to allocate

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Date 22 May 2015

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Dear Sir/Madam,

Invitation to make a submission on the Competition Policy Review Final Report

On behalf of Council, thank you for the opportunity to make a submission on the *Competition Policy Review Final Report*. Please note that while this submission is primarily concerned with recommendation 9 of the final report, (Planning and zoning), Council has some concern with the underlying philosophy of aspects of the report. In particular, Council shares some of the misgivings outlined by the Queensland Government in the "Foreword" to its Public Benefit Test Guidelines which were prepared in response to the Federal Government's April 1995 "*...package of legislative and administrative arrangements that underpin National Competition Policy (NCP)...*" in which it pointed out that:

> *"While NCP is designed to result in better use of resources and substantial and ongoing benefits to the community, the introduction of increased levels of competition will not always deliver the best overall result for the community.*
>
> *Accordingly, Governments have a responsibility to ensure that NCP reforms are only implemented where it is demonstrated that such reforms are clearly in the public interest, that is, there is a clear demonstration that competitive reform will yield a net benefit, and no significant detriment, to the community. While the Queensland Government is well aware of the potential benefits that competition can bring to the community, this Government will continue to ensure that competition is not pursued for competition's sake and that a considered and pragmatic approach is taken to NCP."*

All local governments have regulatory documents such as local laws and planning schemes that they use as tools for the "good government" of their local government areas, and which are caught by the NCP principles as a consequence. Council is concerned that, while a dollar value may be able to be attributed to competition restrictions imposed by regulatory instruments, social and environmental effects are largely emotive and can only be reliably assessed by more intangible means. The resulting problem is in how you compare these tangible commodities with the intangible commodities with any degree of confidence. Where no common measure exists, any person who is directly answerable to their community is likely to give a higher weighting to the emotive social and environmental effects than to the anti-competitive effects. It is noted from section 10 of the Report that the Panel holds the view that:

> *"Maintaining a rigorous, transparent and independent assessment of whether regulations serve the public interest, with the party wishing to retain anti-competitive regulation, is important to ensure that changes in regulation improve the wellbeing of Australians.*
>
> *The assessment should focus on outcomes achieved and not on processes undertaken."*

It is difficult to see how a "*...rigorous, transparent and independent assessment...*" can be undertaken for emotive aspects such as social and environmental effects.

In respect to the Competition Policy Review recommendations about "human services", Council notes the emphasis on private sector provision of those services (subject to Government *"...retaining a stewardship function, separating the interests of policy (including funding), regulation and service delivery."*). This prompts a significant note of caution about the impact of this policy on "human service" outcomes. Australia has in recent years seen a failure of the Government's policies to deliver housing to those in greatest need. There is ample evidence that Governments have been withdrawing from social housing provision, instead favouring rental assistance to client groups so they can purchase homes from the private sector to deliver affordable rental housing. This scheme, which relies so heavily on the "market economy", has not delivered the benefits projected.

On a similar note, there is a pervading view in the report that empowering consumers helps them to make good decisions. In terms of the affordable housing issue, the approach taken since the early 1990s has been to collect development statistics to better inform the development industry so that it can make informed decisions about the timely release, or withholding, of land from the market. This was meant to smooth the "boom and bust" cycle of housing supply, but clearly this hasn't happened. The cycle continues and land prices continue to increase as a consequence. There is a need to do more than just let the market operate as it currently does. There needs to be a link between what we build and the cities that we choose to live in.

Evidence of the Effects of Market Competition

Council shares the concerns outlined in the submission made by the Planning Institute of Australia to the Competition Policy Review Secretariat on the *Competition Policy Review – Draft Report,* particularly its comments on having an established benchmark against which an assessment of "*...the long-term trends of increased market competition...*" can be made. There is no practical benefit in imposing additional obligations on regulators unless any benefit can be practically measured and compared to the ongoing the cost to local government (and the communities that they represent) of implementing the measures. The package of legislative and administrative arrangements that underpin NCP has now been in place for more than 15 years so it would be reasonable to assume that some measured, (rather than theoretical), net cost-benefit figures are available.

Planning Philosophy and "Recommendation 9 – Planning and Zoning"

The primary assertion in section 10.1 of the final report seems to be that planning, through regulation, is anti-competitive. In actual fact, the underlying principle of planning is that it seeks to advance ecological sustainability by providing a sustainable balance between economic, social and ecological considerations. This is borne out in the *Sustainable Planning Act 2009* (SPA), the primary piece of development related legislation in Queensland. The report fails to give appropriate weight to achieving the required balance between these competing interests and is also silent on the following key aspects of planning schemes and current scheme preparation processes:

(1) Business establishment and growth is one consideration in the plan-making and implementation process. The sustainable planning philosophy inherent in many current Queensland planning schemes, as well as most "next-generation" schemes, supports, and provides opportunities for, the growth of business.

(2) The performance-based approach of current and "next-generation" planning schemes in Queensland recognises the need to provide a climate which allows both certainty and flexibility for both current and new businesses. For example, most schemes encourage "mixed-use" district and regional level centres, thereby ensuring that a broad range of businesses can be established in appropriately located and serviced centres. These "mixed-use" centres provide the main focus for private and public investment. Both the public and private sectors recognise that "growing" an established centre rather than allowing a progression of "ad-hoc", "out-of-centre" development is counter-productive in terms of return on investment and "growing" business activity.

(3) Many zones and development assessment levels in planning schemes are allocated according to specific site constraints such as flooding, slope instability, sensitivity of surrounding land uses, the protection of naturally occurring valuable resources and the presence of endangered vegetation. Some development proponents perceive the resulting reduced site yield as a direct anti-competitive measure rather than a common-sense response to inherent site constraints.

(4) Under the *Sustainable Planning Act 2009*, the Government prepares and adopts a number of State regulatory instruments such as the State Planning Policy (the SPP) and State Planning Regulatory Provisions (SPRPs). All of these instruments contain regulatory provisions and prescribe how local planning instruments such as planning schemes must reflect those regulatory provisions. It would be reasonable to assume that SPA, (and its suite of State planning instruments), would have been subject to a "public benefit test" in line with the NCP package of legislative and administrative arrangements endorsed by all Australian Governments. As such, there should be no need to subject those aspects of a planning scheme to yet another "public benefit test".

(5) The current planning scheme preparation process prescribed by most, if not all, States and Territories involves a wide-ranging "public interest test". That test is not focussed on anti-competitive provisions, but rather looks across all elements which contribute to achieving ecological sustainability. Normally the scheme preparation process would involve more than one State interest review and at least one extended period of community consultation. It is during the community consultation period that a draft planning scheme comes under the scrutiny of business groups, developers, land owners and other interested parties. All parts of a draft scheme, (and the background studies that informed its preparation), can be viewed and all parties have the ability to make submissions on the structure and content of the scheme that the local authority must consider and respond to. Yet another level of consultation aimed at just one element of the scheme in isolation would add an unnecessary layer of regulation to an already exhaustive and lengthy process as well as providing the potential to confuse a community that has already seen the same draft scheme.

The Competition Policy Considerations Prescribed in Recommendation 9

Recommendation 9 of the final report lists eight separate competition policy "considerations" that must form part of any "public interest test" of "planning and zoning rules". Council's response to each of those "considerations" is outlined below:-

(1) **Arrangements that explicitly or implicitly favour particular operators are anti-competitive** – This "consideration" needs to be expanded so that its intent is made clearer. Presumably, it is intended to cover competition between similar uses within the same zone on similarly constrained land, and in that context it is supported. However, it could be interpreted in other ways that are not supported. For example, there is the potential for the reference to "favouring particular operators" to be interpreted as "favouring particular types of uses or activities" merely because those uses and activities are generally regarded as synonymous with a particular operator. There is also the potential for the reduced parking requirements and corresponding greater site yield associated with development in close proximity to public transport interchanges to be viewed as preferential and anti-competitive treatment instead of a recognition of the increased transport options available to serve that development.

(2) **Competition between individual businesses is not in itself a relevant planning consideration** – Agreed

(3) **Restrictions on the number of a particular type of retail store contained in any local area is not a relevant planning consideration** – Agreed

(4) **The impact on the viability of existing businesses is not a relevant planning consideration** – Viability of existing businesses is a relevant planning consideration where the proposed use was not envisaged for the area/zone/precinct in which it is proposed to be established; i.e. those instances where the proposed use is specifically listed in the planning scheme as an "inconsistent use" for that area/zone/precinct. Also, it is noted that this "consideration" conflicts with the Productivity Commission's 2011 research report into planning, zoning and development assessments which found that considering impacts on the viability of centres is a relevant planning consideration during strategic planning stages. Like most other local authorities, Council conducts investigations into retail needs and retail provision as well as consulting with retailers as part of its planning scheme preparation processes.

(5) **Proximity restrictions on particular types of retail stores are not a relevant planning consideration** – The intent of this "consideration" needs to be made clearer. Presumably it relates to a prescribed separation distance between retail stores of the same type, and in that context it is supported. However, it could be interpreted in other ways that are not supported. For example, a requirement that certain retail stores only be permitted in "industry zones" if they have a direct nexus with the activities or commodities being produced in that area could be interpreted as offending the "proximity restrictions".

(6) **Business zones should be as broad as possible** – The types of uses permitted in a "business zone" are largely dependent on the size, location and planning intent prescribed for the land. Local business centres would naturally have a more restricted scope of allowable uses than a district or regional level centre so that amenity concerns and inappropriate use of a limited land resource are not compromised.

(7) **Development permit processes should be simplified** – These processes are usually prescribed in an Act or Regulation rather than in a local planning instrument such as a planning scheme, so they are not "zone dependent". However, there could be grounds for expanding the scope of this "consideration" to make the level of assessment allocated in a planning scheme more "risk dependent". For Queensland, the development assessment processes are prescribed by SPA which came into effect in 2009. As previously indicated, it would be reasonable to assume that SPA would have been subject to a "public benefit test" in line with the NCP package of legislative and administrative arrangements endorsed by all Australian Governments.

(8) **Planning systems should be consistent and transparent to avoid creating incentives for gaming appeals** – The intent of this "consideration" needs to be made clearer. Presumably it is aimed at "third party appeals" having the sole purpose of delaying or otherwise frustrating approval of development proposals on technical or "competitor based" grounds rather than planning grounds. This needs to be addressed in the legislation that directs the actions of the Courts, Tribunals and Committees responsible for hearing planning appeals rather than mandating a planning scheme measure that denies the public of their chance to have a say on what is likely to be unanticipated development.

Thank you again for the opportunity to make this submission. I trust that it assists in your deliberations on the recommendations of the *Competition Policy Review Final Report*.

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Yours sincerely,

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