Level 2, 7 National Circuit
Barton ACT 2600
PO Box 3373 Manuka 2603
T +612 6121 2000
F +612 6121 2001
national@raia.com.au
architecture.com.au

Australian Institute of Architects

1 December 2011

Dr Warren Mundy
Presiding Commissioner
Business Regulation Benchmarking:
Role of Local Government as Regulators
Productivity Commission
PO Box 1428
Canberra City ACT 2601

Delivery by email: localgov@pc.gov.au

Dear Dr Mundy,

Re: Benchmarking – Role of Local Government as Regulator Issues Paper

The Australian Institute of Architects (the Institute) welcomes the opportunity to respond to the Productivity Commission's Issues Paper on *Business Regulation Benchmarking – Role of Local Government.* The Institute appreciates the extension of time granted in which to make this submission.

The Australian Institute of Architects (the Institute) is an independent, national, member organisation with approximately 11,000 members across Australia and overseas. The Institute exists to advance the interests of members, their professional standards and contemporary practice and expand and advocate the value of architects and architecture to the sustainable growth of our community, economy and culture. The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible and environmental design.

As you are aware, the Institute responded in 2010 to the Productivity Commission's Performance Benchmarking of Australian Business Regulation: Planning Zoning and Development Assessments. Our interest in this local government benchmarking review is primarily in relation to planning, zoning and development assessments, as this is the primary area of interaction between architecture and local government.

Given that local planning schemes and zoning are created by local government under its regulatory powers, there is inevitable overlap between our response here and our 2010 submission.

Australia's Planning System
Inconsistency between local government area planning schemes, even when purportedly made under the same state or territory authority, is a significant barrier to an efficient planning approval system. Ostensibly, planning schemes under an overarching strategic plan, developed by a State or Territory government, should vary only in what geographical areas have the relevant zone under the strategic plan applied. We understand this is often not the case.

There is a significant barrier to compliance when planning schemes are extremely complex – as an example, the City of Port Adelaide's current planning scheme runs to some 593 pages. If we were to extrapolate this apparent level of complexity to the 560 local

government areas in Australia noted on page one of the Issues Paper, we would have a planning system in Australia defined by a 332,080 page document of planning regulation. We are not suggesting that every planning scheme is 593 pages long, or that on an individual basis it is necessary to comprehend its entirety, but that extrapolation does indicate the breadth and complexity of planning regulation.

Where complexity exists, an architectural practice must either wade through it to establish likely compliance of planning scheme, (assuming it is comprehensible enough to enable the practitioner to interpret it) or, if unable to do so with any certainty, and anticipating the time delays this will inevitably bring in eventually achieving compliance, submit plans anticipating rejection but expecting to be given reasons for rejection. This is an inefficient and costly way of conducting business with costs borne both by architects and their clients.

Inappropriate Content in Local Planning Schemes
The Issues Paper at page 20, raises the question of regulatory responsibilities resting with the most appropriate level of government.

The Institute believes that local governments use planning rules to regulate what are essentially building regulation matters. Often, these activities are couched as sustainability initiatives. The Institute's support for sustainable design and building practice is well established. However, no matter how well intentioned, regulating sustainable building practices and in particular, the type of appliances and fixtures for use in a local government area, is a failure of the system. That local government, representing a community, feels the need to regulate matters unrelated to land use, demonstrates a lack of current building regulations response to community aspirations. Mandating the inclusion of solar hot water systems, or rainwater tanks for example, ought be a state/territory or nationwide measure, not a piecemeal local government initiative.

Sustainability initiatives at a state/territory (or national) level have regulatory efficiency, and all parties know what is expected and can plan for such measures. There is an inevitable cost to business of ad hoc regulation in this field by local government.

The Issues Paper points out that the design, administration and enforcement of regulation becomes less suited to local government when its decision affects those outside the local constituency. Although it can be argued that a particular requirement such as solar hot water within a constituency does not affect buildings outside the local government area concerned, such requirements are an example of the costs incurred by built environment professionals who operate across local government boundaries in gaining knowledge of differing requirements. These local government introduced requirements are examples of regulatory 'creep' that are not subject to a Regulatory Impact Statement type evaluative process – meaning that there is no cost benefit analysis to justify the regulation.

The Institute favours harmonized planning laws, with the removal of ad hoc local government regulation and their associated additional costs, and with sustainability initiatives being regulated by the appropriate authority.

National Planning Guidelines
On a broader scale, the Institute would like to see national guidelines for planning approvals which, if implemented, would further reduce the differences to be navigated across state and territory boundaries. These variations reduce efficiency and can act as a barrier to architects practising across jurisdictions. A harmonised planning system would benefit the community through reducing the cost of doing business and reducing delays in approvals processes.

'Tracks' – more objective planning approval decisions
The Development Assessment Forum's Leading Practice Model, which the Institute fully endorses as an essential way to improve the planning process, promotes the organisation of planning decision processes into 'tracks' and that assessment wherever possible be against 'objective rules and tests'. Even where the ultimate decision requires a subjective analysis, the preliminary matters of compliance can be organised in this manner. We note that some states and territories have made significant progress in this, although others are notably slow to implement.

Private Certification
The benefit of private certification in building regulation compliance is well established, and it has brought about significant time and cost savings for the building industry. In most jurisdictions where this is possible, private certification runs in parallel with public certification through local government, and local government can in some cases be the ultimate authority. The time savings and advisory function of the private certifier in achieving compliance are considered by the industry to be generally worth the additional cost over public certification – hence the growth of this service industry.

The Institute believes similar benefit could be brought to local government development approval processing by private certification in planning, specifically certification of the objective and procedural aspects of planning approval. Organising development approval types into 'tracks', as mentioned above, is one of the major process improvements which would allow projects in the 'exempt' or 'complying' tracks to be readily passed over to private certification.

Planning Panels
To maximize efficiency, effectiveness, and reducing the cost of doing business, the Institute in general seeks to have planning decisions made using set, clear criteria which are objective and based on achieving good design/planning outcomes, devoid of local political influence. We see the appointment of expert panels to consider complex/contentious applications that require the weighing up of competing factors, including design issues, as a more efficient and transparent method of decision making. The effect of having projects appealed to, or referred to, State appointed tribunals, with attendant legal costs, appears to serve much the same purpose and achieve the same effect, but in a cumbersome and unduly expensive manner.

I look forward to the Commission's draft report on these issues and would be happy to discuss any of the points raised in this submission should you require more information or seek clarification.

Yours sincerely,

David Parken, LFRAIA
Chief Executive Officer