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5 November 2012

Regulation Review – Local Government Compliance and Enforcement
Independent Pricing and Regulatory Tribunal
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Re: Submission into IPART's review of Local Government Compliance and Enforcement

Thank you for the opportunity to provide feedback for the review of Local Government Compliance and Enforcement. These are some of the issues that private sector accredited certifiers have encountered when working with councils and their bureaucracy.

It is noted the review fails to address the issue of competition and the need for local government to undertake full cost accounting of the services they provide. History tells us that councils sacrifice some services out of a desire to provide another service that is financially draining on council's bottom line. A primary example of this is evident where some councils are coercing applicants to engage council to provide the Construction Certificate (CC) by threatening that the Development Approval (DA) will take much longer to process if the applicant uses an accredited certifier from the private sector. Similarly some councils provide CCs at no cost when applicant makes application for a DA.

Q3 - Are there areas where compliance or enforcement roles of local government and State Government agencies overlap or are unclear? What are the impacts of this on business, the community, councils or the State Government?

Great confusion exists within the industry as to the role of local government in relation to other judicial officers recognised under the Independent Commission Against Corruption Act 1988 and Ombudsman Act 1974. Council is often a competitor to the private sector in the provision of some services. This role is often wrongly confused with one of auditor. It is not council's role to review documentation or information submitted to council in relation to certification by accredited certifiers under the Environmental Planning & Assessment Act. The certification documentation lodged by accredited certifiers from the private sector is often reviewed and rejected, fulfilling a role not required by the legislation or expected by the community. Councils are a document catchment facility only, if a third party review is required it must be added to the legislation. This extra drain on resources is work that is not needed and is certainly extra red tape for applicants.

Q9 – 9 Do councils have the resources and skills to undertake regulatory activities effectively?

As multi-disciplinary organisations councils have a range of skills to undertake regulatory activities. However often councils overstep these roles and investigate the private sector in matters that are clearly outside their level of competency, eg high rise buildings. These activities can take months to undertake at a considerable cost to the local community. Efforts would be better placed in focusing on a role that produces a result that is achievable and more in tune with the expectations of the community and not in an auditor role that is self-appointed and outside of the legislation.

Q 12 – If you are operating a business across more than 1 council area, how do differences in council approaches impact on your business?


Council's business operates over many areas. As an external party a major frustration relates to council's inability of its departments to work together. For example, projects involving landscaping, hydraulics or environmental issues as part of a DA can become complex and inconsistent in the product that is produced. Traditionally development advisory panels have been set up to address these matters. However results would indicate competition between departments and professional opinions seriously impact on the timely delivery of expert advice at great cost of the applicant.

Q 16 What specific local government compliance or enforcement activities are imposing unnecessary costs on business or the community?

- The Act clearly states how and which items are to be included and excluded in the works when calculating Section 94 and 94A payments (EP&A Reg 2000 Clause 25J(3)). Many councils are adding items that the regulations do not allow and then refuse to acknowledge or change these items when the error is pointed out. For example, Disabled Access upgrades are regularly added when they are excluded in Regulations (EP&A Reg 2000 Clause 25J(3)(j)).
- Section 61 and Section 94 contributions on internal fit out works should only apply to new builds or extensions to buildings as there is no increase to population levels or council infrastructure and therefore should be exempted.
- Applicants are regularly subjected to inappropriate, incorrect and not-applicable DA conditions. Any conditions on a DA should be relevant, specific to the development and conditions must provide a clear method of how to achieve compliance at the appropriate stage of the development (pre-CC, Pre-commencement, pre-Occupation Certificate, etc.). Well written and appropriate DA conditions would save additional Section 96 applications and streamline developments post DA approval.
- Councils exhibit anti-competitive behaviour through behaviour such as offering unlimited inspections to act as a Principal Certifying Authority (PCA) at an unknown cost because they fail to fully cost the services they provide. This process involves reallocating money from other departments to manage any shortfall when these extra inspections are undertaken to the detriment of predetermined budgets.
- There are examples of councils using bullying tactics to scare private certifiers into walking away from jobs, leaving the job with Council. Councils can and do make it difficult for private certifiers to carry out their role. In some cases accredited Certifiers have been targeted with numerous complaints by one council where the council uses staffing resources to micro-analyse files lodged by accredited certifiers, at an unknown cost, to form the basis of complaints lodged with the Building Professionals Board. This is another example of council engaging in activities beyond the scope of their role at a cost to the community that is unspecified, yet significant.

Please contact me if you would look more information or further feedback into any of the issues raised in this submission.

Yours sincerely



Jill Brookfield
Executive Officer