial decisions around whether or not to attempt to establish this business in South East Queensland.

In Queensland Section 97 of the Local Government Act gives Local Governments the flexibility to fix “regulatory fees” associated with regulatory functions also referred to as a “cost recovery fee”. Section 97 of the act also states that a cost recovery fee must not be more than the cost to the Local Government for taking the action for which the fee is charged.

The table below is a random sample of fees currently being imposed by South East Queensland Councils. The table highlights not only the significant variation between the total fee being charged, but also the significant variations in the methodology used to calculate some fees.

Local Authority	Boundary Relaxation	Road Nomination	Build over Stormwater	Document Lodgement	Townhouse Development 30 units (code)	General Industrial Shed 2500sqm (code)
Brisbane City Council	$546	$273	$705	$48.50	$11750 + $145 per unit >9 = $14795	$11650
Gold Coast City Council	$920	$920	$298	$194	$9239 + $170 per unit >10 =$12639	$4658
Ipswich City Council	$400	n/a	$155	$165	$4850 + $330 per unit > 3 =$13760	$20150
Logan City Council	$500	n/a	POA	$98	$2460 + $360 per unit =$13260	$8100
Moreton Bay Regional Council	$395	$395	$395	$90	$5499 + fee for each technical report submitted eg noise, stormwater management	$12641
Redland City Council	$455	$75	POA	$110	$4000 + $250 per unit >5 = $10250	$6260
Scenic Rim Regional Council	$501	$501	$198	$200		
Sunshine Coast Regional Council	$445	$200	POA	$115	21 -50 units $16255 + $380 per unit = $27655	$17800
Lockyer Valley Regional Council	$365	n/a	$125	$175		
Somerset Regional Council	$215	$215	$215	$111		

HIA fails to understand how the fee for a simple matter such as a boundary relaxation on the Gold Coast can be more than twice that charged by a number of other councils and four times that of yet another Council.

How can the fee for document lodgement, which for all intents and purposes is purely an administrative function, be four times more expensive on the Gold Coast than it is in Brisbane.

For small business working across the various jurisdictions in south east Queensland the confusion and financial impost created by the variation in not only the quantum of the charge but also the methodology used to calculate the charge is significant. Additionally, HIA members have commented that the charges currently imposed by Councils in Queensland often exceed (sometimes by a factor of 4) the fees paid to consultants to prepare the application in the first place.

Local Governments in Queensland contend that the current charges accurately reflect the work involved to assess the application, the examples highlighted in the table above indicate that at a minimum some councils are operating far less efficiently than others.

HIA recently became aware of an example where a consultant was quoted (in writing) a fee of 1.1 million dollars by a Council to lodge an application to subdivide a parcel of land into 600 allotments. HIA estimates the Council could employ at least 10 additional staff for a 12 month period based on the fees from this one application alone. It is difficult to fathom how under any circumstances the Council could be incurring costs of this magnitude to assess this one application.

This example does however appear to add legitimacy to the comments made by the Productivity Commission in 2011 when it was stated that "On a per capita basis in 2009-10, Queensland councils appeared to have the highest level of resourcing (in terms of staff levels and planning expenditure) but also incurred the highest median level of expenditure per development assessed, and approved the smallest median number of developments per staff."[6]

[6] Australian Government, Productivity Commission, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment, Research Report,* 2011.

Case Study 4 - Planning Permit Activity Report

When it comes to benchmarking planning performance at the local government level, the large number of variances in planning systems between states makes it very difficult.

Adherence to statutory time frames is one key criteria which could be used - that is the time taken for local governments to process planning applications.

Each year the **Victorian** Government has reports on Council's performance with regard to planning applications.

The latest report card on Melbourne's best and worst performing councils, found that over the past year Victoria has experienced a massive increase in processing times for planning permits.

The 2008-09 Planning Permit Activity Report, produced by the Municipal Association of Victoria and the Department of Planning and Community Development, found that despite a 9 per cent fall in applications last financial year, the average time taken for councils to make a decision rose from 116 to 123 days, and the number of planning applications processed within the statutory timeframe fell from 64 to 62 per cent.

The median processing days to issue a decision was 78 days, significantly higher than last year's median of 60 days. The value of fees fell by 6 per cent to $22.9 million, but the estimated cost of works associated with planning applications increased by 4 per cent.

State and local governments need to address resourcing and operational issues within the underperforming councils to produce improvements in processing times. This approach could be introduced in other states and would provide a snapshot of planning permit activity and areas of non-compliance.

Case Study 5 – Processing time frames for planning applications by local government in Victoria

Several cases studies are provided below for the Commission's information. These have been provided by HIA members and demonstrate some of the inefficiencies which arise through local government's administration of planning requirements.

Three-unit residential development

Permit conditions poorly worded with significant errors; permit conditions not as discussed & agreed with previous planner; failure of Council to act prior to VCAT hearing where all issues could have been easily & quickly resolved by agreement.

22.05.08 Town planning application submitted.

01.06.09 Town planning permit received with unworkable and poorly worded permit conditions including:

- North façade to be further "articulated" by 1.0m for its length. Articulated could mean either IN or OUT; (articulation had been previously requested to the east façade only).
- Permit conditions had errors in cardinal points requesting alterations to the wrong facades and walls.
- One permit condition referred to the wrong floor level for screening.
- A driveway width was required that was inappropriate to a basement driveway and unsafe for use.

Permit conditions were completely new from previous negotiations and discussions with Council after two meetings where agreement was reached. A change in town planner occurred between these meetings and the writing of the permit conditions. The applicant appealed various permit conditions to VCAT.

21.10.09. A mediation hearing took place. It was agreed within the first couple of minutes that the permit conditions were poorly worded and would be amended by agreement. The town planner took no responsibility for her own wording of the conditions; she wasn't sure how they got in there. These matters could have been resolved by agreement without the need to go to VCAT but the planner said she had not looked at the appeal data until the day before mediation. The VCAT mediator was critical of the planning permit document and of the planner's conduct but still the delays were significant to the applicant and client.

15.12.09 Permit condition drawings were submitted to Council

20.01.10 A request for further information was received from Council by phone

25.01.10 Revised plans submitted

09.03.10 The endorsed plans were received with the cover letter from Council dated 8th January 2010.

New Residence

Failure to notify adjoining property owners of town planning application.

05.10.07 Town planning application submitted to Council.

07.11.07 Town planning permit received.
No advertising was undertaken.

11.07.08 Private building surveyor advised that Protection Works Notices were required to be served on both adjoining property owner's, during the application for a building permit.

Both adjoining property owners objected to works on the shared boundaries and protested to Council at the lack of planning notification. They had been unaware of plans for a proposed dwelling on the subject lot. They believed that the proposal detrimentally impacted upon the amenity of their property.

The client had to postpone the commencement of imminent building works on site. The adjoining property owners proposed to have the town planning permit cancelled due to the Council's failure to follow procedure and provide satisfactory notification of works. The building surveyor advised that it would be unwise to proceed with building works until the issue was resolved.

17.07.08 Applicant met the adjoining property owners, town planner and team leader at Council. No resolution was reached.

01.09.08 Applicant submitted amended plans to attempt to resolve neighbour issues. These plans were rejected by the adjoining property owners but satisfactory to Council.

11.09.08 Applicant received notification of advertising of amended plans.

06.10.08 Received approval of amendment, granted by Council consent.

Proposed Medical Offices – discrepancy with floor level requirements in a designated flood area

Discrepancy between Melbourne Water and Council regarding an applicable flood level near a creek waterway, 2008 / 2009.

The town planner provided a letter 27.08.08 to the applicant advising that the floor level of the proposed offices would have to be raised 300mm to achieve an acceptable height above the applicable flood level.

The applicant believed that there was a discrepancy in applicable level and an error in Council's calculation of appropriate floor level in relation to overland flows and rising creek flood levels, and advised Council in writing after discussions with Melbourne Water.

Council rejected this information and required the floor level to be raised without impact upon the overall building height. The plans were amended and provided to Council.

When the planning permit was issued on 24.09.09, a permit condition required that the floor level related to the Melbourne Water applicable flood level as earlier put forward by the applicant. The

plans were amended again to drop the floor level by 300mm back to the original state and these plans were endorsed by Council.

This "minor" change required amendments to every drawing on every sheet with significant consequence for cost and time for both applicant and client.

New Residence

Inappropriate delays in handling of the town planning application; unworkable and unachievable permit conditions, requirement for expensive consultant works included then deleted after the consultant work was undertaken.

02.12.08 Town planning application submitted to Council.

10.12.08 Septic permit application submitted to Council.

02.02.09 Received request for information from town planner regarding landscaping.

18.02.09 Advertising closed with no objections received.

30.03.09 Received request for information regarding septic permit issues.

06.04.09 Revised plans to Council regarding septic design.

Note: The septic system design was designed by a highly qualified and well respected waste water consultant and full documentation was provided to Council of the design and calculations together with the land capability assessment report.

06.05.09 Council advised that the septic design was to be approved.

17.06.09 Applicant requested intervention of team leader to get the permits issued.

23.06.09 Received septic system permit.

30.06.09 Received advice that the team leader rejected the town planner's proposed permit conditions and they had to be revised prior to issue.

09.07.09 Received the planning permit. Unworkable permit conditions forwarded to 2 geotechnical consultants for review and quotations to fulfill required works.

Both firms advised that the geotechnical requirements were unquotable due to the inappropriate requirement for a geotechnical consultant to oversee and approve a structural engineer's design and computations.

When referred back to Council, the applicant was advised that the town planner had ceased employment with Council and the author of the geotechnical permit conditions had left that department. An amendment would be required to change the permit conditions. The fee would be negotiable.

14.10.09 Received a stormwater design from the civil engineer for a stormwater retention system in accordance with the permit conditions, at a significant cost to the client.

01.09.09 Amendment was submitted to Council to amend the unachievable permit conditions in consultation with the team leader and advice from the engineering department.

05.10.09 Applicant was advised that a new town planner was allocated.

16.11.09 Received the endorsed stormwater design from Council.

15.12.09 Applicant rang new town planner for a progress update. The planner was unaware of the history of the project, circumstances of the amendment application and unaware that the proposed permit conditions had been written by Council staff and provided to the applicant for submission.

18.01.10 Town planning permit amendment approved with new geotechnical conditions. There was no longer any requirement for a stormwater retention system. Received endorsed town planning drawings.

New Residence

Inappropriate delay by Council from receipt of town planning application to initial request for information: 69 days.

15.12.09 Town planning application submitted.

18.01.10 Received allocation of planner notification.

22.02.10 Received request for information from town planner.

Issues often arise when town planners are not required to assess a proposal against the (Residential Code Clause 54 and Clause 55 of the Victorian Planning Provisions) but has not advised to the applicant of this fact during the lengthy planning process. No advice was received of this from the building department of either Council in question.

On application for building permits, there are examples of proponents being notified that various dispensations are required for front setbacks, overlooking compliance etc. that are assumed to have been assessed as part of the planning process.

Notification from the local council planners at any time during the planning application process would have provided the opportunity to obtain dispensations for siting variations during the planning stage and not after. A note saying that the proposal had not been assessed against ResCode should be included in the initial response to the application and/or request for information sent to the applicant after receipt by Council of the application for a planning permit.