Review of Fees for Development Control Services

A Consultation Paper

INDEPENDENT PRICING AND REGULATORY TRIBUNAL
OF NEW SOUTH WALES

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Matter No: SPR/97/2

Review Report 1998/2 **July 1998**

Submissions

Public involvement is an important element of the Tribunal's processes. The Tribunal therefore invites submissions from interested parties to all of its investigations.

Submissions should have regard to the specific issues that have been raised. There is no standard format for preparation of submissions but reference should be made to relevant IPART reports. Submissions should be made in writing and, if they exceed 15 pages in length, should also be provided on computer disk in word processor, PDF or spreadsheet format.

Confidentiality

Special reference must be made to any issues in submissions for which confidential treatment is sought, and all confidential parts of submissions must be clearly marked. *However, it is important to note that confidentiality cannot be guaranteed as the Freedom of Information Act and section 22A of the Independent Pricing and Regulatory Tribunal Act provide measures for possible public access to certain documents.*

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Submissions on the issues raised in this paper should be received no later than 31 August 1998.
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FOREWORD

On 1 July 1998, new legislation was implemented reforming the development approvals and control process within the Environmental Planning and Assessment (EP&A) Amendment Act and Regulation. The new development assessment system introduces an integrated system for providing consent to development. A proposed development is assessed by a process which reflects the significance of that development. Building approvals have been replaced by a system of certification which allows for accredited private certifiers to compete with councils.

An Order was also issued by the Government under the EP&A (Savings and Transitional) Regulation 1998 to regulate maximum fees for certain special development applications and construction certificates. The Order is for the transitional period until a competitive environment emerges following the accreditation of private certifiers.

The Premier has requested that the Independent Pricing and Regulatory Tribunal (IPART) review the pricing principles for development control fees, and establish guidelines for competitive neutrality.

In December 1997 the Tribunal released an Issues Paper which initiated its review of fees for development control services. In the past six months, the Tribunal has held public hearings and established a Working Party comprising representatives of the main stakeholders. It has conducted a survey and commissioned a consultancy to examine the costs associated with development control services provided by councils.

The local approval process sits within a broader system of state, regional and local planning. It is not a mechanical process. Rather, it allows people to achieve objectives consistent with development standards that reflect the values of particular communities. Any changes to the current fee structure must balance the competing objectives of users and beneficiaries of the system.

It has become clear that councils have only limited activity and cost information on their development control services. This severely constrains the Tribunal's consideration of any new fees arrangement. In the interests of moving to new fee arrangements that are workable and acceptable to key stakeholders, the Tribunal has decided to release this consultation paper. The Tribunal is most grateful for the assistance already provided by stakeholders and hopes that many will be able to assist the review further by commenting on the consultation paper. Following the consultation period, the Tribunal will publish its draft recommendations and indicative fees schedule.

There is much to be done to establish the quantum of fees that reflect efficient costs. Specific issues explored in this consultation paper are:

- Pricing principles for the development assessment system, particularly the "public good" component, and whether a higher cost should be borne by a local community if it demands a higher level of consultation and a more rigorous approval system.
- Cost recovery definitions, particularly in respect of the recovery of legal costs and the costs of governance.

- A preferred fee structure built upon a “standard fee” structure plus “allowable add-ons”.
- How fees should be set to reflect the costs of assessing different types of application.
- Complaint handling mechanisms and the use of avoidable costs in pricing contestable services.

The Tribunal encourages submissions on the specific proposals in this consultation paper.

Thomas G Parry
Chairman
July 1998

SUMMARY

1. Introduction

This consultation paper is a key step in the process of reviewing fees charged by councils and other consent authorities for development control services. Chapters 1-3 outline the current arrangements and provide an overview of submissions. Details of the Tribunal's findings are set out in chapters 4-8 of this paper. The Tribunal invites comments on its findings, preliminary views and proposals, which are summarised below. A consultancy study of the costs of development control services has been published separately. [1]

2. Context

Establishing efficient pricing for the development control services provided by 177 councils in NSW raises major conceptual and implementation issues. In practice, pricing regimes must inevitably depart from textbook rules and concepts. The commonly adopted pricing principles are unlikely to be fully applicable to all development control fees. A significant element of judgement and pragmatism is necessary.

The Tribunal accepts stakeholders' views that changes should be made to the current value-based fees structure. However, departure from the current system means that an alternative procedure must be developed to differentiate the costs of processing different types of development application, ranging from the renovation of a single residential dwelling to more complex developments (eg high rise commercial/residential developments or designated developments) which are likely to have more significant environmental impacts.

Costs must be shared fairly and reasonably between all beneficiaries, including the applicants, the local community and the wider community.

The issues which need to be resolved may be summarised as - *which* beneficiaries should pay *what* costs, and *how* should current fee structures be changed to reflect these costs?

The Tribunal acknowledges that there is no simple or perfect answer to these questions. There appear to be significant differences between the costs of processing development applications across all 177 councils, as a result of internal factors (relative efficiency and council policies) and external factors (such as the local community's attitude to development).

There are three elements in considering a new fee arrangement:

1. *The extent and form of regulation of fees.* For example, which fees should be regulated? How should the schedule of fees be structured, and what scope should councils have to vary the structure?
2. *The costs to be covered by the fees.* Which of the costs (in part or total) should be included in the fees? Costs not covered by the fees would need to be met from councils' general revenues.
3. *The structure of fees by development type or value.* Should there be a single flat fee or should fees vary by type of development? Should separate fees be set for different types of council?

[1] A copy of the PKF consultancy report can be obtained from IPART on Ph: (02) 9290 8400.

The Tribunal is of the view that development application fees should remain regulated as long as such services are not subject to competition. In this consultation paper, various pricing options are identified for comment. In addition, the Tribunal has examined pricing issues of fees for contestable services and related monopoly charges.

The consultancy cost study found that current cost systems do not provide sufficient reliable information on the costs of development control services. Furthermore, the information that is available indicates quite large differences in costs. These are due (in some proportion) to differences in the level of community involvement, differences in efficiency, and differences in accounting policies.

Given the constraints and information shortcomings, a possible way forward is to further explore the time and cost involved in processing different types of application. An average cost will be identified for each development category and will be used as a basis for setting standard fees for all councils. Under this approach, the proportion of costs recovered will vary between councils. However, the Tribunal also suggests options which allow councils to depart from the standard fees under "strict" conditions. The Tribunal invites comments on these proposals.

3. Pricing principles for the development assessment system (Chapter 4)

Pricing policy objectives

The Tribunal considers that the following pricing policy objectives should be applied in pricing non-contestable development control services:

- *Economic efficiency*. Prices should be set with regard to "efficient costs" only.
- *Cost reflective pricing*. Fees for development control services have important implications for (a) resource allocation and (b) value for money for the community and the applicants / developers. With a set amount of resources available to councils, spending more on assessing development applications is likely to be at the expense of the quality and level of other services. Cost reflective pricing can help ensure a council's scarce resources are better utilised to meet its community's needs. Whilst some departures from strict cost reflectivity may be necessary for practical reasons, large departures should be avoided.
- *Equity*. Under the "beneficiary pays" principle, developers / applicants and the community should pay according to the level of benefits accrued to them.
- *Removal of cross subsidies*. Prices should be set to minimise cross subsidies between customers (in this case, different types of development application).
- *Transparency*. If councils choose to impose a complex or more rigorous assessment process, the additional costs should be made transparent to the community and the applicants.
- *Predictability*. The pricing system should give a high level of certainty to the users as well as to the providers of the service.
- *Administrative simplicity*. Costs of compliance and administration are a significant factor. More complex pricing systems are likely to be costly to implement, less predictable and less transparent.

- *Stakeholders' objectives.* Prices should be set based on a specified service level. Broad acceptance of pricing policies by the stakeholders is essential.

In practice, the Tribunal acknowledges that:

- It is not possible to define costs precisely and to mirror these exactly in prices.
- Price setting should also take account of distributional impacts on customers. Where impacts on customers are significant, transitional arrangements should be considered.
- Any new pricing arrangements are likely to have financial impacts on councils. This aspect needs to be considered.

"Public good" benefit

Legislation requires the consent authority to consider a number of matters when assessing development applications. These include environmental impacts on the natural and built environments, social and economic impacts in the locality, and public interest. Whilst community consultation is an integral part of the development assessment process, the need for consultation varies, depending on the type of development.

It may be argued that minimising environmental impacts and protecting public interests are for the good of the entire community (ie the local community and/or the wider community at large), thus constituting a "public good". Some people living in the locality of a development application (eg adjoining property owners) may gain or suffer from a proposed development. However, for state significant projects (eg those projects generating employment opportunities), there are important economic and social benefits which may override other considerations. It may therefore be argued that the community should pay for a proportion of the costs of assessing development applications to take account of the "public good" effects.

An argument against "public good" is the principle that users or customers should pay for services which they receive. However, there is often a fine line between users and customers. Some would argue that the community are also customers, users and beneficiaries of the development approval system. Under the user/beneficiary pays principle, the beneficiaries of development control should bear the cost of providing the benefits they receive and, to the extent practical, those who benefit more should pay more.

However, consideration of a "beneficiary pays" approach often leads to difficulties. The main problem is the identification of any public good component of the benefit being derived from the development assessment process.

The housing and development community accepts that it should pay for a "reasonable" cost of community consultation, but does not wish to pay for an "excessive" level of consultation or intervention. Council submissions suggest that some communities place greater emphasis on local amenity and design criteria which can be achieved only through rigorous assessment. Clearly, the level of public benefit varies greatly between councils.

The Tribunal's preliminary views are:

- There is no single "precise" value for the public good component.
- Under a "prescribed" fee regulation, it is neither practical nor possible to determine the public good component in the fee structure for each of the 177 councils.

- Where a council puts in place a more demanding and rigorous assessment process, the additional costs incurred should be fully transparent and understood by the community. The Tribunal has yet to decide whether the costs should or should not be fully charged to the applicant/developer. The Tribunal recognises that the costs will ultimately fall mostly on those living in the local community. This will happen in a number of ways. If costs are charged to applicants who are local residents, the fees will impact directly on them. Where the applicant is a developer, the fees are likely to be passed on to the future residents. If costs are not fully passed on to developers, councils and, ultimately, ratepayers will bear the cost gap.

The Tribunal seeks comments on the following pricing principles:

Proposed Pricing Principles

- Pricing structures should be cost reflective, and fulfil the objectives of transparency, predictability and simplicity. Any fee structure reform must take into account the practical aspects of pricing and the impacts of change.
- The level and structure of charges should be based on the most efficient and effective way of delivering the development control functions.
- Pricing policy should encourage the best overall outcome for the applicants and the community. It should encourage applicants to submit complete and thorough proposals and discourage councils from pursuing excessively costly processes.
- Any new fee structure should be known "up-front" and should be as clear and straight forward as possible for both the applicant to understand and the consent authority to administer.

Specifically, the Tribunal would appreciate comments on:

Should a "standard average" level of public consultation be allowed in the regulated development application fees?

Should the community or the applicant bear any higher costs, where the council and/or local community demand a more stringent assessment process?

4. Cost and revenue analysis (Chapter 5)

Scope for cost reduction

The costs of assessment vary widely from one council to another as a result of:

- complexity of applications
- council policies, such as strategic planning, notification and delegation
- external factors, such as community attitude to development
- different levels of efficiency
- council's capacity to identify costs and approaches adopted to allocate costs to assessments
- location and size of councils.

Historically, there have been limited, if any incentives for a council to become more efficient and to identify the true cost of assessing applications.

Based on councils' submissions, the outcomes of the Shore Regional Organisation of Councils (SHOROC) and the Western Sydney Regional Organisation of Councils (WSROC) benchmarking studies, and a detailed cost study of eight councils, ***the Tribunal has concluded that:***

- There is significant scope for improving efficiency through process improvement such as a better system of tracking applications to reduce time wasted between key steps in processing applications.
- Productivity improvements can be achieved by putting in place contemporary, up-to-date and accessible local planning policies and instruments.
- Alternative disputes mechanisms can reduce some councils' costs, particularly the staff and legal costs of handling and defending councils' decisions.

The development of performance indicators is important for the regulation of non-contestable development control activities. To date, performance monitoring is limited to turnaround time and the percentage of legal expenses allocated to total planning and regulatory costs.

The Tribunal proposes that:

- ***Councils identify and separately report the full cost of assessing development applications and other development control activities, including a share of overheads for each. Better data is required to improve comparability.***
- ***Department of Local Government (DoLG), Department of Urban Affairs and Planning (DUAP), and the Local Governments and Shires Associations (LGSA) review the coverage and quality of performance data, and measure of the satisfaction of the community and the applicants with the assessment outcomes.***
- ***Councils pursue opportunities to benchmark their performance against neighbouring councils (such as the WSROC benchmarking study approach [2]).***

Survey results

The Tribunal conducted a survey of councils to obtain information on current costs and revenues. The analysis of 103 respondent councils suggests that:

- Labour cost is the major cost component.
- The methodologies adopted to allocate overhead costs vary greatly among councils. Some councils do not allocate any overhead costs.
- On average, the costs of determining DA/BA applications represent more than 4 percent of councils' operating expenses. By comparison, average revenue generated from development control services is less than 2 percent of councils' operating revenues.
- The average cost recovery rate estimated by the councils is 60 percent (excluding legal costs and including all revenue from development control activities). If legal costs are included, the average cost recovery rate is less than 40 percent on the basis of DA/BA fees only.

[2] Western Sydney Regional Organisation of Councils, *Approvals Process Benchmarking & Best Practice Study*, May 1997.

- Revenue from development and building applications represents about 60 percent of total revenue from development control activities. S149 planning certificates and building inspections account for 17 percent and 14 percent of revenues respectively.
- Charging practices for fees other than regulated application fees differ substantially, particularly inspection fees, pre-lodgement consultation fees, subdivision fees and fast tracking fees.

Consultancy findings for eight case studies and recommendations

The Tribunal commissioned a consultancy study to examine costs in detail in a sample of eight councils. This study found that:

- The costs of processing development and building applications vary greatly among the eight case study councils.
- Those councils with the highest costs for assessing applications and longest process time share common features. The diversity of topography, density of population, organisational structure and development stance of residents all tended to increase average processing time. These councils tended to experience increased objections, increased legal costs, and increased mediation and dispute resolution costs.
- In regard to cost recovery, the results from individual application reviews (ie detailed examination of a particular application file) are inconclusive.
- The consultant has estimated a weighted average cost of processing DAs and BAs by major categories of application for the eight councils. Unfortunately, the consultant was unable to assess the cost recovery in each category due to the councils' inability to provide the relevant revenue split.

The consultant's recommendations include:

- implementing activity based costing
- establishing appropriate cost drivers to allocate indirect costs to activities
- improving the accuracy of direct activity cost determination and cost capturing systems such as charge codes and time sheet systems etc
- improving and re-engineering processes
- implementing an application tracking system
- tracking application revenue by category.

Tribunal consideration

The survey and the consultancy study both reveal the fact that councils' accounting and information systems cannot provide the information the Tribunal requires in order to effectively recommend appropriate fees for development applications. The allocation of overhead and joint costs is problematic for most councils. Because councils are still in the throes of developing activity-based financial information, it is difficult to determine the extent to which efficient costs are under-recovered as councils claim.

Both the survey results and the consultancy study confirm that there is wide variation in the costs of assessing development applications. Some economies of scale are enjoyed by the very large councils, particularly the urban fringe and regional councils, which receive and

determine a great number of applications. Most councils do not have adequate information for cost-based price setting.

The Tribunal proposes that DoLG, in consultation with DUAP and LGSA:

- ***develop requirements for better tracking of cost and activity information for development approval systems***
- ***establish a firm timetable for these systems***
- ***provide a clearing house for information on the implementation of these systems.***

New regulated charges will be set on an interim basis (eg two years) pending successful implementation of improved systems.

5. Development application fees (Chapter 6)

Cost recovery definitions

The Tribunal has considered what costs should be recovered through development application fees. The cost components of processing applications include:

Standard costs (generally incurred with every development application)

1. Administration, registration and lodgement.
2. Initial checking of application by duty planner / surveyor.
3. Notifying neighbours and other members of the public.
4. Referrals to internal and external experts.
5. Requesting additional information and / or revisions to application.
6. Site inspections.
7. Assessing the application, including consideration of objections and technical assessments. This includes the reasonable costs of mediating and negotiating with objectors by council staff.
8. Processing the determination and issuing notice of consent / rejection.

Additional costs (which may not be incurred with every application)

9. Pre lodgement consultation.
10. Considering amendments under State Environmental Planning Policy No. 1 (SEPP1).
11. Advertising where prescribed by regulations or relevant planning instrument.
12. Referrals to external agencies for integrated development.
13. Urgent or priority processing.
14. Referral to a full council meeting and / or council subcommittee. This includes the costs of council site inspections, preparation of council reports, and council staff time in attending council meetings
15. Defending a legal challenge to a council decision.
16. Modifying a consent.
17. External mediation.

The Tribunal seeks stakeholder comments on whether this represents an appropriate summary of all the possible costs of assessing development applications. Costs identified above would include both the direct costs (eg salary and on-costs) and indirect costs (overhead costs and the cost of support services) associated with each of the above activities.

The Tribunal considers that the costs of governance (including formulation of town planning policies and matters relating to the development of planning instruments and strategies) should be funded from general rates (ie the ratepayer). This expenditure benefits all residents.

The Tribunal considers legal expenditure including the costs of defending legal challenges to council's decisions on development approvals should be funded from general rates. The significance of this cost varies considerably between councils.

The Tribunal seeks comments on the following cost recovery proposals:

DA fees - Proposed Cost Recovery

- The full cost of providing development control services should be identified, including a share of overhead and common costs.
- The following costs should not be recovered by way of fees from the applicants:
  (a) legal expenses including the cost of defending appeals on approval matters
  (b) cost of formulating town planning policies
  (c) cost of governance relating to councils' consideration of approval matters at council meetings.
- Where a local government charges below the maximum regulated fees, any such cost subsidy should be made explicit.

Community consultation in the approval process varies among councils. Therefore, the costs of community consultation above an average level may be regarded as a "public benefit". This amount should be identified by councils and made explicit and transparent to the community. The Tribunal seeks comments on this approach.

Possible options for a new fee structure

The Tribunal has considered the pros and cons of the current value-based fees structure and alternative pricing options, including:

- standard fees plus ability to charge add-on fees for a range of specified activities (Working Group's[3] preferred option)
- prescribed fees set for different types of applications
- time based charges
- deregulation.

The Tribunal shares the stakeholders' concern that the current fee structure is neither efficient nor fair. In the absence of a direct relationship between price and the cost of assessment, there is no relationship between what it costs councils to deliver development control services and what society is prepared to spend to receive these services (whether it is the applicant or the ratepayer who pays).

The Tribunal considers that full deregulation of fees for development applications is not appropriate at this time, given the absence of competition and most councils' inability to identify costs. The Tribunal is inclined to set a regulated schedule of fees which should be applied for development applications submitted to a consent authority (excluding complying developments[4]). However, it acknowledges that consideration should be given to allowing a council to levy a surcharge in its area or for a particular category of application if there is a good reason for doing so.

The Tribunal proposes that the following four options be further explored:

Proposed Pricing Options for DA fees

1. Set a standard fee for each category of development for a "standard" or "average" development application with optional "add-ons".
2. In addition to (1), individual councils have the option of submitting a proposal for higher fees to an expert panel. Such proposals would have to meet specified criteria. The expert panel would then make a recommendation to the Minister for Planning to approve or not approve the variations. As at present, councils would not need approval to charge less than the regulated fee.
3. In addition to (1), councils have the option of departing from the regulated fee on a case by case basis. The variation would be advised at the commencement of the DA process and could reflect the expected complexity of the application and its review. The applicant has the right of appeal to an expert cost assessor for a ruling on whether council's fee is reasonable or not.
4. A combination of 1, 2 and 3.

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[3] In February 1998, the Tribunal formed a Working Group to consider issues arising from this review. A list of members is provided in Attachment 2.

[4] Under the new integrated development assessment, complying development does not require the consent of council or the Minister for Urban Affairs and Planning.

A single fee scale for the whole of NSW may not adequately cater for the range of circumstances that exist across councils and could have adverse financial implications for some councils. Alternatively, standard fees could be set for groups of councils by location and size. However, given the information shortcomings, it is unlikely that the Tribunal will have sufficient data to set charges on this basis.

Increased costs of regulation and resource requirements would be associated with options 2 and 3. The Tribunal has reservations about option 3 (ie departure from the regulated fee on a case by case basis), due to the uncertainty, potential time delay, cost measurement problems and review process involved. The practicability of option 2 is also in question. In the extreme scenario, if each council put forward one application, there will be 177 cases for review. Whilst it is not expected that there would be a large number of cases, there is a risk that the number of cases for review could escalate beyond a manageable control level.

The standard costs (generally incurred with every application) recovered by a standard fee would include:

1. Administration, registration and lodgement.
2. Initial checking of application by duty planner / surveyor.
3. Notifying neighbours and other members of the public.
4. Referrals to internal and external experts.
5. Requesting additional information and / or revisions to application.
6. Site inspections.
7. Assessing the application, including consideration of objections and technical assessments. This includes the reasonable costs of mediating and negotiating with objectors by council staff.
8. Processing the determination and issuing notice of consent / rejection.

The following costs could be recovered as add-ons:

- advertising where prescribed by regulations or relevant planning instrument
- pre lodgement consultation
- considering amendments under SEPP1
- referrals to external agencies for integrated development
- external mediation.

The Tribunal proposes that the following costs would **not be recoverable** through either the standard fee or by add-ons:

- referral of an approval matter to Council
- strategic planning
- legal costs of defending challenge to a council's decision
- costs of priority or urgent processing (except for assessments which are contracted out)
- costs of dispute resolution
- community consultation beyond what is included in the standard fee

- post approval monitoring costs.

There is a key question of how fees should be charged for different types of development application. For example, should fees be charged in accordance with the classification of buildings in the Building Code of Australia. At present, the most commonly adopted basis includes development costs, construction costs, gross floor area and a "complexity" factor.

The Tribunal invites comment on the options outlined above, and whether standard fees and add-on fees should be differentiated for various types of development.

The Tribunal invites comments and suggestions from all stakeholders on a workable way of structuring fees for complex development such as large residential flats, shopping centres or mixed development. For example, is gross floor area an appropriate proxy for the complexity of the development? The Tribunal also encourages any councils with good activity based costing systems to volunteer for further study of the costs of processing different types of applications.

Estimate of standard fees

The consultant study may provide some guidance on the parameters against which standard fees are likely to be set, ie an estimate of processing time and costs associated with different types of development applications. All interested parties are invited to study this report and provide comments on its potential implications for fees.

Preliminary findings - other development application fees

a. State significant development

According to DUAP's submission, the costs of assessing state significant developments are often substantial and require extensive pre-lodgement consultation, advertising, specialist consultancy services, public consultation and, where necessary, a Commission of Inquiry.

The Tribunal considers that the standard fee plus add-ons can be applied equally to state significant developments. However, it is apparent that the standard fee should be higher, given the size, complexity and significance of these projects. A complexity factor could be pre-determined but capped at a maximum level for such developments. The Tribunal does not support the suggestion of recovering the full costs of post approval monitoring. Monitoring costs following completion of a development should be treated as enforcement and public good benefits which should be funded by the consent authority.

The Tribunal seeks comments on its preliminary views on state significant development projects.

b. Applications to erect advertising structures

Under the amendment regulation, the maximum fee payable for the erection of one or more advertisements is the greater of:

- $215, plus $70 for each advertisement in excess of one, or
- the fee calculated as for other developments based on value.

The Tribunal understands that the above fees are based on a 1994 study commissioned by DUAP.

The Tribunal proposes to retain the structure of an initial application fee plus additional fee based on the number of advertisements.

c. Subdivisions

Consultation with the Institution of Surveyors indicates that the current structure (application fee plus an additional fee depending on the number of lots) is appropriate. The Tribunal notes that the level of development application fees for subdivision increases by 60 percent under the new regulations.

The Tribunal proposes to retain this structure. The Tribunal seeks comments on the reasonableness of the land subdivision fees under the new regulations.

d. Hospital, school or police station erected by a public authority

If councils or the government choose to subsidise these developments, separate funding should be provided and made transparent.

The Tribunal proposes that the same fee structure and charges for local approvals be applied to these developments.

e. Modification of a consent

The new regulations set a cap of up to 50 percent of the original fee in all cases except where the application is to correct a minor error, misdescription or miscalculation (in which case the fee cannot exceed $350).

The Tribunal is of the view that the fee should be capped. The Tribunal seeks stakeholders' views of the appropriateness of the current fee structure for modifying a consent.

f. Staged development

The Tribunal seeks stakeholder comments on the appropriateness of giving councils the discretion to charge full fees for each staged approval application (with the provision for discounts where appropriate).

g. Issue of strata subdivisions

The Tribunal seeks:

- ***councils' comments on whether development applications are necessary for applications to strata subdivide in circumstances where development approval has already been granted.***
- ***Stakeholders' comments on whether the current fees for assessment ($250 + $50 per lot) under the Strata Titles Act are appropriate.***

6. Competitive neutrality issues (Chapter 7)

DoLG has published a guide to competitive neutrality pricing and costing for council businesses. It covers:

- the complaints handling system and external reporting
- competitive neutrality pricing requirements, including tax equivalent payments, debt guarantee fees and rates of return on capital invested
- *full* costing including the recovery of all direct and indirect costs involved in providing goods and services.

The Tribunal notes that only a few councils include a tax equivalent payment when costing their services.

In a Working Paper published by the NSW Treasury in October 1997,[5] the pricing principles for user charges for goods or services sold into competitive markets are developed. Competitively neutral prices are based on *full* costs adjusted by competitive advantages or disadvantages.

The Tribunal notes that at recent *Pricing Guidelines Workshops* conducted by NSW Treasury on *Competitively Neutral Pricing*, it was stated that inter-jurisdictional discussions are now favouring an *avoidable costs* basis for pricing. Whilst the intent is to recover fully attributed costs over the medium to long term, a government agency can apply avoidable costs when establishing competitively neutral prices. Avoidable costs are defined as *the costs that would be avoidable if the commercial activity did not take place; it is a medium to longer term concept ie not short run marginal cost*. Prices set on avoidable costs are lower than with the full costing approach.

The Tribunal invites comments on:

- ***how the application of "avoidable costs" may impact on those development control services that will be contestable from July 1998***
- ***whether a floor price on competitive services is warranted while the market is being established***
- ***whether the restrictions on discount fees for "packaging services" (including monopoly DA assessment) are necessary.***

[5] This paper was developed to assist state government departments establish competitively neutral pricing for goods and services where these departments compete with the private sector.

As more local government activities become open to competition (including contestable certifications in the development control process), an effective complaints mechanism is important. At the local government level in NSW, DoLG will administer the complaints mechanism, and will report to the Minister for Local Government on the findings of any investigations of complaints. The number of complaints and the findings of any investigation should be reported in DoLG's and councils' annual reports.

Councils are required to comply with the Trade Practices Act. Anti-competitive practices such as misuse of market power may be in breach of this Act. The Australian Competition and Consumer Commission (ACCC) has extensive enforcement powers it can use against individuals, corporations and government businesses which breach the Act.

Ringfencing is essential to ensure that costs are attributed accurately and to assist in setting prices that reflect the nature of a council's business activity. From 1 July 1998, councils are required to prepare separate business activity accounts for each category 1 business activity.[6] Councils may decide whether or not to apply competitive neutrality to category 2 businesses (turnover less than $2m). Provision of contestable certification services is likely to fall under category 2 businesses.

Ideally, the costs of "contestable" development control services (ie certifications and issuing of complying development certifications) should be separated from other non-contestable activities. However, there are practical problems for councils because all these services are likely to be provided by the same functional unit. The Tribunal notes that most councils currently lack adequate costing systems for ringfencing.

The Tribunal wishes to further investigate:

- ***the incentives for councils to undertake ringfencing for contestable development control services***
- ***the sort of assistance that should be provided to councils to help them move towards a better costing system.***

7. Other issues (Chapter 8)

Council registration of certificates

The Tribunal's initial views are that:

- ***Councils should be allowed to recover registration costs through a nominal explicit charge payable by the applicant or the accredited principal certifier. However, the Tribunal is mindful that this fee should not become another cost burden to the applicant.***
- ***Where councils provide post approval certifications, the registration fees applying to accredited certifications should be made explicit and charged to the applicants.***
- ***Registration fees should be set based on an avoidable cost basis. The registration fee of $20-50 per certificate adopted by some councils appears excessive.***

[6] The NSW Government Policy Statement on the application of National Competition Policy to local government defines significant business as category 1 "business activity with a turnover of $2m and above".

Other regulated fees

The Tribunal considers that the provision of s149 planning certificates, building certificates, and certified copies of a document held by a consent authority to be activities ancillary to the core town planning and building control functions. On this basis, the fees for these ancillary activities should be based on avoidable costs.

The Tribunal's initial assessment is that fees for issuing planning certificates (s149 certificates) should be set at avoidable costs ie the incremental labour costs and incremental software costs. The Tribunal seeks councils' comments on:

- ***the avoidable costs of issuing s149 planning certificates***
- ***the likely revenue impact on councils if avoidable cost pricing is adopted.***

The fees for other miscellaneous certificates and services should also be set on the basis of avoidable costs. This proposal, if accepted, will mean that some fees may fall (eg s149 planning fees) but others may increase (eg building certificates for single dwellings). Further investigations will be undertaken.

Service agreements

Whilst the Tribunal supports the use of service agreements, it has some reservations about the appropriateness of guaranteeing "fast track" assessment or priority processing if the applicant agrees to pay a higher fee. This may lead to the undesirable perception that applicants who can afford a higher fee may enjoy preferential treatment. The Tribunal considers that the primary goal of having service agreements is to raise the quality and level of services (including turnaround time) for all applications.

The Tribunal suggests that councils who wish to offer priority processing/fast track processing, contract out (ie engage a contractor/consultant to assess the application). This will ensure minimum disruption to the assessment of other applications.

Communication and networking mechanism

DUAP has arranged training sessions and workshops for council officers about the new integrated development application system and the new legislation. Some councils have pursued communication mechanisms such as developer forums, Internet and media. Given the substantial changes in place from 1 July 1998, more effort will need to be devoted to increasing public awareness and understanding of the new system.

Public education on contestable services (ie certification of specified development activities) is critical so that the applicants are aware of the change and can decide between councils and private certifiers. This will assist in the development of a market for those services open to competition.

The Tribunal seeks feedback on the effectiveness of the communication mechanisms adopted to date.

1 INTRODUCTION

New legislation, which streamlines the development control system, comes into effect on 1 July 1998. Pursuant to section 12A of the *Independent Pricing and Regulatory Act 1992*, the Premier requested the Independent Pricing and Regulatory Tribunal (the Tribunal) to review pricing principles for development assessment fees. The terms of reference for the review are set out in Attachment 1.

1.1 Scope of this review

The purposes of the review are to:

- Develop pricing principles for the development assessment system (except for complying developments).
- Establish an indicative schedule of fees for monopoly development control services.
- Establish guidelines for the setting of fees where there is competition.

Table 1.1 lists the fees which are to be addressed by this review.

Table 1.1 Development Control Fees

Fees for which IPART is to recommend pricing principles and establish indicative fees	Fees for which IPART is to consider competitive neutrality issues	Fees and charges not covered by the review
Development Applications - Advertisements - Subdivisions - Hospital, School or Police Station erected by a Public Authority Modification of a Consent Certified Copy of a Document held by a Consent Authority Council Registration of Certificate Planning Certificate Building Certificate Review of Council Decision (New fee – s82A of the Act) Issue of Strata Subdivision (NB This may become open to competition as a result of further legislative amendments.)	Complying Development Certificates Construction Certificate Compliance Certificate Occupation Certificate Subdivision Certificate	Developer Contributions S94 All Bonds, eg Footpath Deposits Administration Fees not currently regulated, eg Monthly Building Statistics

The specific fees for which principles and indicative pricing levels are to be established by this review are the Development Application fees associated with state significant and local development as defined by the Environmental Planning & Assessment (EP&A) Amendment Act 1997 where the consent authority is either a council or the Minister. Part 9 of the EP&A

Amendment Regulation[1] provides a description of the fees that are the subject of this review. A new fee will be charged for reviewing a council decision, as per section 82A of the EP&A Amendment Act.[2] Principles and indicative fee levels are also to be established for the registration of documentation from accredited certifiers.

The Tribunal will not recommend indicative fees for complying development certificates because the issuing of these certificates will be competitive. The issuing of post approval certificates - construction, compliance, occupation and subdivision will also be open to competition. To ensure that there is a level playing field once competition is introduced, the Tribunal has considered competitive neutrality issues as part of this review.

1.2 Review process

The Tribunal's review process involves consultation with stakeholders and other interested groups. An issues paper was distributed to all councils and other stakeholders in December 1997. Submissions were sought and two public hearings were held in early March 1998.

Copies of all submissions and a transcript of the hearings are available for inspection at the Tribunal's office. The public hearing process, consultation, and a list and summary of submissions are provided in Attachments 2, 3 and 4.

To assist in the review, the Tribunal:

- Established a Development Control Fees Working Group in February 1998. The group has representation from the Department of Urban Affairs and Planning (DUAP), Department of Local Government (DoLG), Local Government and Shires Associations (LGSA), Urban Development Institute of Australia (UDIA), Housing Industry Association (HIA), Property Council of Australia (PCA), urban and non-urban councils (Waverley Council and Singleton Council), Total Environment Centre, Royal Australian Planning Institute (RAPI) and Association of Building Surveyors.
- Completed a cost study of eight local councils providing development control process, with particular focus on the processing of development applications (DAs) and building applications (BAs).[3]
- Surveyed councils in February / March 1998 on aspects of DAs and BAs.
- Examined interstate pricing practices, particularly in Victoria, South Australia and Queensland.
- Met with a number of councils, private sector town planners and industry groups.
- Examined previous reports on development control fees and benchmarking studies.

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1 Copies of the Regulation and Acts are available from the NSW Government Information Service, Ph: 9743 7200.

2 A power which exists under the LG Act at Section 100, and which is to be reproduced in the EP&A Act.

3 Under the amendments to the EP&A Act which came into force on 1 July 1998, building approvals (BAs) have been replaced by construction certificates which may be issued by councils or accredited private certifiers. Compliance with the Building Code of Australia (BCA) is now a purely technical process.

To assist its review, the Tribunal has decided to release this consultation paper. After the consultation period, the Tribunal will consider and publish its draft recommendations and indicative fees schedule.

The Tribunal members for this review are:

Dr Thomas G Parry, Chairman
Mr James Cox, full-time member
Ms Liza Carver, part-time member.

1.3 Purpose of this report

Through the release of this consultation paper, the Tribunal hopes to stimulate further public comment on possible fee structures and communicates its initial views on key issues of price setting.

The purpose of this report is to inform interested parties and stakeholders of the progress of the review. This paper also puts forward the Tribunal's initial assessment of pricing principles and alternative fee structures. A number of proposals are presented in this report to prompt further discussion and input.

The following chapters aim to:

- Provide background information on the new development assessment system and an overview of submissions in response to the issues paper (Chapters 2 and 3).
- Outline the Tribunal's initial views on pricing principles (Chapter 4).
- Summarise the outcomes of a cost and revenue analysis, including the findings of the consultancy cost review and survey results (Chapter 5).
- Discuss cost recovery definitions and alternative fee structures for development applications (Chapter 6).
- Discuss competitively neutral pricing issues for those development control services that will be open to competition (Chapter 7).
- Present the Tribunal's consideration of other miscellaneous fees, service agreements and communication or networking mechanisms (Chapter 8).

It should be noted that this report presents the *initial* views and findings of the Tribunal. The Tribunal welcomes comments from interested parties. All public submissions should be received by 31 August 1998. All submissions will be carefully considered in developing an interim report.

2 THE DEVELOPMENT ASSESSMENT AND CONTROL SYSTEM

The development approval system is not a mechanical process of checking an application against regulations. The local government approval process sits within a broader system of state and regional planning. Often, it involves an adjustment process which allows people to achieve objectives consistent with development standards that reflect the values of particular communities. There is always tension between the desire for stability / sustainability and the inevitability of change / growth.

This chapter provides background for the inquiry, including:

- facts and statistics on the planning process
- planning and regulatory reforms in NSW
- transitional regulated fees from 1 July 1998[4]
- an inter-state comparison of fee structures.

2.1 Facts and statistics

At the operational level, town planning and building control constitute one of the major services[5] provided by the 177 councils in NSW. The main activities they involve are:

- processing, assessing and determining development applications (DAs)
- processing, assessing and determining building applications (BAs)
- monitoring development following an approval including inspections
- regulating enforcement matters
- providing miscellaneous services including pre-lodgement consultations, issue of building certificates etc.

At a strategic planning level, councils adopt local environmental plans (LEPs) and development control plans (DCPs) to guide land use and development within their Local Government Area. Councils in consultation with the community make decisions on these plans. Along with the legislation and planning instruments implemented at state and regional level, these planning instruments form the regulatory framework for the local approval process.

Income from development control fees is reported as part of councils' user charges and fees revenue. Based on the Tribunal's survey findings, it is estimated that revenue from development control services represents approximately 2 percent of councils' total revenue. This is a relatively small proportion of all councils' total revenue of $4.6bn[6] in 1996 / 97. By

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4 The schedule of regulated fees was developed by the Department of Urban Affairs and Planning and was included in the draft and final EP&A Regulation 1998.

5 Other services include: community amenities (parks, water and sewerage, library services, swimming pools, street cleaning and street lighting), community welfare (child care, Aboriginal projects, immunisation, aged / disability accommodation services, youth services etc), public health and safety (garbage collection and disposal, animal control) and infrastructure provisions (road works, parking, bush fire control etc).

6 For all 177 councils, the sources of total revenue include: rates (49 percent), user charges and fees revenue (19 percent), interest revenue (4 percent), grant revenue (17 percent), contributions and donations (9 percent) and other (3 percent).

comparison, councils spent approximately $165m on town planning and building control. This represents around 5 percent of councils' total operating costs. It should be noted that the actual resources devoted to planning and building control are likely to be higher because:

- some councils do not fully allocate administrative and joint costs to the core functions[7]
- strategic planning on town planning matters is generally included as part of the costs of governance
- where the applications are decided at council meetings, the additional costs of council meetings and the time spent by councillors (on considering applications, site inspections etc) are not included.

Other key statistics are:

Table 2.1 Statistics on Development and Building Applications (1996/97)

	Development applications	Building applications
No of applications determined	45,311	113,623
Average number of applications determined per council	256	642
Mean turnaround time for all councils	62 days	36 days
Council with the highest mean turnaround time	197 days	109 days

Source: Department of Local Government 1996/97 Data Collection.

Councils are the consent authority for most DAs except for developments where another body such as the Minister or Director General of Urban Affairs and Planning are nominated as consent authority in a planning instrument or in the legislation. When determining an application, the consent authority must consider an extensive range of matters. The matters to be considered are very broad and are open to interpretation.

2.2 Reforming the development assessment system

Until 1 July 1998, the approval and certification system was governed by two main pieces of legislation:

- the Environmental Planning and Assessment Act 1979 (EP&A Act) covering development
- the *Local Government Act 1993* covering building applications and post approval regulatory activities.

The Local Government Act Subdivision Application Part XII 1919 and the Strata Titles Act cover issues relating to subdivision. Legislation concerning conservation, land use and other issues also influences the control of development.

Under the reforms, building and subdivision controls are absorbed into the development control framework.

[7] In its Final Report on Benchmarking Local Government Performance, the Tribunal found that there was a considerable variation (0-over 40 percent) in the proportion of administrative costs as a percentage of total expenditure which was not allocated to any function.

2.2.1 The new integrated development assessment system

The *Environmental Planning and Assessment Amendment Act 1997* brings building, development and subdivision processes together under a single piece of legislation. The new development assessment system:

- introduces a single, integrated system for providing consent to development
- provides for a proposed development to be assessed by a process which reflects the significance of that development
- involves the private sector in the assessment process and in issuing certificates.

From 1 July 1998, developments are classified as:

- local developments – developments requires consent by councils
- state significant developments – developments requires consent of the Minister
- complying – requiring consent by either councils or accredited certifiers
- exempt – not requiring consent
- prohibited – not permitted.

State significant development includes major industrial developments (eg a coalmine), which are of state or regional significance. Under the new Act, the Minister for Urban Affairs and Planning assesses the application and either approves or refuses the proposed development.

Local development may include shopping centres or town house developments. In most cases, local councils are the decision makers for local development. Under the integrated approach to assessment, councils are required to co-ordinate with state government departments to provide their terms of approval.

Complying development is minor development, the environmental impact of which can reasonably be assessed in terms of predetermined criteria such as height, set back and the Building Code of Australia (which include criteria covering structural soundness, design, amenity and access, and water management). Complying development may include alterations and additions to single-storey residential dwellings. The private sector empowered to compete with councils in issuing complying development certificates. Councils will determine the scope of complying developments.

Exempt development does not require any form of consent. It may, in certain circumstances, include garages, garden sheds and internal renovations.

The new system introduces competition to the assessment process including the issue of the following certificates:

- Complying development certificates – verifies that a proposal is “complying development” and may be carried out as it complies with the relevant development and building standards.
- Construction certificates – needed before works commence to verify that detailed building and engineering plans comply with building codes and engineering standards.
- Compliance certificates – may be required at certain stages to certify that an aspect of the development complies with a specific condition of consent or a detailed standard.

- Occupation certificates – authorise the occupation and use of a new building or a change of use of an existing building and certifies the building is suitable to occupy after building work is completed.
- Subdivision certificates – verifies a subdivision complies with conditions of development consent and authorises the formal registration of the plan of subdivision with the Land Titles Office.

A council or an accredited private certifier can provide these certificates. Certifications fees are not proposed to be regulated.

Under the new legislation, the Minister for Urban Affairs and Planning will authorise professional associations to act as accreditation bodies which will in turn assess whether individuals should be granted accreditation.

2.2.2 Implementation status

Exempt and complying developments will be specified in local environmental plans and may vary between and within local government areas. DUAP has prepared draft guidelines for defining such developments. By December 1999, councils have to include the scope of complying developments in their LEPs.

The accreditation process is being put in place. The relevant professional bodies (the Institution of Engineers and the Building Surveyors and Allied Professions Accreditation Board Inc.) have applied to the Minister for Urban Affairs and Planning to become the accreditation bodies. Each association's accreditation scheme is currently exhibited for public comment. The Minister will establish a task force to review initial accreditation schemes.

2.2.3 Review of the planning framework

Currently, the Government is also reviewing the plan making framework and process under Part 3 of the EP&A Act 1979. The government review will address concerns that:

- the plan making system is too complex
- the process is too slow
- the plans and policies do not deal comprehensively with environmental and resource management issues and the needs of future generations
- the system is inaccessible to users.

2.3 Reforming development control fees

2.3.1 Fees prior to 1 July 1998

Current legislation permits councils to charge fees for subdivisions, DAs and compliance certificates, subject to maximum fee levels specified in regulations. Prior to 1 July 1998, there were many pieces of legislation governing development processes and a multiplicity of arrangements for the setting and charging of fees.

Development applications

- Subsection 77(3) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) outlines the development application process.
- Maximum fees are prescribed by the regulations. The pricing structure is based on the cost of the proposed development.
- In the past 17 years that regulations governing fees have been in force, there have been no significant changes in the fees or fee structure. Although some fees were increased as part of the changes to the regulation in 1994, fees have not been indexed, nor have fee structures undergone any major reforms.

Building applications

- Section 68 of the *Local Government Act 1993* (LG Act) outlines the building activities for which prior approval from council is required. These activities include the demolition and erection of buildings. Division 3 of Chapter 7 of the LG Act prescribes the processes for applications, and states that applications must be accompanied by a fee.
- The pricing structure is based on the estimated cost of construction.

Subdivision applications

- Subdivision development is controlled under Part XII of the Local Government Act 1919. In many cases it is also covered under the EP&A Act through local environmental plans.
- Councils determine their own fee schedules for a range of matters including the checking of design drawings for roads, on-site inspections, and inspections for final certification and release of plans.[8]

The provisions regarding the charging of fees in the Local Government Act 1993 are general (Section 608). Under section 609 of the Act, councils must take the following factors into account when determining fees:

- "the cost to the council of providing the service
- the price suggested for that service by any relevant industry body or in any schedule of charges published, from time to time, by the Department (of Local Government)
- the importance of the service to the community
- any factors specified in the regulations."

There is also a provision for higher or additional fees to be charged for a higher standard of service.

2.3.2 How are fees to be charged under the new system?

Historically, separate fees have been charged for a development application, building application and subdivision application. Under the new system, these separate applications will not exist and only one fee will be charged at the initial development application stage. Councils or the consent authorities are able to charge additional fees for services open to competition, including post-approval certificates.

[8] *Review of Subdivision and Outdoor Advertising Fees*, N.A.T. Consulting Pty Limited, April 1995.

The Tribunal will make recommendations to the Minister on the pricing principles for development assessment fees and appropriate fee structures. The Minister will then determine the new fees structure to be legislated and implemented.

2.3.3 Transitional regulated fees from 1 July 1998

Until such time as the Tribunal completes this review and makes recommendations on fee structures, the fees and charges introduced 1 July 1998 with the new *Environmental Planning and Assessment Regulation 1998*[9] replace the fees under the 1994 Regulation. The same DA fee structure continues to apply but the fees are higher.[10] These fees have been included in the draft Regulation released in November 1997, prior to the commencement of this review.

On 30 June 1998, the Minister for Urban Affairs and Planning issued an Order under EP&A (Savings and Transitional) Regulation 1998 to regulate maximum fees for certain special development applications and construction certificates. The Order is for the transitional period until a competitive environment emerges following the accreditation of private certifiers. The effect of the Order is as follows:

- The maximum fee for a construction certificate is set at the same rate as the previous rate for a BA; or
- Where a DA and construction certificate is now required for development which previously needed only a BA, the maximum fee for the DA is set at the same rate as the previous rate for the BA and no fee can be charged for the construction certificate; and
- Additional fees cannot be charged for the development approval functions specified in the Order including the issue of an occupation certificate.

The Tribunal notes that the size of increase in the development fees varies depending on the value of construction. In general, the increase is around 10-11 percent for applications with development value over $250,000.

Attachment 5 provides a comparison of the fee levels including the "transitional" fees from July 1998.

2.4 Inter-state comparison of fees structure

The planning framework and fees structures vary across the states. A comparison of fee structures in Victoria, South Australia, Queensland and New South Wales is presented in Table 2.2[11]. A detailed description of fee structures is provided in Attachment 6. The Tribunal notes that in Western Australia, the Regulations of the Local Government Act 1995 give local government autonomy in the fees charged for planning services. The Housing Industry Association (HIA), in its submissions, raises concern about the lack of consistency between councils across Western Australia and Queensland, where fees are not regulated.[12]

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9 This new Regulation was gazetted on 25 May 1998.

10 DUAP submits that the fees in the Regulations are set on the basis of indexation according to inflation since 1994 - when the fees were previously reviewed.

11 HIA has provided valuable assistance to this comparison study, including an overview in its submission.

12 HIA submission, appendices.

Table 2.2 Inter-state Comparison of Regulations and Fees Structure

	Victoria	South Australia	Queensland	NSW
Planning framework				
Process	Two processes for planning permits and building permits	Integration of planning and building systems	Integrated development assessment system	New integrated development assessment system
Legislation and regulations	Planning and Environment Act 1987 and Fees Regulations 1988	Development Act and Regulation 1993	Integrated Planning Act 1997	Environmental Planning and Assessment Amendment Regulations 1998
Extent and form of regulation of development control fees	Planning permits are regulated; building permits are open to competition	Regulated except that private certification is allowed for assessment against building rules	Deregulated. Fees are at the discretion of councils	Regulated for DA fees; competition will be introduced to certifications of specified services
DA fees or equivalent charges				
Basis of charges	Flat fee for 20 classes which define the type of application and a range of estimated costs of development	Base fee + % of *cost* of development	Vary from council to council. Some are more prescriptive and detailed than others. Some apply floor area	$ based on cost of construction
Examples: $200,000 development	$130 (dwelling) or 268 (other)	$200	Council specific	$770
$1m development	$1,345	$1,000	Council specific	$1,920
$10m development	$6,725	$10,000 (councils regularly waive larger DA fees)	Council specific	$9,175
Subdivision	Flat fee of $268 unrelated to number lots	$52 plus $5 for each new allotment up to a maximum of $,1000	Council specific eg sliding scale application fees	New road: $500 plus $50 per additional lot No new road: $250 plus $40 per additional lot
Developments requiring advertisements	Not prescribed	Reasonable costs	Council specific	Actual costs of advertising up to a maximum fee $830 for advertised development or $1,665 for designated development
Referral to external authority	$66 (residential) or $130 (other) for consideration of “matters” under planning schemes	$52 per referral	Council specific	No general referral fees except for integrated development at $250 per referral

Each of the three jurisdictions (Victoria, South Australia and Queensland) has initiated reforms to its planning and development assessment system. Competition has been introduced mainly in the building control area. There is a wide range of fees structures and approaches. Some states retain the value based approach (South Australia) whereas other councils in Queensland have adopted floor area/site area and/or types of development. The extent to which fees cover costs is uncertain. For instance, fees may not be set to cover full costs if a government wishes to encourage and promote development.

3 OVERVIEW OF SUBMISSIONS AND PREVIOUS STUDIES

This chapter provides a summary of:

- submissions by key stakeholders
- other studies and reports on the local government approval process.

3.1 Submissions

The Tribunal has received over 50 submissions from key stakeholders and interested parties, including the Department of Urban Affairs and Planning (DUAP), the Local Government and Shires Associations (LGSA), local councils, the development and housing industry, users of the system, and interest groups. A list of submissions is provided in Attachment 3, followed by a summary of the content of the submissions in Attachment 4.

In order to understand the issues, the key points that arise from the submissions are summarised below.

Cost issues and extent of cost recovery

LGSA and councils support the principle of recovery of fully distributed costs. Councils are concerned with the cost of processing incomplete and/or "substandard quality" applications.

On the other hand, the development and building industry submits that only good practice costs should be recovered. In regard to overhead costs, the Housing Industry Association (HIA) submits that the fees should cover "efficient" overhead costs only. The Urban Development Institute of Australia (UDIA) maintains there is substantial, albeit varying, scope for efficiency improvements within councils.

The Property Council of Australia (PCA) discusses the apportionment of costs between the user (ie applicant) and beneficiary (ie community). It argues that applicants should pay the costs of pre DA meetings, advertising and the reasonable cost of technical assessment. However, PCA contends the following costs should not be borne by the applicant:

- community consultation process/council intervention/political process
- establishing planning policies
- assessing heritage issues.

Most councils submit that they are implementing improved costing systems which will enable them to identify and capture costs.

Fee structure options

There is stronger support for cost reflective fees than value reflective fees. Most submissions question the equity and efficiency of the current, value based fee structure, even though it is simple and easy to administer. PCA believes the current system reflects the capacity to pay, rather than the costs.

Proposals contained in submissions include:

- DUAP proposes a base fee plus add-ons, that is:
  - a regulated base fee common to all applications, to cover overheads, administrative costs and estimated cost of staff time spent on the assessment.
  - add-on fees, eg EIS assessment, modification, advertising fees, referrals, legal costs, Commission of Inquiry. Councils would determine the level of notification, mediation and negotiation. However, add-on fees should be clearly defined, supervised through some form of scrutiny, and not be subject to council discretion.
- HIA advocates a fee structure based on a development assessment matrix including key components of assessment. A fee for a particular type of development could be set. Most fees could be set by benchmarking efficient costs.
- LGSA suggests that councils be grouped by categories (possibly location, size, and difference in public consultation). This approach would facilitate the setting of an appropriate base fee model for each category.
- Wyong Council suggests a two-tier structure for designated development, with up-front charges followed by a final charge within two weeks, which can provide a full assessment as to the full cost. Minimum fees rather than maximum fees are proposed for contestable services.
- Blacktown Council advocates levying an administration fee plus value based fees.
- Eurobodalla Council proposes charging an application fee for each type of development activity based on a package fee concept. For site inspections there could be a fixed fee multiplied by a factor of distance travelled to the site.
- Liverpool Council advocates a maximum scaled fee plus additional discretional fees for innovative and additional services (eg a speedy / deluxe application, external referral). Increases in discretional fees should be pegged. An appeal procedure should be provided to deal with "excessive" fees for non-contestable services.

Extent of regulation: Prescribed fees -v- deregulated fees

Stakeholders differ as to the desirable level of flexibility. Whereas the development and housing industry largely supports central regulation, LGSA and councils prefer a greater degree of flexibility. Councils submit that a prescriptive approach does not allow for differences between councils. Scrutiny could be achieved via the management plan process. Blacktown and Eurobodalla Councils believe that deregulation can apply to all development services.

Cross subsidies/CSO components

Again, views vary regarding the appropriate level of cross subsidies for different types of applications. While PCA believes that the residential sector is the main drain on the system and is subsidised by commercial and large projects, Wyong Council considers there is no significant level of cross subsidy between large projects and small residential projects.

Public good benefit

Several councils advocate the apportionment of assessment costs between applicants and the community. The housing and development industry is concerned that a more extensive level of public consultation should not be subsidised by developers.

However, it can be argued that the public good component should be dealt with at the strategic planning process. The key question is the appropriate level of council accountability and transparency.

Best practice/benchmarking

Liverpool Council proposes that performance indicators be published in annual reports. Some councils argue that quantitative performance indicators do not reflect the quality of assessment.

Linking fees to performance

The housing and development industry is concerned that current fees are not linked to level of service. Approval decisions are not delivered within a reasonable time. This is due to delays in the assessment process. Outsourcing is proposed to reduce delays suffered by applicants.

Some councils favour the use of a service agreement backed by a guarantee. Liverpool Council suggests that fast tracking fees should be allowed.

For contestable services, market testing will drive councils to focus on standards of service.

Contestable services - competitive neutrality issue

There is concern about potential cross-subsidisation from monopoly development assessment services to contestable services. Some councils argue that they should be allowed to set prices to gain a market edge and/or be able to run a business at a loss in its formative years.

It is important that for contestable services, the community be advised that there is a choice of private service providers other than councils. Other comments on this matter include:

- The Institute of Surveyors is concerned that private certification in rural areas may be constrained by the small number of professionals operating in such areas.
- Councils and private certifiers should be charged the same level of information fees.
- UDIA supports the application of tax equivalent regimes for councils.

Registration fee for private certifications

There is a general acceptance that councils should charge a fee. However, the same fees should also be applied to the council's business unit which competes with the private sector provider.

Other issues

- Miscellaneous fees: The development and housing industry is concerned about the types and levels of miscellaneous and supplementary s608 fees.
- State significant projects: DUAP submits that provision should be made to allow recovery of post-approval or completion monitoring costs.

- Subdivision fees: Concerns are expressed about the range and level of fees other than the application fee charged by councils.

3.2 Other information, reviews and studies

Local approvals processes have been under review for some years,[13] with the aim of improving consistency in decision making, efficiency and planning outcomes. During the course of this review, the Tribunal has considered several studies relating to development control, including:

- BIS Shrapnel report.
- Review report on subdivision and outdoor advertising fees.
- Benchmarking studies on local approval systems.
- Management overview reports by DoLG.
- Report and discussion paper by the Public Accounts Committee on legal services provided to local government.

Key points in these reports, which are relevant to this review, are summarised below.

3.2.1 BIS Shrapnel report (1994)

This study was commissioned by DUAP in 1994. The report supports deregulation, but states that councils lacked the ability to charge on a project cost basis as their accounting systems were not structured on a time / project cost basis.

The study shows that in aggregate, revenue from fee structures did not cover council costs. However, when a sample of applications was examined, most appeared profitable. There are two reasons for the discrepancy:

- councils had no idea of how much time had been spent on individual applications; and / or
- many development control resources are spent on non-core, non-DA processing activities.

Other key findings of the BIS Shrapnel report include:

- a small number of councils accounted for 50 percent of all DAs / BAs processed
- the public good element was estimated at 25-30 percent of assessment cost
- In consultant's subjective opinion, the combined public good and council efficiency discount was at least 40 percent.

3.2.2 Review of subdivision and outdoor advertising fees in 1995 (NAT Consulting)

Eight case studies were undertaken. The report found that councils had not developed accounting systems which properly captured costs. Allocation of administrative costs had not occurred. The following fees are recommended in the report:

- Subdivisions: A sliding fee scale for assessing subdivision based on lot size. Fees for site inspections, plan checking, release of linen plan to be deregulated.

[13] The Local Approvals Review Program (LARP) is sponsored by the National Office of Local Government.

- Advertising fees: Fees for advertising signs be the greater of (a) an application fee plus a charge for each sign requested or (b) a fee determined on the estimated cost of erecting the signs.
- Regulated fees should be indexed annually by CPI.

3.2.3 Benchmarking studies - SHOROC and WSROC

The DA/BA approval processes have been the most common subject of process benchmarking studies. Two group benchmarking studies have developed frameworks for benchmarking BA/DA processes. One was undertaken by the Shore Regional Organisation of Councils (SHOROC) and the other by the Western Sydney Regional Organisation of Councils (WSROC). Both these projects were funded under the Federal Government's Local Government Development Program.

WSROC study

The WSROC study involving Baulkham Hills, Blacktown, Fairfield and Liverpool Councils, draws on customer research to establish views on current and preferred practices for all stakeholders. The key outcomes are:

- A framework for performance measures covering an annual cycle of activities in benchmarking, staff and customer surveys, and ongoing data collection, and setting priorities for action programs in management plans.
- The framework covers both qualitative and quantitative data. Qualitative data such as processes, policies and customer focuses are to be assessed through surveys and workshops. Quantitative data includes application processing time and cost data.

SHOROC study

The SHOROC project involving Mosman, Manly, Pittwater Council and Warringah Councils, uses customer research to examine the effectiveness of the processes. Case studies review a sample of applications. Key issues identified are the need for an effective pre-lodgement consultation process, and the importance of having up-to-date, accessible and easily understood policies and planning framework.

Immediate priorities for reform by councils include: improved front end planning, delegations, integrated assessment, improved administrative processes, better tracking of and reporting on individual applications, and improved customer service and communication. The cost and revenue analysis in this study suggests a cost recovery rate of 30-50 percent for the four participating councils.

- Key outcome: The design of a framework to improve council performance, a three yearly review of policy and planning frameworks, and independent reviews of urban design outcomes.

3.2.4 A discussion paper by the Public Accounts Committee: A review of Legal Services to Local Government

In its report, *Legal Services to Local Government*, tabled in Parliament in 1991, the Public Accounts Committee (PAC) expresses concern about the high level of legal expenditure incurred by local councils. PAC is currently following up on the issue. An inquiry is

underway aiming at constructively identifying the continuing causes of high legal costs. It is also investigating why some local government bodies have not embraced the cost-effective processes of alternative dispute resolution (ADR) more wholeheartedly. As part of the inquiry processes, a discussion paper was released in November 1997. The Tribunal notes the following points of interest in PAC's discussion paper:[14]

- The results of the 1997 PAC survey indicate that many councils have not embraced ADR. Many councils continue to experience high levels of disputes relating to development and building applications.
- The Purser survey[15] demonstrates the correlation between the formal incorporation of ADR philosophy and practice and reduced levels of expenditure in resolving legal disputes.
- Benefits attached to introducing a Mediation Program include: qualitative and quantitative improvements in the involvement of the community in decision making processes, reductions in costs (legal/court, time, staff), improved public relations, and better feedback.
- There are criticisms of ADR. Where the practices of mediation are not carried out according to a set of best practices guidelines, the process of mediation can be ineffective and inefficient, leading to imbalances in the power structure which underpins the success of the mediation process.

A report has recently been released by the PAC in June 1998. The Tribunal will further consider this report in the review process.

3.2.5 Management Overview Reports by DoLG

The Tribunal notes the following reference and comments by DoLG in its Management Overview Reports:

- In a Management Review Report of Woollahra Municipal Council, reference was made to a resolution adopted by Woollahra Council on 14 February 1994 to introduce:
  - a pre-application service for development and building applicant offering a free 30 minutes consultation
  - a rate of $75 for each additional 30 minutes for subsequent consultations
  - an "in-principle" assessment for developers of pre-application proposals for a fixed fee of $500 with an additional charge of $75 per half hour in excess of the minimum time period, the assessment to be undertaken by the proposed Manager Building and Development Co-ordination in conjunction with members of the Building Committee of Council at an informal meeting.
- The poor planning performance of some councils tends to reduce the opportunity for local residents to contribute to the future of their local community.

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[14] Legal Services to Local Government: *Minimising Costs through Alternative Dispute Resolution*: Discussion Paper, Public Accounts Committee, Report No. 22/51, November 1997.

[15] Purser, Gretel, *Survey of Local Government Authorities,* conducted in 1995, March 1997, *Report for Local Government Authorities: Mediation and the Resolution of Town Planning Disputes.*

3.3 Summary

Submissions to the review and previous studies generally reflect that changes should be made to the current value based fees structure. Issues for alternative fees structure are cost reflectivity and assessment of "efficient" costs. A "base regulated fee structure" appears to emerge as a feasible option.

One common issue is the fair and reasonable sharing of costs between all beneficiaries, including the applicants, the local community and the wider community as a whole. The conflicting demands which need to be resolved may be summarised as *which* beneficiaries should pay *what* costs and *how* should current fee structures be changed to reflect these costs?

These issues are further considered in the following chapters.

4 PRICING POLICY OBJECTIVES

Local government jurisdictions vary according to geographical area, the mix and concerns of constituents, and the composition of development. These varying characteristics can exert a large influence on the costs of delivering development control services.

For example, a council may incur large costs in assessing development applications because in addition to being required to advertise the application in the local newspaper, it must inform a large number of residents, as the local community wants to be informed of these matters. By contrast, another council may incur relatively low assessment costs because its constituents require it to inform only the neighbours about a development.

Assessment costs for designated developments vary according to the type of development and the extent of public consultation concerning the development.

Under the Environmental Planning and Assessment (EP&A) Amendment Act 1997, the State Government and councils retain a statutory monopoly for delivering most development control services.[16] In making recommendations on new fee arrangements, the Tribunal must consider a wide range of economic and social issues before forming judgments on the appropriate price for these services. This chapter:

- discusses the objectives of pricing policies
- explores pricing principles for the development assessment system.

There are several difficulties associated with implementing pricing principles for development control services in a pragmatic and practical manner. One issue is the identity of the customer for development control services. Applicants and developers are not the only users and beneficiaries of development control services. It may be argued that local residents and councillors are also users and beneficiaries. Furthermore, the extent of the public benefit associated with the services varies according to the type and location of the development.

4.1 Objectives of pricing policies

4.1.1 Resource allocation

Councils' development control services are monopolies businesses created by government mandate. If development control fees are under-priced, the consent authority may not recover the cost of the service. This reduces its ability to provide other services to residents or necessitates increases in other taxes and charges.

Conversely, if development control fees are over-priced, the cost to the applicants increased or development is discouraged. For household applicants, higher fees reduce disposable income available for consumption of other goods and services, or lower savings. For business applicants and developers, increased fees will mean the costs of their activities will increase. Business and developers will try to recover the additional costs by increasing the price consumers pay for final goods and services. If businesses or developers cannot pass on the additional costs to consumers, business owners will bear the costs through lower

[16] The private sector can issue: complying development certificates, construction certificates, compliance certificates occupation certificates and subdivision certificates.

development activities or profits, or employees may suffer through lower wages or employment opportunities.

To promote efficient allocation of the community's resources, it is important that development control fees reflect the efficient cost of providing appropriate development control services to applicants. An issue discussed in more detail below (section 4.2.1) is whether charges should be based on average (fully distributed) costs or marginal costs and what costs should be passed on.

4.1.2 Transparency

The costs of delivering development control services to applicants should be clearly identified in a transparent process. The full costs of the development control process include joint or common costs.[17] Examples of common costs are information technology and corporate services. Judgment is required to allocate the common costs between applicants in a fair and transparent manner.

4.1.3 Administrative simplicity

Development control fees should be simple to administer. Complex fee structures involve additional administration and compliance costs. They also increase the risk that applicants will not readily understand the services they receive for the development control fees.

4.1.4 Predictability

Development control fees should be predictable. Knowledge of prices allows applicants to make better development decisions. Predictable fees will also encourage councils to seek improvements in the delivery of development control services.

4.1.5 Incorporation of external costs or benefits

Many development activities create externalities that influence the welfare of people in either a positive or negative manner. For example, urban development can alter the demographics of a community, increase traffic congestion, cast shadows or block views. People have different views of the importance of externalities associated with a development. While some people consider they will incur substantial costs if a development proceeds, others believe they will forgo substantial benefits if it is halted. In striking a balance between the expectation of applicants, adjoining residents and the broader local community, councils may engage in extensive consultation and analysis. This adds to the cost of the approval process.

Therefore, a method is required to recover the cost of assessing a development application from the applicant and the community it affects. The issue of the incorporation of the public good aspect in pricing is discussed in section 4.2.2.

[17] Joint or common costs are costs incurred in the production of multiple products or services that remain largely unchanged as the proportion of those products or services varies. These costs are incurred if any one of these outputs is provided.

4.1.6 Equity objectives

Some councils wish to waive or cross subsidise development control fees for developments proposed by non-government organisations and developments that are believed to bestow large economic and social benefits on the local community.

Cross subsidies are one way of encouraging development and keeping development control fees affordable to certain members of the community. However, cross subsidies may not be the most efficient or effective way to achieve equity objectives. Cross subsidies distort prices, causing an inefficient allocation of the community's resources. Equity objectives are often better pursued through redistribution policies that are delivered through the tax and welfare system. This should be provided transparently by way of explicit community services obligations and social policy programs.

4.1.7 Financial objectives

Councils' financial objectives include measures to ensure adequate cash flows to deliver a range of services to the community. For business activities, an acceptable return on capital or profit margin should be earned. As DA assessment is one of councils' statutory functions, the primary objective is to ensure appropriate costs are recovered. Where councils compete with the private sector for the provision of specified contestable services, consideration should be given to a profit margin when pricing these services.

4.1.8 Customer objectives

Customer objectives centre on obtaining a service of appropriate quality and reliability at a 'fair and reasonable' price. Implicit in this goal is to protect consumers from the abuse of monopoly power.

Unlike most government monopoly services, such as water and electricity, it is difficult to identify the customer for development control services. Other than applicants or developers, some argue that the local community and councillors are also customers, users and beneficiaries of the development approval system.

4.1.9 Reconciliation of pricing objectives

In principle, the pricing principles mentioned above are often consistent with one another, rather than in conflict. Financial objectives are often consistent with the efficient allocation of society's resources. Councils need to recover the costs of services to continue the delivery of services to the community. A potential conflict may arise in achieving resource allocation and equity objectives, especially if there are not substantial economies of scale.

4.1.10 Summary and preliminary views

In summary, the Tribunal believes that fee structures should:

- reflect efficient costs of development control services, subject to the possible identification of public benefits
- be transparent, simple and predictable
- not preclude inclusion of equity considerations, but require identification of such considerations.

Key issues in the application of these principles are the identification of the relevant efficient costs and public benefits.

4.2 Aspects of pricing in practice

4.2.1 Alternative measures of costs

Development assessment fees should be set to recover the efficient costs associated with assessment of developments. There are several approaches to costing, including:

- fully distributed costs
- marginal costs
- avoidable costs.

Fully distributed costs involve calculating the direct costs of providing the development assessment service plus a share of the council's common or joint costs. An example of joint costs is the costs of lighting and office space. Joint costs tend to be allocated to the various development assessment services on an arbitrary basis, eg according to the proportion of revenue earned. This approach is used commonly because it is relatively simple to apply and the information tends to be available from councils' accounting systems.

Marginal costs refer to the alteration in total costs of providing one more unit of service. In theory, this would be the additional cost of assessing one more development application. In practice, the measurability of the impact on costs would be considered in choosing the additional unit of service to be analysed. Marginal costs are usually lower than fully distributed costs, because the latter include joint costs.

Avoidable costs are the changes in costs which occur when an activity is added to an entity, or when an activity expands or contracts over a more substantial output range. Examples are the change in costs when development assessments increase by say, 20 percent, or the costs of serving a particular group of DAs such as industrial developments or residential developments. Thus avoidable costs are the marginal costs of varying output over a range rather than by a single unit.

From an economic perspective, it is important to ensure that all known resource costs are reflected in the fees charged for development control activities and services. The correct cost and resource signals should be given to both the users and the beneficiaries of the process ie the applicants and the community. This will help councils to determine the level of resources expended on development assessment in accordance with the community's wishes.

The treatment of costs under the three different approaches is summarised in the following table:

Table 4.1 Treatment of Costs under Different Allocation Methods

Cost category	*Is the cost included in the cost base?* Fully distributed cost (FDC)	Short run marginal cost (SRMC)	Long run marginal cost (LRMC)	Avoidable/ incremental cost
Direct costs (eg direct labour)	Yes	Yes	Yes	Yes
Executive costs	Yes	No	No	No
Rent	Yes	No	Often but not always	Often but not always
Other overhead costs	Yes	No	Yes	Avoided if activity is not undertaken
Capital costs exclusive to the activity	Yes	No	Yes, but difficult to measure	Yes
Joint capital costs	Yes	No	No in most cases	Avoided if activity is not undertaken

Source: The above table is provided by the Productivity Commission in discussion with the Tribunal on competitive neutrality issues. The table will be published in a forthcoming paper by Wilson S, Douglas I, Martyn B, 1998, Cost Allocation and Pricing, Competitive Neutrality Staff Working Paper, Productivity Commission, Canberra.

For development control services, setting prices on a purely marginal cost basis will not provide sufficient revenue for a council to recover total costs.

Stakeholders' views

Councils and LGSA favour full cost recovery based on fully distributed costs. The difficulty in coming up with appropriate prices is reflected in a comment from LGSA:

> Each application is likely to be unique in terms of a variety of criteria such as structure, function, location, environmental and community impact. Each application must be professionally assessed. It is inappropriate to apply marginal cost pricing principles in these circumstances. Fully distributed costs are also favoured because of [their] relative simplicity. Further, … marginal cost pricing will not provide for full cost recovery. [18]

Wyong Shire Council submits that fees set according to marginal cost would confuse the public. Furthermore, marginal cost pricing would be complex to administer.

However, Landcom and UDIA support the use of marginal cost pricing to recover the costs of assessing development applications. They assert that overheads should not be recovered because the community benefits from the development assessment process. The Eurobodalla Shire Council contends that marginal cost pricing 'promotes the potential for flexibility in organisation structures, resource application and work practices'.[19]

Tribunal consideration

If resources are to be allocated efficiently *and* there is perfect competition, it is generally considered that prices should be set to equal marginal costs. In the case of development

[18] LGSA submission to Issues Paper, p 6.

[19] Eurobodalla Shire Council, submission to Issues Paper, p 3.

control services, marginal costs are the increase in total costs incurred by providing a small but measurable increase in development control services, eg the additional cost of assessing one more development application. Marginal cost pricing can reflect variations in the cost of delivering development control services in different locations and/or to different applicants. As development control services have relatively low capital costs, the Tribunal believes that in this case marginal costs are mainly marginal operating costs. However, marginal costs cannot be estimated with certainty.

Average cost pricing based on the fully distributed cost approach specifies the average direct and indirect costs of providing a service. In delivering development control services, councils incur joint or common costs, such as information technology and corporate services. The fully distributed cost approach seeks to allocate these costs to the services according to their proportional use of the common facility. Activity based costing methodology is generally used to capture and record costs.

The problem with this approach is that the method chosen to distribute common costs is arbitrary. For example, common costs may be distributed according to the number of employees or according to labour costs. Consequently, different methods of allocating common costs are likely to produce different estimates of the actual cost of development control services. Therefore, under the fully distributed cost approach, it may be difficult to identify and substantiate cross subsidies in the delivery of development control services.

The Tribunal's survey of development control fees and a consultant's report on local government costs for development control fees indicate that most councils' accounting and information systems are not sophisticated enough to identify the full cost of development control services.[20] The consultants recommend that councils assign costs to activities. This will provide better information on both the direct and indirect costs of a development application. The current lack of information severely limits councils' ability to assess the total cost of services, let alone to estimate marginal costs.

LGSA submits that economies of scale could exist if a council received a large number of similar development applications. However, if there were economies of scale in assessing development applications, councils would incur losses where fees were set according to marginal cost, and would require subsidies. This approach raises several concerns. First, the cross subsidies between development applications or other council services are not transparent or explicit. Second, given rate pegging, the cross subsidies would be provided at the expense of other services.

However, it is an open question as to whether there are substantial economies of scale. Development control services have relatively low capital costs. Therefore, it could be argued that the average cost and the marginal cost of providing development control services should be within a reasonable range.

Overall, the Tribunal considers that in practice, prices for the monopoly core statutory development assessment services should be based on an average cost methodology.

4.2.2 Treatment of public benefits

The EP&AA legislation requires the consent authority to consider a number of matters in assessing development applications:

[20] Parnell Kerr Foster 1998, *Review of Local Government Costs for Development Control Services*, Sydney.

> In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development which is the subject of the development application:
>
> a. the provisions of:
>
> (i) any environment planning instrument, and
> (ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and
> (iii) any development control plan, and
> (iv) any matters prescribed by the regulations,
>
> that apply to the land to which the development application relates,
>
> b. the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
> c. the suitability of the site for the development,
> d. any submissions made in accordance with this Act or regulations,
> e. the public interest.[21]

Community consultation therefore represents an integral part of the development assessment process. However, the need for consultation may vary greatly, depending on the type of development.

It may be argued that many of the environmental impacts and protection of the public interest are for the good of the entire community (ie the local community and/or the wider community), thus constituting a "public good". Public goods are services where consumption by one person does not affect the amount available for consumption by others, and where an individual cannot be excluded from the benefits of the service provided.

Some people living in a locality (eg adjoining property owners) may gain or suffer from a proposed development. For state significant projects (eg those projects generating employment opportunities), there are important economic and social benefits to be enjoyed if such projects proceed. It may therefore be argued that the community should pay a proportion of the costs of assessing development applications.

Against the "public good" argument is the principle that users or customers should only for services which they receive. However, it is difficult to differentiate users from customers. Apart from the applicants or developers, it may be argued that the community/councillors are also customers, users and beneficiaries of the development approval system. Under the user/beneficiary pays principle, the beneficiaries of development control should bear the cost of providing the benefits they receive, and those who benefit more should pay more.

However, consideration of a "beneficiary pays" approach often leads to difficulties. The main problem is how to identify any public good component of the benefit being derived from the development assessment process.

Stakeholders' views

LGSA and several councils, such as the City of Broken Hill, Liverpool City Council, the Council of the City of Armidale, and Byron Shire Council, state that development control fees should recover the full cost of supplying the service. Under the present fee structure,

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[21] *Environmental Planning and Assessment Amendment Act 1997* pp 30-31.

councils claim they are incurring substantial losses in providing development control services to applicants.

Other stakeholders do not support councils recovering the full cost of providing development control services. PCA and HIA argue that development application fees should reflect the user pays principle because aspects of the development assessment process provide the community with a public benefit.[22] UDIA submits that the development assessment process confers public benefits to the community and the costs of administering the system should be borne by councils. However, it acknowledges that applicants should pay a fee that encourages councils to provide an efficient service. The housing and development community accepts that it should pay for a "reasonable" cost of community consultation, but does not wish to pay for "excessive" levels of consultation or intervention.

Several councils, including Kempsey Shire Council and Gosford City Council, believe development application fees should reflect public benefits. Kempsey Shire Council suggests the applicant should pay 80 percent of the fee and the community should pay the remainder. Gosford City Council suggests that councils should recover 75 percent of the assessment cost from the applicant and the community should pay the remainder. Maitland and Fairfield City Councils believe that a council should have the option of subsidising development application fees to reflect public benefits. However, Maitland City Council maintains that the cost of the subsidies should be transparent to the community.

DUAP states that it is difficult to determine the public benefit in the development application process. It cites studies by BIS Shrapnel and NAT Consulting that suggest the public benefit is about 25-30 percent of the cost of an assessment.[23] The Council of the City of Armidale states that fees should not reflect public benefits unless the actual community benefits associated with the development application process can be identified. Furthermore, it argues that development assessment fees should not include an arbitrary estimate for public benefits. Kogarah Municipal Council submits that public benefits should not be included in development application fees because it is too difficult to identify and measure public benefits.

Maclean Shire Council considers the development control process has a public benefit, but applicants must pay the cost of complying with statutory requirements and public expectations. However, the Master Builders Association of NSW is concerned that councils use the notion of public benefits to increase the cost of assessments to applicants, eg asking for additional and more detailed information about a development.

Council submissions also suggest that some communities place greater emphasis on local amenity and design criteria which can be achieved only through rigorous assessment. Clearly, the level of public benefit varies greatly among councils.

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[22] Public goods are services where the consumption of one person does not affect the amount available for consumption of others and where an individual cannot be excluded from the benefits of the service provided.

[23] BIS Shrapnel Pty Ltd 1994, *A Base Costs Study of New South Wales Local Government Planning and Development Control Fees*, Department of Planning, Sydney. NAT Consulting Pty Ltd, 1995.

Sharing of public benefits

User charging is difficult to implement for public benefits. However, public benefits are not confined to development control services. Public benefits are associated with other activities and services.[24]

The lack of information on the benefits that the broader community receives from the development control process makes it more challenging to implement user charging to recover the costs of the development assessment process.

The difficulty of estimating the benefit the community receives from the development application process arises because:

- the social and environmental impact of a development varies according to the type of development and its location
- local communities having widely different views on development.

Consequently, the constituents of some municipalities (especially some inner metropolitan councils) are more likely to object to developments because of a desire to protect the natural environment, historic buildings and amenities. Therefore, the councils will incur greater costs to review public objections to development. For example, councils may engage consultants and lawyers to review a development application or to defend a council decision in court.

Therefore, it seems inappropriate to arbitrarily value the public benefit of the development control process at a certain proportion, say 20-30 percent, of a council's costs of delivering the service. In concluding this, the Tribunal is aware that several councils, BIS Shrapnel and NAT Consulting advocate this approach.

The Tribunal is considering alternative options to share the cost of the development assessment process between applicants and the community. The options vary regarding the treatment of the public benefit associated with the development control process. The public benefit will vary between councils. However, the options promote cost-reflective pricing for development applications. Further details on the options for setting development application fees are presented in chapter 6.

Summary and preliminary Tribunal views

- There is no single "precise" value for the public good component.
- Under a "prescribed" fee regulation, it is neither practical nor possible to determine the public good component in the fee structure for each of the 177 councils.
- Where a council puts in place a more demanding and rigorous assessment process, the additional costs incurred should be fully understood by the community. The Tribunal has yet to be convinced that these additional costs should be fully charged to the applicant / developer. The Tribunal recognises that the costs will ultimately fall mostly

[24] For example, the Tribunal's review of fisheries management charges identified several beneficiaries of fisheries management: commercial fishers, recreational fishers and the community. The community benefits from the conservation of fish species. The Tribunal applied the beneficiary pays principle to share the costs of fisheries management between the beneficiaries. The cost of core government activities, such as policy development for fisheries management, was considered a public benefit that should be borne by the community. The remainder of the costs of fisheries management was allocated according to the market value of the commercial catch and recreational catch.

on those living in the local community. This will occur in a number of ways: if costs are charged to applicants, the fees will impact directly on the residents who are the applicants; where the applicant is a developer, the fees are likely to be passed on to the future residents; if costs are not fully passed on to developers, it is the councils and ultimately, the ratepayers who will bear the cost gap.

The Tribunal seeks comment on this proposed approach.

4.2.3 Cross subsidies

A cross subsidy exists where different customers meet varying proportions of the costs of services. Technically, a cross subsidy occurs where some customers pay less than the marginal (or avoidable) cost, while others pay more than the stand alone costs[25] of service provision.

Stakeholders' views

Participants present opinions regarding the existence of cross subsidies between certain types of development applications. Some participants argue that the existing cross subsidies for development applications for police stations, schools and hospitals lodged by a public authority impose additional costs on councils. Others suggest that cross subsidies between residential and non-residential applications impose additional costs on developers. Some councils express a desire to subsidise certain applications to pursue economic and social objectives.

LGSA proposes removing the nominal development application fee paid by public authorities to build a hospital, school or police station from the EP&A Act. It submits that:

> … there should be no distinction between private and public sector developments on the basis that there is no less work associated with a public authority development application assessment.[26]

Importantly, the distinction between public and private applicants appears to contravene competitive neutrality principles.

PCA submits the current fee structure for development applications (which is based on construction costs) is based on the ability to pay. It believes that residential households are the main users of the development control process. Small residential applications generally attract greater public reaction and public sensitivity is an important factor in costing the development control process. This means major developments are cross subsidising the cost of assessing small residential applications. PCA proposes that if councils decide to subsidise certain developments, the subsidy should be paid by the ratepayer, and not by business applicants or developers.

Wyong Shire Council does not agree that there are significant cross subsidies between business applicants and residential applicants. However, it claims there are some cross subsidies between certain residential applicants because the costs of assessing a rural residential development application are higher for an urban residential development application. Rural residential development applications cost more to assess because of the

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[25] Stand-alone costs refer to those costs that would be incurred if that customer alone was being provided with a service without the advantage of being able to share its joint costs with other customers.

[26] LGSA submission to Issues Paper, p 3.

additional travel time for the council to inspect the property and the lack of economies of scale in processing this type of application.

Several councils, such as Wyong Shire Council, Rockdale City Council and Wollongong City Council, propose that councils should be able to subsidise development application fees to promote regional development. A council may wish to waive fees for developments proposed by non-government organisations.

Tribunal consideration

As discussed earlier, cross subsidies are not the most efficient or effective means of delivering community service obligations to certain members of the community or of promoting regional development. Subject to consideration of public benefits, applicants should pay the full cost of the provision of development control services. If councils wish to subsidise certain development applications, the subsidies should be borne by the ratepayer. Moreover, the subsidies should be transparent to the community. Several participants suggest that subsidies be included in councils' management plans.

The Tribunal's view means that development applications lodged by public authorities to build public hospitals, schools and police stations should attract cost reflective fees.

The Tribunal does not have conclusive evidence that other applicants or types of applications receive cross subsidies.

4.2.4 Implications for the pricing structure of development control fees

The remainder of this consultation paper considers in detail the key issues affecting the level and structure of non-contestable development control fees. In considering an appropriate new fee structure, the Tribunal needs to:

- take account of differences in councils' operating environments
- establish a fee structure that is reasonable, practical and relatively easy to understand and administer
- ensure a reasonable level of certainty about the on the part of applicants and councils
- consider the effects and consequences of fees on different stakeholders.

Three elements are essential to the new fees structure:

1. The extent and form of fees regulation ie how should the schedule of fees be structured, and what scope should councils have to vary the structure?
2. The costs to be covered by the fees ie which of the costs (in part or total) should be included in the fees, given that costs not covered by the fees would need to be met from councils' general revenues and thus, passed on to ratepayers?
3. The structure of fees by development type or value ie should there be a single flat rate fee or should fees vary by type of development? Should separate fees be set for different types of council?

In making its recommendations on these issues, the Tribunal has considered proposals submitted by councils and stakeholders. Options for recovering the cost of delivering development control services are presented in Chapter 6.

Issues associated with pricing contestable services, such as complying development certificates and construction certificates are discussed in Chapter 7.

4.3 Summary and proposals

In theory, the pricing principles outlined above guide the development of practical pricing structures for development control services delivered by councils in a variety of operating environments. In practice, several major difficulties arise in applying the pricing principles to development control fees.

Firstly, several groups are customers or users of the development control process. Apart from applicants or developers, local residents and councillors also benefit from the provision of development control services. Secondly, the extent of the public benefit varies according to the type of development and location.

Finally, little information is available on either the actual or the efficient costs of delivering development control services. Nevertheless, the limited information available suggests that one factor underlies the variations in the cost of development assessment services between councils. That is the different council requirements regarding consultation with local residents on development applications.

The Tribunal seeks comments on the following pricing principles:

Proposed Pricing Principles

- Pricing structures should be more cost-reflective, but tempered by the objectives of transparency, predictability and simplicity. Any fee structure reform must take into account the practical aspects of pricing and the impacts of these changes.
- The level and structure of charges should be based on the most efficient and effective way of delivering the development control functions.
- Pricing policy should encourage the best overall outcome for the applicants and the community. It should encourage applicants to submit thorough and complete proposals, and discourage councils from pursuing excessively costly processes.
- Any new fee structure should be known "up-front" and should be as clear and straight forward as possible for both the applicant to understand and the consent authority to administer.

Specifically, the Tribunal would appreciate comments on:

Should a "standard average" level of public consultation be allowed in the regulated development application fees?

Should the community or the applicant bear the higher costs, where council and/or the local community demand a more stringent assessment process?

5 COST AND REVENUE ANALYSIS

Of the 177 councils, 95 are in rural areas. Services provided vary across urban, regional and remote rural localities. The approval process varies according to council size and community needs. The key cost and revenue issues to be resolved in this review are:

- identifying of the costs and resources of providing development control services, including an appropriate allocation of councils' joint costs and overheads
- analysing of factors influencing the costs of undertaking these functions in different councils
- disaggregating the costs for various assessment and control processes given the diversity, type and range of development services and applications
- analysing the extent of cost recovery in providing development control services
- assessing efficiency.

To help assess the costs of development control services, the Tribunal conducted a survey of all councils regarding aspects of development control. It also commissioned a consultancy study to undertake a detailed analysis of a sample of eight councils.

This chapter:

- discusses the apparent cost drivers in the development approval system
- discusses the scope for improvements
- summarises the findings of the survey and the consultancy cost review of a sample of eight councils.

5.1 Cost drivers

The costs of assessing development applications include labour, materials and a share of common or overhead costs such as head office costs and capital costs (eg motor vehicles used for site inspections). Factors affecting cost are:

- nature and complexity of building and development
- council policies and systems eg alternative dispute resolution techniques / extent of delegation
- level of community consultation in assessment process and formulation of policies
- effectiveness of front end planning instruments
- size and location of councils
- complexity of legislation / effectiveness of planning instruments
- level of compliance
- community / council attitude towards development.

Some councils explain that the requirement to notify and consult with community and government agencies gives rise to delays in the processing of applications and increases in costs.[27]

5.2 Performance indicators

Performance information on planning and regulatory services is collected by DoLG and included in its annual publication on comparative information. Key performance indicators are:

- number of DAs and BAs determined
- mean turnaround time in calender days for determining applications
- median turnaround time in calendar days for determining applications
- legal expenses for total planning and regulatory costs.

The comparative data collected by DoLG for 1995/96 is provided in Attachment 9.

As well as assessing processing times and costs, some stakeholders comment that customer satisfaction and planning outcomes should be assessed.

The Tribunal is concerned about the comparability of the data for total planning and regulatory costs. In a review of Benchmarking Local Government Performance in NSW, the Tribunal found that there is considerable variation in the proportion of administration costs as a percentage of total expenditure. This implies councils have adopted different approaches to allocating administration costs (and other joint costs) to core activities. The Tribunal recommends that greater attention be given to providing definitions for indicators and checking and auditing the data.[28]

5.3 Assessment of cost efficiency

The aim of regulation is to ensure that councils are not rewarded for inefficiencies in their work practices. Most submissions (including councils' and those from the development industry) agree that councils must not be allowed to recover the cost of inefficient and unnecessary work practices and procedures.

5.3.1 What is a "good practice" local approval process?

The SHOROC study identifies the following features of a good practice local approval process:

- effective strategic planning
- accessible front end planning information
- a simple, clear and effective application and assessment process
- systematic reviews of development outcomes
- clear roles and responsibilities for councillors and staff

[27] For example, submission by Eurobodalla Council, p 1.

[28] IPART, *Benchmarking Local Government Performance in NSW*, Final Report, April 1998.

- good communication and collaboration. [29]

5.3.2 Scope for cost improvements

Given the large number of councils involved, it is not possible to assess the costs for each council to establish their operating efficiency in the delivery of development control functions. The BIS Shrapnel report estimates a 10-15 percent efficiency discount factor ie on average inefficiency can add 10-15 percent to costs.

Based on councils' submissions, the outcomes of the SHOROC and WSROC benchmarking studies and the cost study of eight councils, the Tribunal considers that:

- ***There is significant scope for improving the efficiency of the approvals process by having a through process improvement such as better system of tracking applications to reduce time wasted between key steps in processing applications.***
- ***Productivity improvements can be achieved by putting in place contemporary, up-to-date, and accessible local planning policies and instruments.***
- ***Alternative disputes mechanisms can reduce costs for some councils, particularly the staff and legal costs of handling and defending council decisions.***

5.3.3 Tribunal's views

The development of performance indicators is important to the regulation of non contestable development control activities. To date, performance monitoring statistics are limited to the turnaround time of making a determination, and the percentage of legal expenses to total planning and regulatory costs.

The Tribunal considers that:

- ***Councils should identify and separately report the full cost of assessing DAs, and other building control activities, including a share of overheads. Better data is required to improve comparability.***
- ***The coverage and quality of performance data should be reviewed, particularly the measure of the satisfaction of both the community and the applicants, and the assessment outcomes.***
- ***Benchmarking against neighbouring councils (as per WSROC's approach) should be pursued.***

5.4 Survey of development control fees

A survey of all local councils in NSW was undertaken to:

- collect statistics on numbers of development and building applications, and modification to consent
- study the resources used in providing development control services, including an allocation of common joint costs
- study the sources of revenue from development control functions
- consider the gap between costs and revenues.

[29] *Shoroc Benchmarking and Best Practice in Local Approvals*, Final Project Report, National Office of Local Government, Sydney, June 1997.

In February 1998, a questionnaire was sent to all councils, seeking:

1. General council information.
2. Development control function statistics (including employee numbers directly involved in development control functions, the number of DAs and BAs processed, and post approval services).
3. Estimated costs and revenue relating to develop control activities.
   - The *cost* base is based on fully distributed costs, including salary costs for town planner, building surveyors, clerical and technical support, and labour oncost, travel costs, support services, overheads and legal costs.
   - The *revenue* base includes fees from development/building/subdivision applications, building certificates, building inspections, s149 planning certificates, and other administrative fees relating to development control services.
4. Opinions regarding the public benefits of planning controls.

In total, 103 responses were received (52 from urban councils and 51 from rural councils). Most provided an estimate of costs and revenues. The councils which responded to the survey are listed in Attachment 8. The analysis is undertaken based on the DoLG's classification of councils into 11 groups:

Table 5.1 Council Groupings

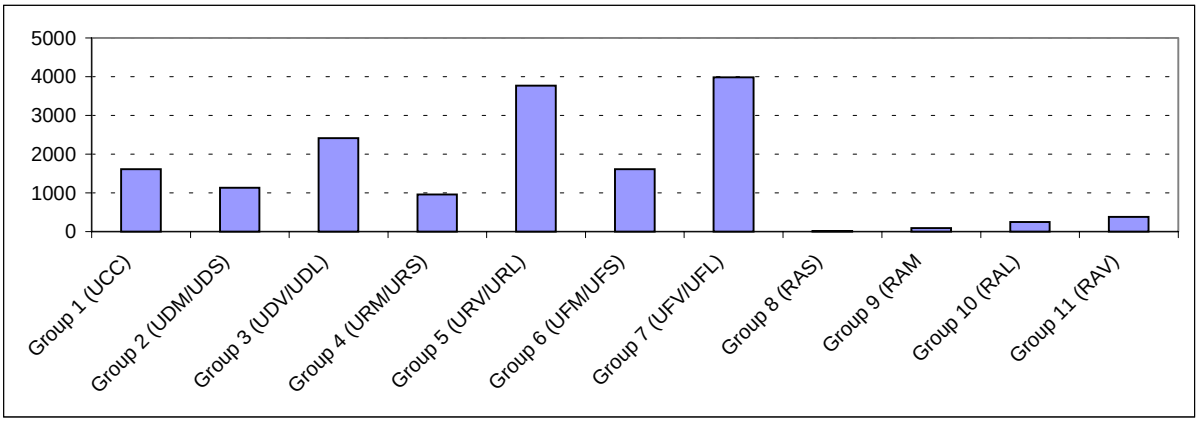
Group	Classification	No of councils	No of councils responded	Location/size
1	UCC	1	1	Urban capital city
2	UDM/UDS	19	11	Urban developed medium/small
3	UDV/UDL	14	8	Urban developed very large/large
4	URM/URS	34	23	Urban regional medium/small
5	URV/RUL	4	2	Urban regional very large/large
6	UFM/UFS	3	3	Urban fringe medium/small
7	UFV/FRL	8	4	Urban fringe very large/large
8	RAS	5	2	Rural agricultural small
9	RAM	40	25	Rural agricultural medium
10	RAL	29	13	Rural agricultural large
11	RAV	20	11	Rural agricultural very large
Total		177	103	

The following sections (5.4.1 to 5.4.7) presents the key findings and observations based on the survey results.

5.4.1 Number of development applications and building applications

Large/very large councils process a greater number of DAs/BAs than medium/small sized councils. Urban councils process many more DAs/BAs than rural councils.

Figure 5.1 Survey Results - Average Number of DAs/BAs Determined



Source: IPART Survey of Development Control Fees.

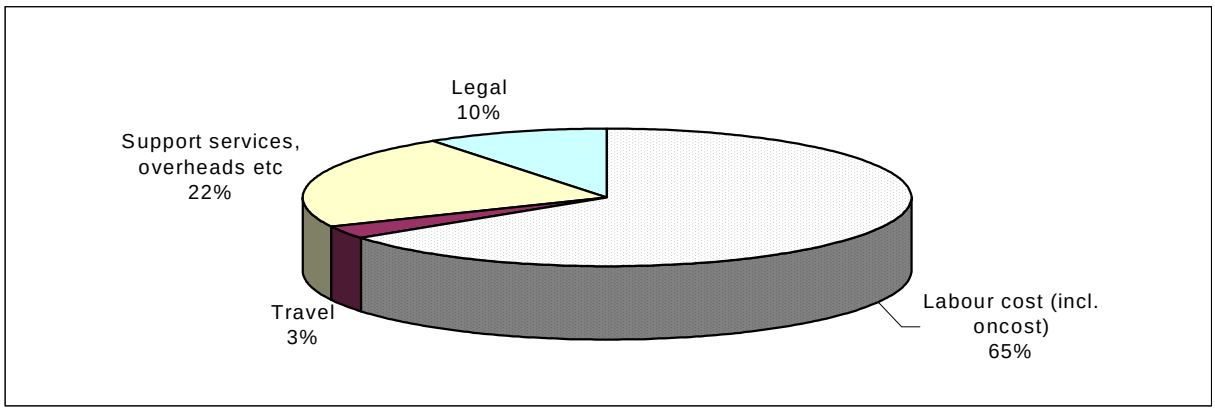
It is noted that:

- On average, 74 percent of DA relates to new works. The remaining 26 percent relate to additions and alternations. For BAs, the survey showed a similar number of new works (53%) versus additions and alternations (47%).
- On average, a greater proportion of BAs is delegated to a committee or a person (93 percent) compared with DAs (80 percent). Council decides the remaining portion of applications.

5.4.2 Cost components

The major cost components are labour costs (66 percent) and support and overhead costs (22 percent). However, the percentage of support and overheads is understated because about 50 percent of councils were unable to provide an estimate of support and overhead costs.

Figure 5.2 Survey Results - Components of DA/BA Assessment Costs



The survey confirms that metropolitan councils incur much higher legal costs than other councils.

5.4.3 Cost allocation

The survey confirms that councils are not able to identify all the costs of assessment. The problem area is the allocation of common costs. This highlights the inadequacy of councils' costing systems. The methodology for allocating overheads varies substantially between councils, ranging from:

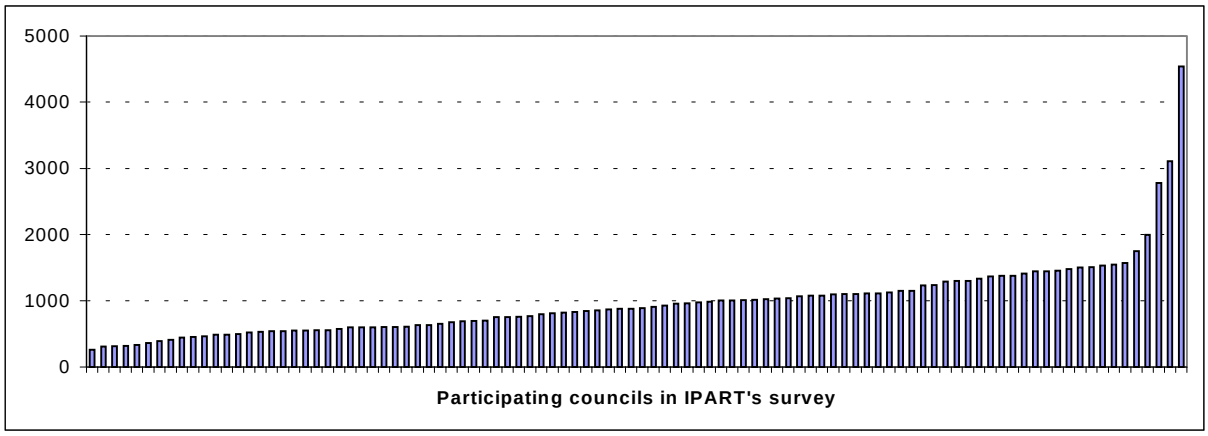
- apportioning corporate support based on number of assessment staff
- apportioning support services based on the development control budget as a percentage of the total recurrent budget
- using detailed cost driver methods to determine activity based costing information.

A large number of rural councils report less than 10 percent of support and overhead costs, with some councils admitting that allocations are not available for most overheads.

5.4.4 Average cost of assessing DAs/BAs

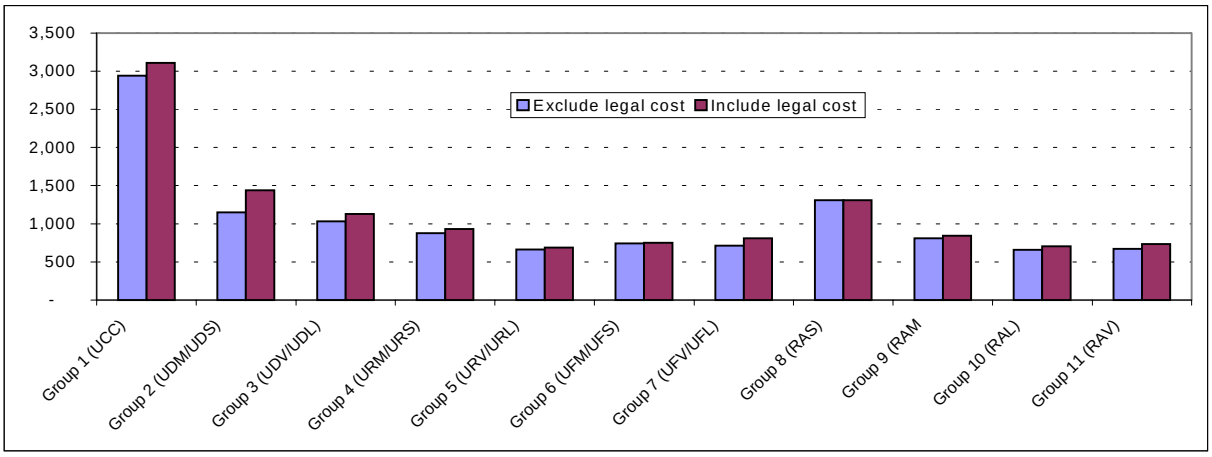
For the 103 respondent councils, the average cost of assessing applications (including direct labour costs, support services, overheads and legal costs) ranges from $260 to over $4,500 (Figure 5.3). The average cost is estimated at $1,017 per application. Three councils within the metropolitan area report an average assessment cost of over $2,000 per application. These three councils also incur high level of legal costs.

Figure 5.3 Survey Results - Average Assessment Cost per Application ($)



The average assessment cost per council group is shown in Figure 5.4.

Figure 5.4 Survey Results - Average Assessment Cost by Council Groupings



It is noted that:

- The three council groupings with the highest average assessment costs are group 1 (urban capital city councils), group 8 (small rural agricultural councils) and group 2 (small / medium sized urban developed councils).
- The high average assessment costs for Group 1 (urban capital city) can be explained by the composition of the applications, mostly being large development projects in the central business districts.
- For urban councils
  - A comparison of three main groupings (ie metropolitan areas, regional councils, and urban fringe areas) may suggest that some economies of scale exist in metropolitan areas and regional urban councils (ie a higher processing cost for small and medium sized councils.
  - Councils which process a large number of applications (urban fringe councils and large regional councils) have the lowest costs of assessment.
  - The costs of processing DAs / BAs in metropolitan areas are 30-50 percent higher than urban regional areas / urban fringe areas. This can be partly explained by economies of scale and council / community attitudes to development.
- For rural councils, costs increase as the size of council decreases.
- The average cost of assessing DAs / BAs is much higher in metropolitan areas than in other council areas, except for small rural councils.

The frequency distribution of average assessment costs per application shows that most councils (60 percent) fall within the range of $400-$1,200. In all, 67 councils are spread evenly between the $400-$1,200 cost bands.

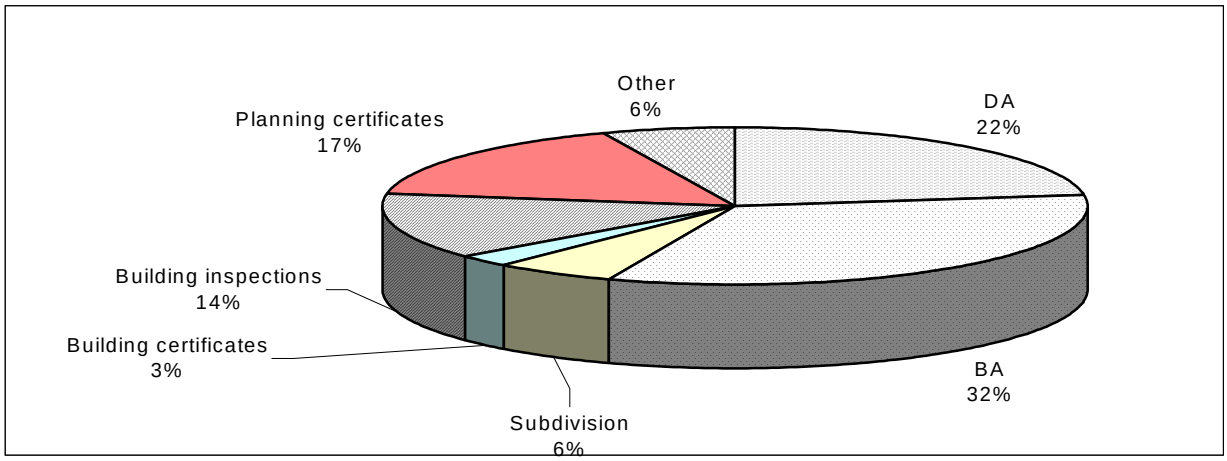
5.4.5 Revenue analysis

Revenue from development control activities

On average, revenue generated from development control services is less than 2 percent of councils' operating revenues.

DA/BA/SA fees account for 61 percent of total revenue for this function, followed by s149 certificates (17 percent), inspections (14 percent) and building certificates (3 percent).

Figure 5.5 Survey Results - Sources of Revenue from Development Control Functions



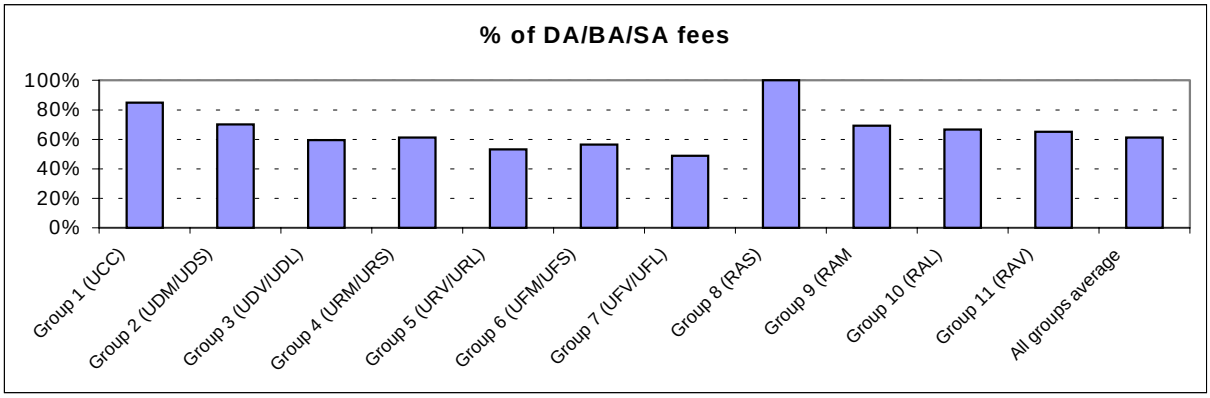
Revenue analysis by council groupings

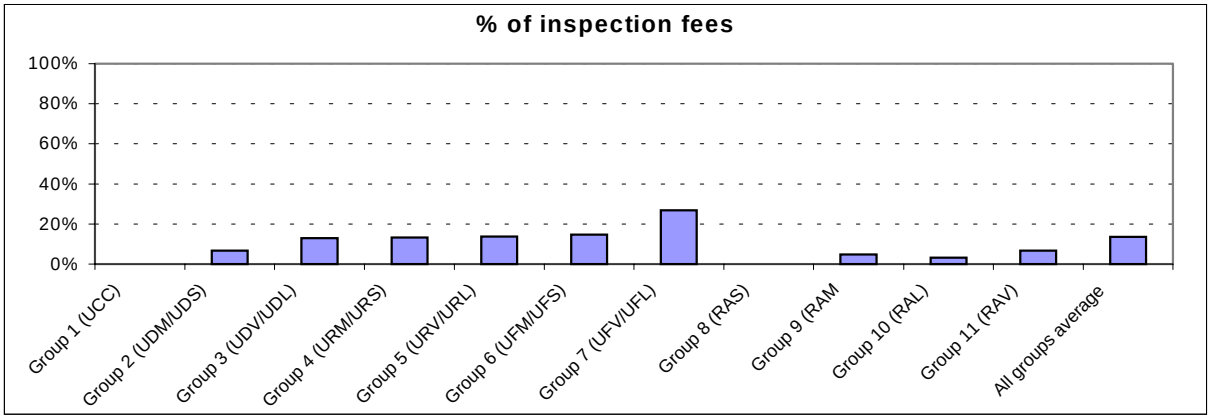
It is noted that charging policies for inspections vary greatly between councils. Of the 103 respondent councils, 47 do not receive any income from inspections. A majority of urban councils charge inspection fees (39 out of 52). By comparison, only 15 rural councils report income from inspection fees. Under the new legislation, all councils may charge inspection fees as part of the post approval certification system.

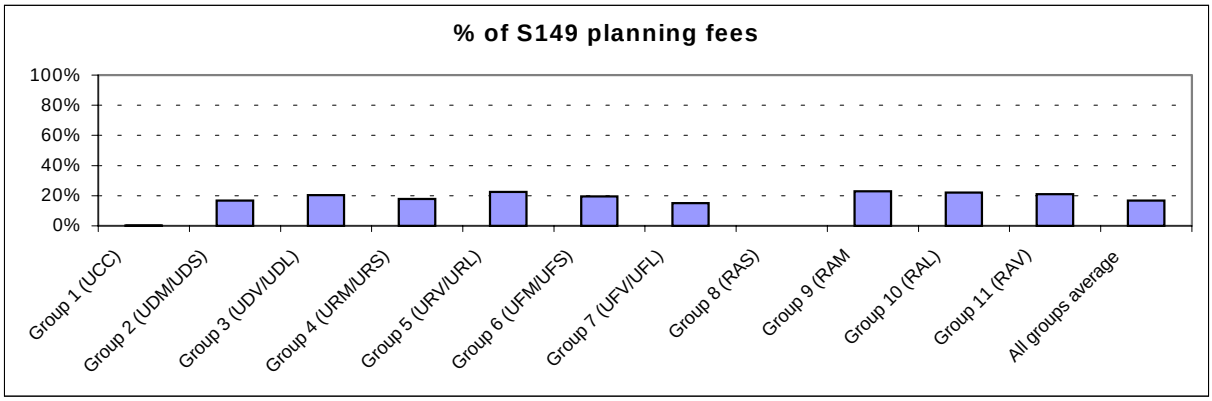
The survey results (Figure 5.6) show most groupings have a similar mix of income source except for:

- Group 1 (Sydney City Council) with over 80 percent of income derived from DA and BA fees.
- Group 7 (very large and large councils in urban fringe area) with the highest proportion of revenue from inspection fees.
- Group 8 (small councils in rural agricultural area) with DA/BA fees as the primary source of income.

Figure 5.6 Survey Results - Revenue Analysis by Council Groups



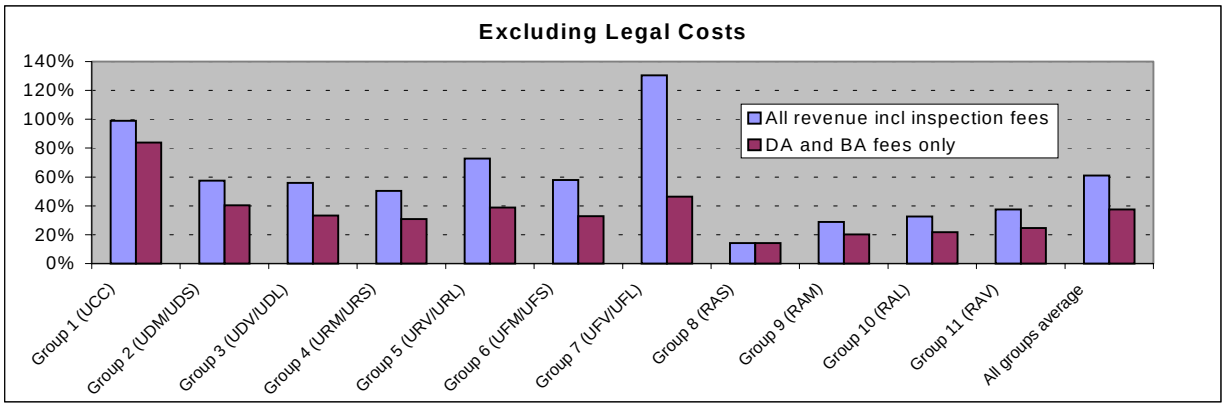


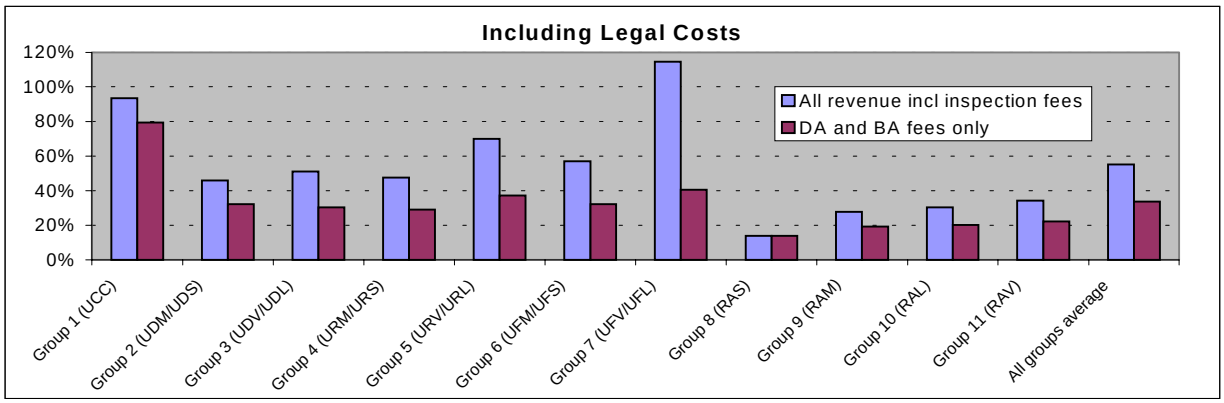


5.4.6 Cost recovery

Based on the costs and revenue information provided by councils, the Tribunal has compared the extent of cost recovery in councils' development control services. This is expressed as a percentage cost recovery rate, ie revenue divided by costs. A percentage score of 100 percent means revenue equals costs. A percentage score of less than 100 indicate that councils' costs are not fully recovered. Conversely, a percentage score of greater than 100 implies revenues are greater than costs (ie costs are fully met and a profit is made). The pattern of cost recovery by council grouping is shown in Figure 5.7.

Figure 5.7 Survey Results - Extent of Cost Recovery





In the above analysis, the cost base includes all costs related to salary costs and labour oncost, support services and overhead costs.

Excluding legal costs, the survey results show that:

- The average cost recovery rate estimated by councils is less than 40 percent. Cost recovery is greater for urban councils than rural councils.
- If other fees revenues are included in the comparison, the average cost recovery for all councils improve to around 60 percent.
- One group of councils (urban fringe very large / large councils) fully recovers the cost if other fees revenues are included. However, as some councils have not fully allocated costs to DA / BA assessment process, the "true" cost recovery rate should be lower.

5.4.7 Other findings

- In terms of percentage of human resources utilised in the approval process, number of employees directly involved in the local approval process ranges from under 2 percent (Group 8, rural agricultural small councils) to over 7 percent. On average, around 5 percent of councils' employees are directly involved in approvals. Urban councils devote a greater proportion of human resources to the approval process.

- Of the 103 respondent councils, 37 councils (36 percent) believe that the principle of full cost recovery should not be applied to development projects involving heritage issues. 27 councils believe that full cost recovery should not be applied to projects generating employment.

5.5 Consultancy cost study

The objectives of the consultancy[30] were to:

- identify cost drivers and all the costs that are incurred and relevant in the provision of development control services, including an appropriate share of the council's joint and overhead costs
- examine the difference in the cost recovery of processing applications of various scales, types and values where possible
- identify and assess the impact of other factors which may affect the costs of processing applications.

In consultation with LGSA, a sample of eight councils[31] was selected for this cost review in the light of the timing available and resource implications. Although it would be desirable to study more councils, it is considered that a bigger sample is unlikely to represent the circumstances of 177 councils.

During March 1998, the appointed consultant (Pannell Kerr Forster) visited all eight councils and held detailed discussion with senior executives and relevant officers about the development control assessment process.

The consultant has attempted to assess the costs of processing different types of development/building applications, for:

- residential single dwellings
- residential medium/high density development
- non-residential development such as commercial and industrial
- sub-divisions
- other applications.

To establish whether there are differences in the cost recovery among these categories, the consultants have:

- Considered a sample of recent applications. For each council, the consultant has reported on a number of recent applications (randomly selected), with particular attention to the fees received (including advertising), date determined, method of determination, time and resources involved.
- Estimated overall costs and revenue, by major categories of application, for both building and development applications. The average costs per category of application were then estimated and compared with the average revenue.

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30 Copies of the PKF consultancy report are available from IPART, at – *www.ipart.nsw.gov.au* - or Ph: (02) 9290 8400

31 The eight councils in the sample were selected on the basis of location, size and coverage of applications determined by these councils. Four councils are in the metropolitan areas and the other four are in rural areas of the State.

It is apparent that information on the cost and revenue split by type of application is not readily available from councils' existing systems. Most councils have indicated that additional resources will be required to provide information on revenue by type of applications.

Approach and methodology adopted by the consultant

Rather than relying on councils' cost information, the consultant visited all councils to establish the time and resources involved in the following steps:

- pre-lodgement
- receipt and lodgement
- assessment
- determination
- post approval monitoring.

The consultant then designed a cost allocation for all steps in the process for each type of application. This allowed a comparison of councils on a consistent basis.

Consultancy findings

The findings of the consultant report are summarised in Table 5.2. The eight councils in the case studies are denoted as M1, M2, M3, M4, C1, C2, C3 and C4.

It should be noted that the cost information was drawn from the councils' 1997/98 Management Plan estimates. The methodology used by the consultants to capture, estimate and assess costs was the best available for the consultancy, given the vast differences in information available from the case study councils. It is noted that the methodology used in the study relies on the quality of subjective information available from council assessment staff regarding time and frequency estimates.

Table 5.2 Cost Study Result – A Summary

COUNCIL	M1	M2	M3	M4	C1	C2	C3	C4
Classification	**Urban Developed Medium**	**Urban Developed Medium**	**Urban Fringe Very Large**	**Urban Developed Medium**	**Urban Regional Medium**	**Urban Regional Medium**	**Rural Agricultural Large**	**Rural Agricultural Very Large**
Area km2	<20	<20	<500	<25	>4,000	4,000	>2,000	6,000
Residential Population	53,000	51,000	170,000	48,000	60,000	58,000	9,000	15,000
Employee Numbers	258	361	850	200	484	399	70	131
Total operating expenses 1996/1997 $m	31	32	67	19	46	32	8	13
Organisational Structure	Core business units & support units	Core business units & support unites	Core business units & support units	Core business units & support units	Integrated core & dedicated support units + admin support	Business units & support units	Small admin support + core functions	Small admin support + core functions
Number of DAs processed	765	1204	701	221	304	368	88	94
Number of BAs processed	1,040	1267	3,171	564	1,058	1,506	203	326
Average processing time incl post approval monitoring								
DA minutes	991	1470	584	802	868	841	471	953
BA minutes	1,110	1429	475	822	412	525	542	642
Average weighted costs DA								
Direct	$652	$619	$226	$414	$355	$364	$189	$366
Indirect	$427	$525	$333	$290	$290	$468	$272	$312
Total	**$1,080**	**$1,144**	**$559**	**$703**	**$645**	**$832**	**$462**	**$678**
Average weighted costs BA								
Direct	$580	$594	$195	$399	$234	$194	$191	$260
Indirect	$468	$458	$298	$346	$294	$156	$70	$67
Total	**$1,048**	**$1,052**	**$492**	**$744**	**$528**	**$350**	**$261**	**$328**
Average legal costs	$554	$243	$142	$183	$17	$75	$5	$2
Cost Recovery (incl legal costs)	44%	67%	82%	46%	47%	41%	41%	38%
Relevant Cost Drivers								
Relative density of shire	Heavy	Heavy	Sparse	Medium	Low-medium	Low-medium	Sparse	Sparse
Topography	Diverse	Diverse	Not as relevant	Diverse	Not as relevant	Diverse	Not as relevant	Not as relevant
Objections	80-90%	85-95%	<40%	30%	10%	<20%	0-5%	5-10%
Notification/advertising	95-100%	100%	5-10%	100%	35-40%	35- 40%	0-5%	60-70%
Use of dedicated committees	Yes	Yes	Seldom	Seldom	Yes	No	No	No
Development stance of Residents	Anti Development	Anti development	Pro Development	Reasonably Neutral	Pro development	Anti development	Mostly neutral	Mostly Neutral
Ability to attribute costs	Reasonable	Average	Average	Advanced	Advanced	Reasonable	Average	Average
Allocation method	To support	To support	To support	To cost centre	To activity	To cost centre	To admin	To admin
Rate of direct overhead allocation	Partial	Some	Little	Some	Most	Some	Little	Little
Size/Sophistication of support functions	Substantial	Moderate	Substantial	Moderate	Substantial	Moderate	Simple	Simple
Additional Fee policy	Inspections & advertising	Advertising	Inspections & advertising	Inspections & notifications	None	None	Advertising	None
Inspection travel time	Low	Low	Moderate	Low	Moderate	Moderate	High	High

Source: Consultancy Study on Review of Local Government Costs for Development Control Study, Pannell Kerr Forster, June 1998.

The key findings on the eight case study councils are summarised below. The Tribunal acknowledges that the small sample size may limit the interpretation of the findings to other 169 councils.

Lack of quality data

Councils were not able to provide information on sources of revenue by types of applications. Councils did not have separate cost tracking system for assessing DAs, BAs and other development control activities (such as post approval monitoring and enforcement activities).

Cost drivers

Those councils with the highest costs of assessing applications and longest processing times typically cited the same cost drivers. Diversity of topography, density of population, organisational structure and development stance of residents all tended to drive up the average processing time. Residents of high cost councils tended to exhibit behaviour characterised by increased objections, increased legal costs, increased mediation and dispute resolution costs.

The consultant found that level of efficiency varies among the eight councils. Some councils have a more effective local approval process than others. The results suggest key cost drivers are each council's policies, notably delegation and notification practices, which are likely to be driven by community attitudes to development. Given the small number of councils in the sample, the results in regard to economies of scale are inconclusive.

Cost allocation

Approaches to cost allocation vary. There are significant differences in the quality of financial and costing systems. Although most of the eight councils studied are progressing towards a better cost allocation system, there is still a long way to go, except for one council.

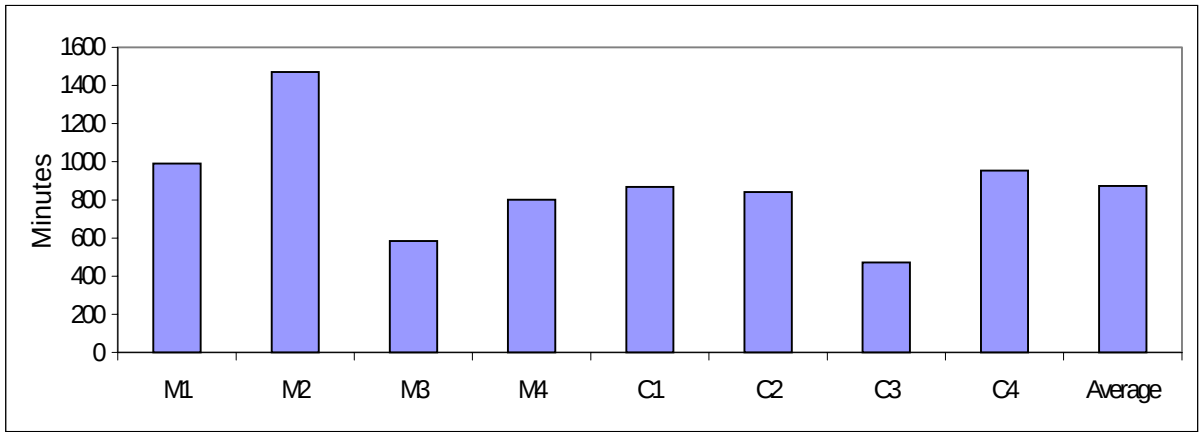
The consultant compared the overhead cost allocation with other professional service firms. In general, professional service firms[32] have a 50/50 rule of thumb in relation to allocation of overheads ie indirect costs and support costs are roughly the same proportion as salaries and labour oncosts. Although the four metropolitan councils in the sample have a higher proportion of costs in their overheads than the country councils, their overhead ratio is generally consistent with the overhead proportions for private sector professional service industries.

Processing time – development applications

The consultant found that there is a significant difference in the average processing time among the eight councils (Figure 5.8).

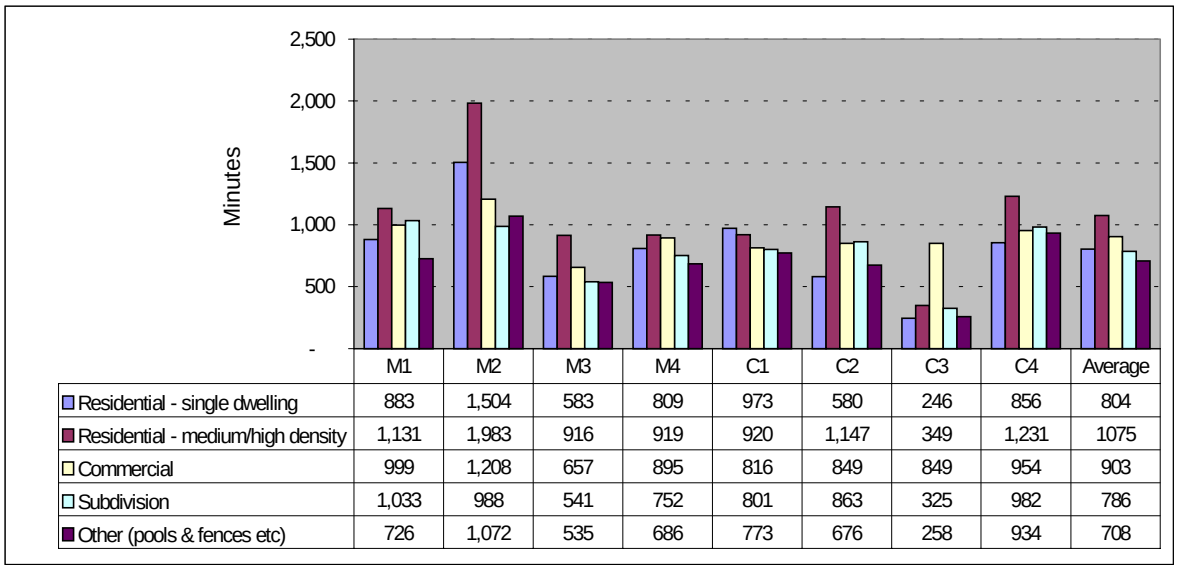
[32] The professional services referred to by the consultants are advertising services, market research services, business management services, legal services and accounting services.

Figure 5.8 Development Applications - Average Processing Time (minutes)



A comparison of processing time by types of application is shown below:

Figure 5.9 Development Applications – Average Processing Time by Type of Development Application



	M1	M2	M3	M4	C1	C2	C3	C4	Average
Residential - single dwelling	883	1,504	583	809	973	580	246	856	804
Residential - medium/high density	1,131	1,983	916	919	920	1,147	349	1,231	1075
Commercial	999	1,208	657	895	816	849	849	954	903
Subdivision	1,033	988	541	752	801	863	325	982	786
Other (pools & fences etc)	726	1,072	535	686	773	676	258	934	708

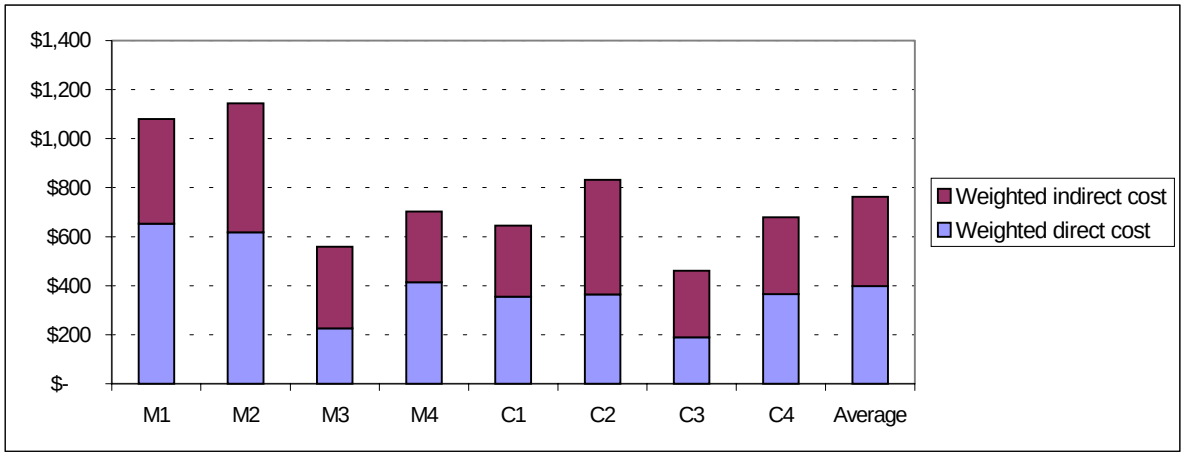
Average costs of DA assessment

Estimation of the average costs of DA assessment is based on:

- weighted processing time
- weighted direct cost (mainly salary costs) to process each application for a particular category
- allocation of support costs to BA / DA process.

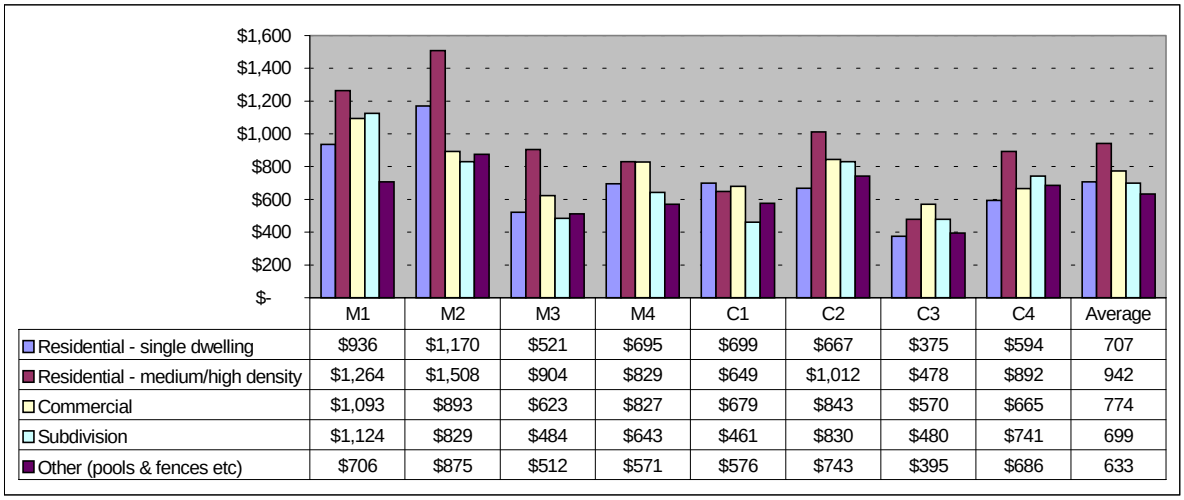
The costs of processing development and building applications vary greatly among the 8 case study councils (Figure 5.10).

Figure 5.10 Development Applications - Average Costs ($) per Application (All categories)



A comparison of processing time by type of application is show below:

Figure 5.11 Development Applications – Average Costs by Type of Application



	M1	M2	M3	M4	C1	C2	C3	C4	Average
Residential - single dwelling	$936	$1,170	$521	$695	$699	$667	$375	$594	707
Residential - medium/high density	$1,264	$1,508	$904	$829	$649	$1,012	$478	$892	942
Commercial	$1,093	$893	$623	$827	$679	$843	$570	$665	774
Subdivision	$1,124	$829	$484	$643	$461	$830	$480	$741	699
Other (pools & fences etc)	$706	$875	$512	$571	$576	$743	$395	$686	633

Cost recovery

Examination of a sample of DAs/BAs determined recently by councils shows a better cost recovery rate than the survey results regarding the average cost recovery for all applications. This is similar to BIS Shrapnel's finding. It suggests there is unaccounted time not directly attributable to a particular application, eg dealing with general public inquiries and staff time involved in legal appeals or that a few "abnormal" cases blow out costs.

Cross subsidies

The results are inconclusive regarding whether there is a clear pattern of cross subsidies between applications for residential single dwellings, residential medium/high density developments, and commercial/industrial developments.

Particularly, the analysis does not show a clear lower cost outcomes for processing residential dwelling applications (Figure 5.9 and 5.10).

A detailed examination of DA/BA application files has not provided a clear pattern of cost recovery between different types of application. The study highlights the need for improving processes and the accuracy of activity cost information.

Recommendations

The consultant has made a number of recommendations, including:

- implementing activity based costing
- establishing appropriate cost drivers to allocate indirect costs to activities
- improving the accuracy of direct activity cost determination and cost capturing systems such as charge codes and time sheet systems etc
- improving and re-engineering processes
- implementing an application tracking system
- tracking application revenue by category.

The Tribunal proposes that DoLG, in consultation with DUAP and LGSA, should be responsible for implementing these recommendations.

5.6 Summary and implications for fees structures

Both the survey results and the consultancy study confirm that there appears to be a wide variation in the costs of assessing development applications. Some economies of scale appear to be enjoyed by the very large councils, particularly the urban fringe and regional councils which receive and determine most applications. Most councils do not have adequate and good cost information for price setting.

The Tribunal proposes that DoLG, in consultation with DUAP, local governments and LGSA:

- ***develop requirements for better tracking of revenue, cost and activity information for development approval systems***
- ***establish a firm timetable for these systems. Such systems should be implemented by July 1999.***

The new regulated charges will be set on an interim basis only, pending successful implementation of improved systems.

The survey results suggest that the average cost recovery rate estimated by the councils is 60 percent (excluding legal costs and including all revenue from development control activities). If legal costs are included, the average cost recovery rate is less than 40 percent on the basis of DA/BA fees only.

The consultancy study indicates a higher recovery rate based on an examination of a sample of applications determined by councils. The cost difference can be explained by:

- costs associated with general inquiries are not attributable to a particular application
- costs associated with legal appeals against a councils' decisions are not covered in the estimates of assessment costs by council officer
- time spent on matters not directly related to assessing DAs/BAs (eg enforcement matters) are not captured in the cost study, but may be included in the survey.

The Tribunal is interested in the processing time for each key step in the approval process. This may be useful in considering fee structures. The Tribunal will undertake a further time and cost studies.

6 DEVELOPMENT APPLICATON FEES

This chapter examines the fees charged for development application services, including fees for:

1. development applications that require local approval
2. subdivision applications
3. state significant developments
4. applications for approval to erect advertising signs
5. applications involving hospitals, schools or police stations erected by a public authority
6. applications to modify a consent once approval has been given.

In considering an appropriate fee structure, the Tribunal needs to take account of:

- cost recovery definitions
- differences in councils' operating environment
- a fee structure that is reasonable, practical, relatively easy to understand and administer
- ensuring a reasonable level of certainty for the applicants and councils
- the effects and consequences for different stakeholders.

6.1 Cost recovery issues

A cost recovery policy raises a number of issues. Councils submit that in general, the fees currently charged do not cover the costs of the services provided. This is also of concern for ratepayers, who perceive that they may be subsidising developers. At the same time, developers and the building industry are concerned about the possible impact of higher fees on the costs of development and housing. The Tribunal has therefore considered the following cost recovery issues:

- the extent to which efficiency improvements are possible
- public good components
- the extent to which the cost of community consultation should be borne by developers
- whether councils can identify the "full" cost of assessing applications
- which costs should be recovered from development application fees? For example, should joint costs such as policy formulation and head office expenses be included in development assessment fees? Should variations in costs for different council areas be reflected in fee levels?

The first three points have been discussed in previous sections. The Tribunal has considered what costs should be recovered through development application fees. Specific cost components require attention. Guiding principles for cost recovery are discussed below.

6.1.1 Costs of development assessment

The determination of any pricing system for council service begins by identifying the costs of providing that service. The costs of undertaking a development application have been identified partly through the consultant's report on eight representative councils (discussed in Chapter 5) and partly through discussions with the Working Group. The following costs have been identified:

Standard costs (generally incurred with every application)

1. Administrative costs associated with registration and lodgement.
2. Costs of initial check of application by duty planner / surveyor.
3. Costs of notifying neighbours and other members of the public.
4. Costs of referrals to internal and external experts.
5. Cost of requesting additional information and / or revisions to application.
6. Costs of site inspections (where required).
7. Costs of actual assessment of application including consideration of objections and technical assessments. This includes the reasonable costs of mediation and negotiation between applicants and objectors by council staff.
8. Costs of processing determination and issuing consent / rejection.

Additional costs (which may not be incurred with every application)

1. Costs of pre lodgement consultation.
2. Costs of considering amendments under SEPP1.
3. Costs of advertising where prescribed by regulations or relevant planning instrument.
4. Referrals to external agencies for integrated development.
5. Costs of urgent or priority processing.
6. Costs of referral to full council and / or council subcommittee. This includes costs of council site inspections, preparation of council reports, and council staff time in attending council meetings.
7. Legal costs including costs of a defending a legal challenge to a council decision.
8. Costs for modifications to a consent.
9. Costs of external mediation.

The Tribunal seeks stakeholder comments on whether this represents an appropriate summary of all the possible costs of assessing development applications. Costs identified above include both direct costs (eg salary and on-costs) and indirect costs (overhead costs and the cost of support services) associated with each of the above activities.

These costs (less a public good component) must be funded either by general revenue (primarily rates) or directly from fees from applicants. The next step is to find a fee structure and level of fees that provides the correct balance between these two revenue sources.

The Tribunal considers that the costs of governance (including formulation of town planning policies and matters relating to the development of planning instruments and strategies) and

legal expenses should be funded from general rates (ie by the ratepayer). These activities benefit the whole community and not just applicants. They are discussed below.

Cost of governance

Costs of referral to council

The costs of referring an application to council add significantly to the cost and time involved in development assessment. Given the sheer weight and volume of DAs and BAs, most councils delegate the approval power to council staff, subject to certain constraints. For example, many councils reserve the right to "call up" an approval for whatever reason. Normally, this is done if the development is controversial or is subject to a large number of objections.

The applicant normally has little control over whether an application is considered by delegated officers or councillors. It is difficult to find a direct relationship between the costs of council processes and an individual application. The process of considering and debating public matters (including development matters) is really part of a council's core responsibilities. The local community derives a significant benefit from being able to have council consider development issues in a public forum.

For these reasons, the Tribunal is of the view that the costs of referral to council should be funded from general council revenue and not from development application fees. The Tribunal welcomes comments on its position.

Strategic planning costs

Strategic planning involves developing and revising local planning instruments particularly the Local Environmental Plans (LEPs), Development Control Plans (DCPs) and site specific development codes. It is clear that strategic planning has a large impact on the development approval process. Poorly designed or out of date plans that are difficult to understand or require constant amendment add considerably to the costs of assessing development applications. The Tribunal knows of one council that has over 200 LEPs. Some councils apply planning schemes which predate the Environmental Planning and Assessment Act 1979.

The Tribunal understands that the Department of Urban Affairs and Planning is conducting a review of the plan-making framework and process under Part 3 of the Environmental Planning and Assessment Act 1979. This is an extremely important review, which has the potential to improve council planning services significantly. One way of facilitating the simplification and rationalisation of planning instruments may be to require mandatory reviews of council planning instruments. An example of such a mechanism is contained in the Subordinate Legislation Act 1989 which requires that the State Government's statutory instruments including regulations, by-laws and statutory rules be conducted every five years.

LGSA submits that:

> Whether activities such as policy formulation should be included is arguable. The further each function is removed from the actual assessment process, the harder it is to directly attribute the cost. This is particularly so if the fee structure allows for fees to relate to the actual assessment

> costs of individual applications. It could be argued that policy formulation costs are part of the governance role and represent a public good to be funded from general revenue. [33]

Singleton Council contends that in country town areas, site specific development codes are established for greenfield areas which directly benefit developers. It argues that such costs should be recovered from developers. On some (but rare) occasions, developers propose site specific codes to councils for consideration and approval.

If contemporary and accessible local planning policies and instruments are put in place, they provide clarity and consistency for users, including applicants and council assessment officers. It is recognised that best practice local approval systems involve effective strategic planning. This would mean lower costs were likely to result in the development assessment system.

On balance, the Tribunal considers that these strategic planning activities benefit the whole community and not just applicants.

The Tribunal is of the view that strategic town planning and development control should be part of a council's corporate planning process.

Legal expenses

In 1991 the Public Accounts Committee (PAC) tabled a report on Legal Services to Local Government, which commented on the high level of legal expenditure incurred by local councils. As a result, it is now mandatory to provide a summary of legal proceedings by or against councils. The PAC is currently undertaking an inquiry into "Legal Services to Local Government: Minimising Costs through Alternative Dispute Resolution".

Legal expenditure by councils is significant and is on the rise: $10m in 1993, $12.9m in 1994/95, $15.5m in 1995/96 and $17.1m in 1996/97. In 1996/97, legal expense averaged $96,000 per council. On average, legal expenses account for 10 percent of total planning and regulatory costs.

Table 6.1 Legal Expenses to Total Planning and Regulatory Costs (1996/97)

Grouping of council	Legal expenses ($)	Total planning & regulatory ($)	%
Urban city council	324,527	6,562,000	4.9
Urban developed medium/small	5,274,189	28,877,827	18.3
Urban developed large/very large	4,121,264	38,848,963	10.6
Urban regional medium/small	2,615,246	34,439,931	7.6
Urban regional large/very large	525,653	13,000,000	4.0
Urban fringe medium/small	231,340	3,147,743	7.3
Urban fringe large/very large	3,194,849	26,622,941	12.0
Rural agricultural small	0	77,728	0.0
Rural agricultural medium	77,800	2,859,415	2.7
Rural agricultural large	359,527	5,063,026	7.1
Rural agricultural very large	354,886	5,949,140	6.0
All groups	**17,079,281**	**165,448,714**	**10.3**

Source: Department of Local Government - Raw data on 1996/97 key performance indicators on planning and regulatory services.

[33] LGSA's submission, p 3.

In its 1995 Annual Report, the NSW Ombudsman Office reported local councils' over reliance on legal advice and legal process. In the 1996/97 Annual Report, the Ombudsman suggests that the problem continues.

Several factors suggest legal costs should not be recovered through DA fees. Firstly, there is no direct relationship between the DA applicants and the legal costs of a particular application. In the absence of any such direct relationship, it is fairer that these costs be met by the general community, than DA applicants (a sub-group of the general community) be expected to pay those costs. Secondly, allowing councils to recover legal costs from DA fees will reduce the incentive to adopt alternative dispute mechanisms, which are likely to be less costly. Thirdly, expenditure on legal costs may benefit the whole local community rather than the applicants. However, high legal costs may reflect deficiencies in planning processes rather than problems inherent in DAs.

In respect of legal costs incurred in defending a council refusal of an application, the Tribunal understands that the current practice is that the legal costs of merit assessment (ie class I and II appeals)[34] are generally not recoverable from the unsuccessful party (except in exceptional circumstances). However, the legal costs of judicial reviews are recoverable.

Where councils' costs cannot be recovered from the applicant, the Tribunal is of the view that they should be recovered from general revenue, rather than through additional DA fees.

A final issue is the costs of internal lawyers or legal advice on the interpretation of planning legislation and planning instruments. The Tribunal does not propose passing these costs on to applicants in fees. In the Tribunal's view, legal advice of this nature is, part of the core function of council and is more akin to strategic planning costs. It is excluded for similar reasons.

The Tribunal's view is that legal costs should not be recovered through development application fees.

6.1.2 Proposed cost recovery definitions

Having regard to submissions received and the pricing principles discussed in Chapter 4, the Tribunal considers that the following approaches to cost recovery should be adopted.

The Tribunal seeks comments on the following cost recovery proposals:

DA fees - Proposed Cost Recovery

- The full cost of providing development control services should be identified, including a share of overhead and common costs.
- The following costs should not be recovered by way of fees from the applicants: (a) legal expenses including the cost of defending appeals on approval matters, (b) cost of formulating town planning policies and (c) cost of governance relating to councils' consideration of approval matters at council meetings.
- Where a council charges less than the maximum regulated fee, any such cost subsidy should be made explicit.

[34] A class I appeal is against a council decision to refuse a DA. Class II appeals applied to BAs.

Given the varying degree of community consultation in the approval process among councils, the costs of community consultation above an "average" level could be treated as a "public benefit". This amount should be identified by councils and made explicit and transparent to the community.

The Tribunal seeks comments on this approach.

6.2 Adequacy of current fee structure

Under current regulations, fees for DAs are based largely on the value of construction. Applications to subdivide land are the main exception to this, being based on a flat fee with an additional fee per lot.

The Tribunal formed a working group of representatives from industry, local councils and other stakeholders to examine the current fee structure and consider appropriate alternatives.

The working group found that the current fee structure is not appropriate for a number of important reasons. These are:

1. There is no evidence that the cost of construction provides a basis for determining the cost of assessing an application. Indeed it has not been suggested that current fees have any direct relationship with the cost of assessment. It is difficult to estimate the true cost of construction, particularly for larger, more unusual projects.
2. Given that current fees are not related to the actual costs of assessment, there is no way of knowing whether current fees are too high or too low (although the Tribunal's survey of all councils, suggests that in aggregate at least, current fees do not necessarily capture councils' costs).
3. The fees do not account for any of the wide variety or the complexities of DAs .
4. Fees based on construction cost disadvantage councils operating in regions with a high proportion of low cost developments.

The Tribunal shares the Working Group's concerns. The current fee structure is not reflective of costs and is neither efficient nor fair. In the absence of a direct relationship between construction cost and cost of assessment, there is no relationship between what it costs councils to deliver development control services and what society is prepared to spend to receive these services (whether the applicant or the ratepayer pays). This inevitably leads to resources being allocated in a less than optimal manner. It also provides no information to council management on how to minimise these costs and/or to better cover costs with fees.

Against this, it may be argued that applicants with a higher cost of construction obtain greater benefit from the development control system and should be asked to pay more.

Whilst efficient resource allocation is not the only legitimate goal of a pricing system, it is an important goal. Therefore assessing the relationship between cost and prices is an essential starting point to any inquiry into prices.

6.3 Alternative fee structures

The Tribunal has considered the pros and cons of the current value-based fees structure and alternative pricing options, including:

- standard fees charged plus optional add-on fees for a range of specified activities (Working Group's preferred option)
- prescribed fees set for different types of application
- time based charges
- deregulation.

The Working Group's preferred option is a standard fee with add-ons. The costs to be included in a standard fee are described in greater detail in the next section.

However, as discussed in Chapter 5, the consultant's study reveals a wide range for averaged costs for assessing DAs and BAs. The wide variations in costs raises concerns that a standard fee may unfairly disadvantage some of NSW's 177 councils and advantage others, even allowing for differences in council efficiency.

The Tribunal therefore considers there is a need for some flexibility in council fee setting. The options being considered are:

Option 1 - Standard Fee with Add-ons

This option involves charging a standard fee to cover the efficient costs of assessing a "standard" DA, including a fixed amount of cost for the time spent in consultation and mediation with objectors. This standard fee may be divided into a standardised table of fees for different types of DAs and / or different types of councils.

To the standard fee would be added specific charges for advertising, consideration of SEPP1 amendments, referrals to other agencies and other "add-ons". This proposal is described in detail below (section 6.4).

Option 2 – Fees Review Panel

This option was considered by the Working Group. Given this scenario councils would have the right to apply to a Fees Review Panel staffed by local government and industry representatives to have their fees varied to exceed from the standard fee. Approval would be required only if the proposed fees exceeded the standard. If approved, the fees would be published and become the maximum fees for that council. Criteria for review would be determined by the Tribunal in its final report but would not permit review of "excluded cost items". The onus would be on councils to demonstrate why their cost conditions justified a departure from the norm.

Option 3 – Case by case review

This option would allow a council to depart from the standard fee in the particular circumstances of a specific case (eg where an application falls within an environmentally sensitive area and additional work will be required to assess it). Council would need to advise the applicant upon lodgement of the application of the reason for the variation and the level of charges to be imposed. However, the applicant would have the right of

appealing to an expert cost assessor for a ruling on whether the council fee was reasonable or not. Whilst this option is likely to result in more cost reflective pricing, it would fail the pricing policy objectives of predictability and administrative simplicity.

Option 4 – Combination of Options 1, 2 and 3

This option would combine all three of the above options. A council could apply for approval of a published set of charges which varied from the standard charges (option 2). It would than also have scope to depart from these charges on a case-by-case basis (option 3).

The Tribunal seeks comments on the four options.

Proposed Pricing Options for DA fees

1. Set a standard fee for each category of development for a "standard" or "average" development application with optional "add-ons".
2. In addition to (1), individual councils have the option of submitting a proposal for higher fees to an expert panel. Such proposals would be required to meet specified criteria. The expert panel would make a recommendation to the Minister for Planning to approve or not approve the variations. As at present, councils would not need to seek approval to charge less than the regulated fee.
3. In addition to (1), councils have the option of departing from the regulated fee for individual cases. The variation would be advised at the commencement of the DA process and could reflect the expected complexity of the application and its review. The applicant has the right of appeal to an expert cost assessor for a ruling on whether council's fee is reasonable or not.
4. A combination of 1, 2 and 3.

It is also suggested that a standardised table of fees can be set to apply to groups of councils by location and size. However, given the information shortcomings, it is unlikely that the Tribunal will have sufficient data to set charges on this basis. On the other hand, a single fee scale for the whole of NSW is unlikely to cater for the range of circumstances that exists across councils and could have adverse financial implications for some councils.

The key question is how "public benefit" can be incorporated under the options. It is noted that option 1 does not provide for certain costs and above average costs. This gap may be viewed as the "public benefit". Options 2 and 3 reduce the "public benefit" attribution of costs. Arguably, there is greater potential for recovery of costs from developers under option 4. Another alternative would be a "discount" off standard fees to reflect public benefit. However, a uniform discount would be arbitrary.

The Tribunal notes that there are additional resource implications associated with options 2 and 3, eg increased cost of regulation. Indeed, the Tribunal has reservations about option 3 (ie departure from the regulated fee on a case by case basis). The main concerns are: uncertainty, potential time delays, cost measurement problems and the complexity of the process involved. There may also be concerns about the practicability of option 2. In the extreme, if each council puts forward one application, there will be 177 cases for review. Whilst it is not expected that there would be a large number of cases, there is a risk that the number of cases for review may escalate beyond a manageable control level.

6.4 Costs to be included in standard and add-on fees

As discussed in section 6.1.1, 17 cost items are identified in the approval process. Standard cost components are incurred for typical developments. The Tribunal has examined whether each of these cost components should be recovered from applicants through standard fees and add-ons, or from general rates. The suggested approach is to charge:

- a standard fee to cover those steps which are a normal part of the standard processing of an application
- add-ons to cover additional steps specific to the particular applications.

6.4.1 Costs to be included in standard fees

Costs proposed for inclusion within standard fees are listed below:

- Administrative costs associated with registration and lodgement.
- Costs of initial check of application by duty planner / surveyor.
- Costs of a "reasonable" notification of neighbours and other members of the public.
- Costs of referral to internal and external experts.
- Cost of requesting additional information and / or revisions to application.
- Costs of site inspections (where required).
- Costs of actual assessment of application including consideration of objections and technical assessments. This includes the reasonable costs of mediation and negotiation between applicants and objectors by council staff.
- Costs of processing determination and issuing consent / rejection.

6.4.2 Costs to be included in add-on fees

Additional fees would then be chargeable to cover the additional costs of services which do not typically occur in every development application. These fees are for:

- having a pre lodgement consultation (optional)
- placing advertisements where prescribed by regulation or relevant local plan
- considering SEPP1 amendments
- referring the matter to external agencies for integrated approvals
- using a council approved mediation service (optional).

6.4.3 Costs excluded from standard fees

Under this proposal, some costs would **not be recoverable** through either the standard fee or add-ons. These costs are for:

- referring a matter to Council
- legal expenses including an the costs of an appeal against a council decision
- strategic planning
- priority or urgent processing (except for assessment work which is contracted out)

- community consultation beyond what is included in the standard fee or costs of dispute resolution
- post approval monitoring.

The reasons for not including the first three items are discussed in section 6.1.1. The reasons for excluding the other cost components are discussed below.

Costs of referral to council, strategic planning costs

As noted in 6.1.1, the purpose of referring a DA to council is to enable public consideration and debate on the matter. Public consideration and debate on council matters (including development matters) is part of a council's core responsibilities and should not be recovered in development fees.

Legal costs

As discussed in 6.1.1, the Tribunal has decided to not incorporate council's legal fees in development applications.

Urgent or priority processing

The Tribunal is aware that some councils have charged, or would like to be able to charge, additional fees to undertake urgent or priority processing of DAs. The Tribunal would be concerned if such a fee was used to enable some applicants to "jump" the processing queue, particularly if this fee had the effect of rewarding slow and inefficient councils.

On the other hand, the additional revenue from priority fees could enable council staff to work overtime to meet an applicant's requirements or allow councils to outsource some of the application process. The development industry appears to be less concerned about the actual size of DA fees than it is about the holding costs caused by the delay in processing. This suggests there might be substantial willingness to pay for priority services.

The Tribunal is aware of one inner city council which will outsource all DAs at the applicants' expense while retaining the entire DA fee (or half the DA fee if it is more than $2,000). The Tribunal considers that the retention of the whole, when the activity is outsourced is inappropriate. Retention of some part may be appropriate, but should be clearly justified.

In principle, the Tribunal has no objection to councils providing additional internal or outsourced DA services for priority processing, *but only where a council has a well developed and enforceable service guarantee.* This qualification is necessary to ensure priority processing is not to the detriment of other applicants. If the above criteria are met, councils may include this option as an add-on, subject to the approval of the fees panel.

Costs of dispute resolution

The standard fee structure will incorporate a "reasonable" amount of the costs of council time caused by resolving disputes between the applicant and objectors during the public consultation process. This is typically the largest cause of cost and delay in assessing DAs.

The Tribunal recognises that training and development in professional mediation skills will greatly assist the resolution of neighbourhood disputes by narrowing the issues in

contention and facilitating better compromise solutions. It is very much in councils' interests to have their assessment staff trained in mediation. The Tribunal commends those councils that have already undertaken this process.

As noted above, the Tribunal does not support charging *mandatory* fees for the use of external mediators. The proposed standard fee gives councils an incentive to reduce time spent negotiating and mediating disputes by using council assessors who are skilled mediators. Faster resolution lowers the cost to council and increases the net revenue from fees. However, the Tribunal has allowed for an optional "add-on" fee for the use of a council approved mediation service only where an applicant requests such a service.

Post approval monitoring

The Department of Urban Affairs and Planning has raised the issue of costs of post approval monitoring. This is also a concern mentioned by councils, some of which have to provide ongoing community monitoring committees as a condition of the development consent.

DUAP submits that for some projects (such as state significant projects), the costs of post approval monitoring activities are substantial, but are not covered in the current fee structure. Examples are provided below:

Table 6.2 Estimated costs of post approval monitoring

Development projects	Estimated costs
Pasminco project, Newcastle	50 person days per year at $15,000 pa
	(Actual is less than this due to lack of adequate resources)
Kooragang coal loader expansion, Newcastle	68 hours at $120 per hour, say $8,160
Van Ommeren bulk liquids storage stage 1	$5,200 + ongoing monitoring of $600 pa
Linfox Warehouse – stage 1	$6,150 + ongoing cost $750pa
Balpool Piggery	$51,300 + $9,200 pa
Aluminium dross recycling plant	$19,900 + $4,500 pa

Source: Department of Urban Affairs and Planning.

The Tribunal does not support recovering the costs of post approval monitoring because:

- They are not part of approval process.
- Councils have the ability to charge fees for compliance monitoring as part of the construction process (by charging for post approval certificates). Fees and costs for these certificates are discussed in Chapter 7.

After a project has been completed, further monitoring costs are of an enforcement nature. They should therefore be funded by DUAP and/or the council. Imposing such costs would create uncertainty because it is not possible to estimate the size of such monitoring costs at the project development stage.

6.4.4 Summary

The Tribunal seeks comments on whether it is acceptable to classify costs as standard, additional, and excluded. The Tribunal also seeks input from interested parties on estimates of "reasonable" notification requirements for the standard fees and a "reasonable" amount of time for consultation and assessment.

It should be stressed that whatever final fees are determined, the Tribunal will recommend that those fees "cover the field" in terms of fees chargeable for development control services. In other words, no additional costs will be recoverable by council through ancillary or miscellaneous charges.

6.5 Indicative fees

6.5.1 Estimate of standard fee

As noted in Chapter 5, the Tribunal does not have sufficient information to calculate indicative standard fees with the degree of accuracy necessary to make any final recommendations.

The consultancy study presents only averaged estimates of DA/BA processing time. The Tribunal is undertaking further analysis to separate processing costs for various categories of application. This may involve councils in recording time spent processing a sample of applications to provide a better idea of actual time involved. Once a reasonable time period has been estimated, hourly rates to account for direct and indirect costs can be accurately derived from the consultancy study and applied to the time period to determine a fee. In the meantime, the consultancy study provides guidance on the parameters within which standard fees are likely to be set.

All interested parties are invited to study this report and provide comments on its potential implications for fees. Copies of the consultancy study are available from the Tribunal.[35]

6.5.2 Differential charging

Under the above proposed fee options, they key question is how fees should be set for different types of DA, eg should they be set in accordance with the classification of buildings in the Building Code of Australia. At present, the most commonly adopted basis includes: development costs, construction costs, gross floor area and a "complexity" factor.

It has been suggested that standard fees can be set for groups of councils by location and size. However, given the current lack of information, it is unlikely that the Tribunal will have sufficient evidence to set charges on this basis.

It is interesting to note that some councils are adopting gross floor area as a way of setting fees for compliance certificates. For residential flat buildings, the number of units is used. Basing fees on gross floor area (GFA) or number of units may be a good way of accounting for the additional cost of undertaking complex assessments. The relationship between assessment time and GFA or number of units will be one factor the Tribunal will consider in its further inquiries.

[35] Contact officer is Anne McCawley on (02) 9290 8499.

The Tribunal invites comments on whether standard fees and add-on fees should vary for various types of development.

The Tribunal invites comments and suggestions on a workable way of structuring fees for complex developments such as large residential flats buildings, shopping centres or mixed development. Is gross floor area an appropriate proxy for the complexity of the development?

The Tribunal encourages any councils with good activity based costing systems to nominate themselves for a time costing study.

6.6 Other fees

The Tribunal is required to report on other fees relevant to development application services. These fees are discussed in this section.

6.6.1 State significant development

The integrated approval legislation introduces a new category of development called state significant development. This category covers all types of development for which the Minister for Urban Affairs and Planning is the consent authority. Under the current regulated system, fees for development applications are the same, regardless of whether the Minister or the local council is the consent authority.

State significant developments (SSDs) include:

- developments for Olympic Games projects
- developments for the Sydney Showground site
- major employment generating developments
- developments declared to be "State Significant Development" by the Minister by notice in the Gazette
- developments which the Minister directs a local council to refer to him
- developments that are declared to be state significant in any other state or regional environmental plan.

SSDs are normally major commercial or industrial developments but may include smaller developments.

A common feature of SSDs is the holding of a Commission of Inquiry which provides a public forum for dealing with many of the complex issues involved in assessing these major developments. Commissions of Inquiry may be initiated by the Minister for Urban Affairs and Planning. The Minister generally refers a matter to an Inquiry if requested to do so by the applicant or the local council in the region affected. Inquiries are costly and consume considerable resources.

DUAP has provided the Tribunal with some estimates of the departmental time involved in assessing SSDs:

Table 6.3 State Significant Projects

Project	Time Involved	Total Labour Cost (@ $100 per hour)[36]	DA Fee
Mona Vale TAFE Development	51 hours	$5,100	$1,675
Baiada Poultry Processing Plant	131 hours	$13,100	$21,000
Hotel at Olympic site	184 hours	$18,400	$29,800
Entertainment complex, Sydney Showground	944 hours	$94,400	$39,000

Source: Department of Urban Affairs and Planning

This small sample suggests that for some SSDs, current fees may not be adequate. If indirect costs were to be added, the disparity would be even greater. The sample also shows, as expected, that the holding of a Commission of Inquiry greatly increases the costs of assessment.

The high cost of holding a Commission of Inquiry raises some difficult issues. On the one hand, it could be argued that the public inquiry and detailed planning assessment undertaken for these type of projects is largely for the benefit of the broader community. As such, it is part of the community's broader planning processes and should be funded by the community. Alternatively, it can be argued that the development proposal is what has caused the community to undertake the high level inquiry and public assessment.

The Tribunal believes the developer should make some contribution towards these costs but not a complete contribution because of the widespread public benefit that the community receives by undertaking a public inquiry.

In order to set a fee for assessing SSDs, the Tribunal will first have to determine whether an inquiry will be held and if so, what proportion of the cost of the Commission of Inquiry be funded by fees. The second step will be to determine both DUAP's costs in assessing an application of this kind and the costs associated with the Commission of Inquiry.

The Tribunal does not have sufficient information to determine such fees at present. However, one possibility for this and other larger projects, is to set a fee based on the gross floor area of the proposal. Another is to simply retain the traditional system of basing the fee on the cost of construction. Additional research may shed some light on the best way of pricing this activity.

Given the enormous range in expense, project size and complexity of SSDs, one possible option might be to require the consent authority to "quote" an estimated number of person hours for the project and set a fee based on an hourly rate determined by the Tribunal. Where the applicant believes this estimate to be unreasonable (and the applicant would have a good idea of the time involved given the likelihood that he/she employed private consultants to draft the application), the applicant can appeal to the Fees Review Panel to determine a more reasonable fee. The main disadvantage of this is the uncertainty conveyed to the applicants. Alternatively, a surcharge could be levied in addition to the standard fee. The surcharge would be subject to a complexity factor, but would be capped at a maximum level.

[36] This hourly rate was chosen for the purposes of illustration only. It may or may not be the actual hourly rate chosen if a detailed costing investigation was undertaken. That would take account of the seniority of staff involved and labour oncosts. In addition, a final cost figure would need to account for the indirect costs of assessing the DA.

The Tribunal invites comments on the best way to set fees for state significant development.

6.6.2 Fees for applications to erect advertising structures

The new regulations establish a separate category of DA fees for advertising structures. These are the greater of:

- $215 for each advertising sign + $70 for each additional sign; or
- a fee based on the cost of construction from the standard DA table (which may be revised following the Tribunal's final recommendations).

The $215 + $70 fee was derived from an earlier consultancy commissioned by the Department of Urban Affairs and Planning. The Tribunal is proposing to retain this fee, subject to input from stakeholders.

The Tribunal proposes retaining the structure of an initial application fee plus an additional fee based on the number of advertisements.

6.6.3 Applications involving hospitals, schools or police stations erected by a public authority

The regulations currently set a maximum fee of $115 for applications involving the construction of hospitals, schools or police stations by a public authority.

Councils have indicated that the assessment required for these developments is no different than for other DAs. Accordingly, most submissions from councils favour removal of this exemption.

The Tribunal's concern is that the exemption means local councils are effectively subsidising a community service provided by State Government. The Tribunal has no difficulty (and would encourage) discounts on fees being provided for community based developments (assuming council has a clear and transparent policy for allowing such discounts). However, it is normally a matter for council to determine this policy. If State Government wishes to impose such a community service obligation on local government, this should be made transparent and funded directly from State Government revenue.

The Tribunal proposes that the same fee structure and charges for local approvals be applied to these developments.

6.6.4 Modification to a consent

The old regulations allowed councils to charge up to 30 percent of the original DA fee when an application was made to modify a development consent.

The new regulations set a cap of up to 50 percent of the original fee in all cases except where the application is to correct a minor error, misdescription or miscalculation (in which case the fee cannot exceed $350).

The fee for modifying a consent is extremely difficult to regulate. Council representatives have argued that sometimes the assessment of the modified proposal can involve more work than the original DA (particularly where further notification of neighbours is required). On

the other hand, industry representatives have expressed concerns that the current system gives the Council considerable discretion in setting fees within the 0-50 percent range for modifications which can often be extremely simple to process. In addition, it has been argued that some modifications are required simply because of council errors in drafting the original consent.

The Act requires that applications to modify a consent be approved only if the development to which the modified consent relates is substantially the same as the original development. Given this, the Tribunal suggests a smaller percentage of the initial fee be charged but capped at some reasonable level. This will be the subject of further investigation.

The Tribunal notes that a Queensland council has adopted two fees, one for minor modification matters ($320) and the other for substantial modification matters ($1,400). Another council has adopted a fee for modification of a consent which is 25 percent of the current applicable fee with a minimum fee of $790.

The Tribunal is of the view that the fee for modification of consent should be capped. The Tribunal seeks stakeholders' views of the appropriateness of the current fee structure for modification of consent.

6.6.5 Staged development

Section 80 (4) of the EPA Act allows for staged development. In practical terms, this is where a council gives "in principle" approval to a development, with the requirement that a more detailed application be submitted at a later stage for further approval.

Where separate development approvals are required, the Tribunal's current view is that separate fees should apply. This is because the likely costs to council are similar for each application (in terms of notification of residents, internal and external referrals, evaluation of the proposal, etc). Councils should charge a discount to applicants for staged approvals where it is clear that the costs of assessing each stage are lessened by virtue of the pre-existing approval for the site. This discount can only be assessed on a case by case basis.

The Tribunal seeks stakeholder' comments on the appropriateness of giving councils the discretion to charge full fees for staged approval applications (with a provision for discounts where appropriate).

6.7 Subdivisions

There are two types of subdivision: land subdivisions and strata subdivisions.

6.7.1 Land subdivisions

The land subdivision assessment process involves essentially four stages:

1. assessment of an application to subdivide land
2. assessment of detailed work plans
3. inspections during the construction process
4. council endorsement of the final plan of subdivision which allows the subdivision to be registered at the Land Titles Office.

In terms of fees, only the first stage is regulated. Under the Integrated Planning Legislation, the remaining steps become construction certificates, compliance certificates and subdivision certificates respectively. As these services become contestable[37], they will be unregulated and prices set by market forces.

Concerns have been raised by the Institution of Surveyors and UDIA about councils charging a range of miscellaneous additional fees for subdivision assessment. For example, a number of inner city councils charge a substantial application fee for subdivisions in addition to the regulated application fee for development. There appears to be no justification in law or in policy for such a fee. As has been made clear elsewhere in this report, the Tribunal's intention is to recommend a tightening up of council's ability to charge fees for miscellaneous or ancillary services where a comprehensive regulated fee has been determined.

The Tribunal notes that the new regulations contain a revised proposal for land subdivision fees. These are: $500 + $50 per additional lot (for applications involving a new road)
$250 + $40 per additional lot (for applications which do not involve a new road).

These fees are based on a consultancy study commissioned by DUAP in 1994.

These fees appear to exceed the average costs of assessing a subdivision as suggested in the Tribunal's consultant's report. The total expected cost of assessing a typical subdivision varies from $461 to $1,123 for a sample of eight councils. However, for the reasons described earlier in this chapter, these figures are necessarily based on average estimates of the standard steps in all DA applications and may not be reflective of the actual cost of the subdivision process.

The Tribunal seeks comments on the level of land subdivision fees.

If necessary, the Tribunal will undertake further detailed studies of the subdivision process and the costs involved.

6.7.2 Strata subdivisions

The process of strata subdivision involves separating the areas of a building or townhouse development into discrete lots for which separate titles may be bought and sold. It also includes identifying areas of common property held by the strata body corporate itself.

There are typically two sets of fees for strata subdivision:

1. a fee for the development application to get approval for the strata subdivision under the EP&A Act
2. a fee for assessment of the strata plan under the Strata Titles Act.

The first fee is set in the new regulations as $250 + $50 per additional lot. The second fee is unregulated.

The Institution of Surveyors submits that a development application is unnecessary for a strata subdivision where development approval has already been given to erect the

[37] As discussed further in Chapter 8, councils will determine in their local environmental plans the extent to which subdivision certificates may be issued by private certifiers.

building. In other words, any impact the development may have on the environment has already been considered and approved. However, there may be an argument for retaining the requirement of development approval for the stratification of older buildings if they were constructed prior to the commencement of the Environmental Planning and Assessment Act 1979.

The Tribunal seeks comments from councils on why development applications are necessary to strata subdivide in circumstances where a development approval has already been granted.

In terms of the assessment of the Strata Plan under the Strata Titles Act, the Tribunal has received submissions which argue that this process is identical to the processes required to issue a final Building Certificate for the site (s172 under the old legislation, s149A under the new legislation). The fee should thus be identical to fees currently regulated for Building Certificates. Strictly speaking, the fees for assessment under the Strata Titles Act are not part of this inquiry (which is concerned only with fees under the EP&A Act).

However, if warranted, the Tribunal is prepared to examine this issue further.

The Tribunal seeks stakeholder comments on whether the current fees for assessment under the Strata Titles Act are appropriate.

7 COMPETITIVE NEUTRALITY ISSUES

This chapter:

- examines the services that will be subject to competition under the reforms
- discusses the guidelines that should be applied by councils in setting prices for those services
- considers the complaints mechanisms available to competitors of councils if they are disadvantaged by unreasonable or unfair council prices.

7.1 Services open to competition

Under the integrated planning legislation, there are five types of certificate which would previously have been issued only by councils, but may now be issued by either local councils or accredited certifiers from the private sector.

These are:

- *Complying development certificate*
  A complying development certificate verifies that a planned development is "complying development" and does not require the consent of council or the Minister.
- *Construction certificate*
  A construction certificate is endorsed on building plans and specifications to certify that the plans comply with technical building or engineering standards. Construction cannot commence without a construction certificate.
- *Compliance certificates*
  Compliance certificates are building and engineering certificates that must be issued at various stages of development to indicate that the work complies with the required standards.
- *Occupation certificate*
  The occupation certificate authorises the occupation and use of a new building and is issued at the end of the project.
- *Subdivision certificates*
  A subdivision certificate is an endorsement on a final plan of the subdivision which verifies that the development complies with council's planning approvals. The subdivision certificate must be completed before the plan can be registered at the Land Titles Office and the properties sold.

Once the accreditation system is implemented, local councils will begin to compete with accredited certifiers and other local councils to provide the above certificates. An "accredited certifier" is any person who has been certified by a professional body authorised by the Minister under the Environment Planning and Assessment Act to undertaken such accreditations.

In addition, local councils will have the discretion in their local environmental plans (LEPs) to define the types of development for which "complying development certificates" may be issued. Ministerial approval of these LEPs is required. Councils have the discretion to determine the type of subdivision certificate (if any) that may be issued by accredited certifiers. This gives local councils considerable discretion as to the nature and scope of competitive services within their area.

7.2 Fees for competitive services

The Government's reason for introducing contestability in respect of development fees is to encourage efficiency, drive down costs and prices, and improve service delivery. However, competition will not occur if prices are set at such a low rate by council that no private sector competition can survive. A local council can do this by setting prices at below cost and recovering additional costs elsewhere through general rates or from other fees. In this cases, while developers may enjoy lower fees, the benefits of improved efficiency through competition are not achieved, particularly as the lower fees are counter balanced by higher fees or poorer service elsewhere.

The key requirement is therefore that councils price fees at a level that allows them to recover the true or actual costs of providing that service. To do otherwise exposes a council to the risk of a successful challenge by a private sector competitor. The exceptions to this general principle are where a council decides to price a service at below cost to pursue some legitimate community service obligation or, perhaps in limited circumstances, where below cost pricing is needed to develop the business.

7.2.1 Fully distributed costs, marginal costs, or avoidable costs?

Any consideration of the "true" cost of providing a service raises the question of whether fully distributed costs, marginal costs or avoidable costs should be charged for costs of providing that service. These concepts are discussed in Chapter 4.

A fully distributed cost is an accounting concept where the total cost of a business is allocated across that business's activities in accordance with some pre-determined allocation policy. This includes the allocation of indirect costs such as overhead costs and the costs of support services. The consultancy study undertaken for this review allocates fully distributed council costs to DA and BA assessment activity.

Marginal costs are the expense of producing an additional unit of goods or services. The great difficulty in measuring marginal costs is determining the appropriate unit of output and the time frame to which costs are to be applied. In the longer term all costs are variable and marginal. In the shorter term many substantial costs may be viewed as "fixed" and not included in marginal cost calculations.

Because of the difficulty of measuring marginal costs, the concept of avoidable costs (or incremental costs) is often used to assess the costs of significant changes in output. It is a medium to longer term concept not applicable to a short run marginal cost. Avoidable costs are measured by looking at larger amounts of output and considering what costs would be *avoided* if a particular good or service was not provided. Whether a cost is avoidable or not depends substantially on the nature and scope of the activity being considered. For example, the avoidable cost of providing a single council inspection will be substantially different, and involve different cost calculations, from the avoidable costs of providing an entire post-approval inspection service. In all likelihood, the later would involve some costs for overheads and support services. The former is more akin to marginal costs and may involve only the direct labour costs and motor vehicles costs of undertaking the inspection.

Avoidable or marginal costs will generally be lower than fully distributed costs. However, the lower the amount of joint or shared costs, the smaller the degree of divergence. If a council completely ringfenced its council operations into separate business units (and paid

for its share of council overheads and support services), the entire cost of that unit would be avoidable and hence should be fully recovered by fees. The issue of ringfencing council businesses is discussed further in section 7.2.5.

The National Competition Principles does not specify whether pricing should be based on fully distributed costs or avoidable costs. The State Government's policy on the application of competitive neutrality to council businesses,[38] implies that fully distributed costs is the approach to adopt. However, there is however some degree of flexibility in pricing.

The Tribunal notes that in recent Pricing Guidelines Workshops conducted by NSW Treasury on Competitively Neutral Pricing, inter-jurisdictional discussions leant towards an *avoidable costs* basis for pricing. Whilst the intent is to recover fully attributed costs over the medium to long term, a government agency can apply avoidable costs to establish competitive neutral prices. Prices set on the basis of avoidable costs are lower than with the full costing approach.

In the Tribunal's view, avoidable costs can be used as a floor for determining prices for contestable services. It is, of course, open to a council to recover fully distributed costs if that is its preference. The main argument against avoidable costs is that this form of accounting will disadvantage private sector competitors by allowing council competitive businesses to take advantage of the fixed and shared costs provided by council. In business terms, however, a business is behaving rationally if it prices its fees to recover at least the avoidable costs of a particular activity. This depends on the product mix and whether the business is financially viable in the medium to longer term. Councils should endeavour to charge in excess of the floor price where it is practicable to do so.

The Tribunal invites comments on how the application of avoidable cost may impact on development control services that are contestable from 1 July 1998.

7.2.2 What costs should be included in prices?

Regardless of whether fully distributed costs or avoidable costs are adopted, councils need to identify all their costs of providing competitive services. They must ensure appropriate costs are properly captured in prices and minimise the danger of being challenged successfully by the private sector. This is discussed further in section 7.3.

The Tribunal does not believe that it would be appropriate in its guidelines to adopt a highly prescriptive approach to determining council costs. The nature and extent of council costs will vary depending on the structure of each council. In the Tribunal's view, councils and their financial staff are best placed to determine these costs.

Nevertheless, the Tribunal expects every council which charges fees for contestable services to have undertaken a costing exercise to determine those fees and to be able to document this costing exercise. This may include:

- Direct labour costs of the activity in question (including on-costs).
- Indirect and overhead costs such as costs of
  - office accommodation
  - office equipment (including depreciation)

[38] Costing for Council Businesses – A Guide to Competitive Neutrality, July 1997, published by the Department of Local Government.

  - professional and public liability insurance
  - any external or internal technical assessments (if not accounted for in direct labour costs)
  - personnel and other support services (including financial services)
  - any clerical and administrative support not accounted for in direct labour costs
  - motor vehicles including depreciation
  - records management
  - electricity, telephone and other similar costs
  - cleaning, building maintenance and other similar costs.
- Management costs.

The proportion of these costs allocated to contestable services will depend on the specific nature of the activity in question and whether the fully distributed cost or avoidable costs methodology is used. If avoidable costs is used, some of the above costs may not be included in the cost calculations at all. However, where a cost (such as support services) can be attributed proportionally to an activity, it is avoidable and should be included in cost calculations.

The Tribunal's key requirement is that councils be able to document a rigorous, consistent, defensible and transparent process which identifies their costs and shows how fees are determined.

7.2.3 Competitive neutrality

In addition to the costs identified above, local and state government businesses may receive a *net competitive advantage* over their private sector counterparts purely by virtue of their public ownership. If not accounted for, this will produce inefficiencies in service delivery by the public sector at the expense of the private sector and the general community (because the true cost of providing that service is not being reflected in prices). The process of accounting for any net competitive advantage of public ownership is known as applying the principles of competitive neutrality.

The main types of competitive advantage a government may have, due to its public ownership, are that it may not:

- have to pay tax
- have to borrow money at commercial rates
- be subject to the regulations that are faced by a similar, privately owned business
- have to earn a profit and pay dividends.

The main disadvantages a government may have, due to its public ownership include:

- more restrictive public sector employment terms and conditions
- less managerial autonomy and more onerous accountability requirements
- difficulties in accessing taxation benefits such as depreciation and other investment deductions (although this is not an issue if the business does not pay tax)

- requirements to provide unfunded community service obligations.

However, it should be stressed that competitive neutrality does not require councils to account for other competitive advantages or disadvantages they may enjoy through size, buying power or specialist expertise.

In determining "net competitive advantage" councils should not off-set an inefficient government advantage against an inefficient government disadvantage. To do so would not eliminate inefficiency. Instead, councils should identify and eliminate sources of advantage or disadvantage as much as possible through non-price structural reforms. Where a net competitive advantage (or disadvantage) remains, this should be accounted for in the price set by a council.

The NSW Government's guidelines on competitive neutrality give councils considerable discretion as to how they adopt competitive neutrality pricing principles. However, where a council business receives an annual sales turnover / gross operating income of $2m or more, (a "Category 1 business"), councils are expected to adopt competitive neutrality principles in full. This includes proper separation of the business from other council activities. If a council believes the application of the competitive neutrality principle to such a business will be detrimental overall, it must conduct a public and independent benefit / cost analysis which shows a net cost. Less strict requirements are proposed for smaller council businesses with turnovers of less that $2m.

If adopted in full, competitive neutrality requires the following calculations to be made:

- **Tax equivalent payments** including taxes that may not be paid by councils but would be paid by private sector competitors:
  - Income tax
  - Fringe benefits tax
  - Sales tax (including the motor vehicles used by the business's staff.)
  - Financial Institutions Duty
  - Payroll Tax
  - Sales Tax
  - Land Tax
  - Stamp Duty
  - Any other State or Commonwealth tax from which the local government business is exempt.

- **Debt Guarantee Fees** need to be determined for any loan the council makes on behalf of the business, or which benefits the business. Generally, a council enjoys a discount from the standard commercial rate solely because of its public ownership. However, given the low levels of capital invested in the contestable business activities, debt guarantee fees are unlikely to be a major issue.

- **Rate of Return.** A return on the capital invested in the business is a legitimate cost to business which should be recovered in prices. Normally a return is calculated on the assets invested in the business. However, this will be difficult for the business activities in question, given that the business is labour intensive and the amount of capital invested small. In these circumstances, the Tribunal considers it appropriate for a council to determine a profit margin on the business.

In order to demonstrate the application of competitive neutrality, the Department of Local Government's Guidelines require, at a minimum, that businesses with an annual turnover in excess of $2m be reported as separate business activities in councils' operating statements. The Guidelines also recommend separate accounting for other council business activities.

As discussed above, the Tribunal's main requirement is that councils are able to document a rigorous, consistent and transparent process which identifies costs for supplying competitive services. Separate accounting of these services will generally be necessary so that a council can demonstrate to an outside body that it has properly adopted the principles of competitive neutrality.

The Tribunal invites comments on the capacity of councils to separately account for the costs of providing competitive services, and to apply the principles of competitive neutrality to the provision of those services.

7.2.4 Fees charged by councils to accredited certifiers for registration of certificates

An issue related to competitive neutrality is the capacity of councils to set charges for the registration of post-approval certificates and complying development certificates. Councils are required by law to undertake this registration service.

The Tribunal notes that some councils are charging significant amounts for each certificate registered. In some cases this fee appears excessive. This issue is discussed in section 8.2.

The Tribunal stresses that any registration fee levied on private certifiers must also be levied on council (for providing the same service). To do otherwise would be to impose an unfair additional cost on the private sector that is not being borne by the in house council service provider.

Some councils offer a package deal for issuing all certifications (complying certificates, construction certificates, compliance certificates, occupation certificates, and subdivision certificates). It will not be an issue if principal private certifiers offer the same package deal. However, if a council deal includes non-contestable services, such as DA assessment, there may be a competitive neutrality issue as the principal private certifiers would be unable to compete with councils on the scope of services. One option may be to limit councils to offering a package deal for contestable services only. However, this may limit the benefit of a greater discount enjoyed by applicants.

The Tribunal invites comments on what an appropriate registration fee should be and whether councils should be able to package service including monopoly DA assessment.

7.2.5 Ringfencing

It is very difficult to set fees for competitive services in circumstances where the competitive activities are a subset of a broader range of activities which are not competitive. Problems arise for councils and their competitors concerning how to effectively allocate costs between competitive and non-competitive activities, and how to ensure competitive neutrality for the competitive activities.

The most effective way of determining prices for competitive services is to completely separate competitive business activity from other council activities. Where that business continues to utilise council resources such as office space or support services it should be

required to pay council an amount which reflects the cost of providing those services. If this is done, many of the competitive neutrality issues may be avoided or reduced. As long as the business is making some return above its costs from fees, then, from the councils' viewpoint, it is covering its costs. From the public's viewpoint it may be competing "fairly" or in a competitively neutral fashion.

The potential costs of ringfencing contestable development control services are the obvious internal dislocation and disruption caused to staff, the establishment expenses, and the potential loss of economies of scale or scope. There is also the practical problem of ringfencing a business where staff are required to perform other non-commercial council functions.

The Tribunal encourages councils to examine the ringfencing option and to comment on the viability of ringfencing competitive council businesses.

7.2.6 Effect of s.612

A major difficulty councils will face in operating in a commercial environment is complying with s612 of the Local Government Act 1993. This section requires that councils publicly exhibit all fees for 28 days in their annual plan of management. Variations from the published fees are allowed only if:

a) a new service is provided, or the nature or extent of an existing service is changed; or

b) the regulation in accordance with which the fee is determined has been amended.

The revised fees must also be publicly exhibited for 28 days.

Whether clause (a) gives council any flexibility is a matter for debate and legal interpretation. It seems unlikely that the clause will allow price changes purely on account of changed market conditions. This means that s612 imposes significant constraints on councils' efforts to compete for business in a market where their competitors can change their prices at any time.

The Tribunal understands DoLG is examining this provision as part of its review of anti-competitive legislation under the National Competition Policy. The Tribunal strongly encourages some amendment to these provisions to allow councils to compete in truly contestable markets.

The Tribunal invites comments from councils and DoLG on the viability of the current fee setting requirements for councils which compete in contestable markets.

7.2.7 Community service obligations and other departures from full cost pricing

As noted at the beginning of this chapter, councils may choose to depart from the principles discussed above in certain circumstances, as described below.

Community service obligations

State Government policy allows for councils to set fees at below cost to fulfil community service obligations, provided those fees are determined in advance and through an open and transparent process . Typically, community service obligations may involve waiving or discounting fees for developments undertaken by non-profit organisations for the benefit of

the broader community. In other circumstances the cost of the obligations should be identified and reported to councillors and the local community.

The cost of community service obligations is funded internally by council. Where council's business is properly ringfenced, a notional payment is made for revenue foregone.

Complaints about the misapplication of community service obligations should be handled in the same way as other complaints about council pricing (discussed in section 7.3 below).

Market development

Private business is able to offer discounts, specials or prices at below cost to attract business or develop a new market. There is no reason in principle, why in the short term councils should be prohibited from undertaking these marketing practices.

The danger is that the implementation of such a practice by an incumbent monopolist could easily be interpreted as predatory pricing or some other form of misuse of market power. The Tribunal will be more comfortable with "loss leading" and other similar price practices once it has been demonstrated that a competitive and sustainable market exists for competitive services. In any event, while s612 is in place, the prospect of council engaging in this sort of pricing practice is limited.

The Tribunal is considering whether it should recommend a floor price for all competitive services. This will ensure that unfair or anti-competitive practices are avoided in the short term.

The Tribunal invites comments on the above proposals and, in particular, on whether a floor price is warranted for competitive services while the market is being established.

7.3 Complaints handling

A private certifier who is dissatisfied with the prices a council is charging for competitive services has three options:

- **Complain to the council.** All councils are required to have separate complaints handling mechanisms to deal with these and other types of complaint. Councils are required to detail in their annual reports how competitive neutrality complaints have been dealt with.
- **Complain to DoLG, ICAC or the Ombudsman.** If the complaint is not resolved by council, the complainant may seek the help of DoLG, ICAC or the Ombudsman. For competitive neutrality complaints it is generally most appropriate to complain to DoLG, the primary investigative body for this purpose. DoLG will investigate the complaint using the investigatory powers given to the Minister of the Local Government under the Local Government Act. Any finding of DoLG must be tabled at a council meeting.

  If dissatisfied with a council's response to DoLG's findings, the Minister may issue orders on the council, requiring certain actions to be taken (or not be taken), may levy a surcharge against councillors or staff for monies misappropriated and/or ultimately dissolve the council if necessary.
- **Complain to the Australian Competition and Consumer Commission (ACCC).** Councils are required to comply with the Trade Practices Act. Anti-competitive practices such a predatory pricing or other forms of misuse of market power may be in

breach of this Act. ACCC has extensive enforcement powers it may use against individuals, corporations and government businesses that breach the Act.

As noted earlier, DoLG's guidelines for applying competitive neutrality principles give councils some discretion regarding the extent to which they adopt competitive neutrality pricing principles. A threshold issue is whether a council defines a particular activity as a "business activity".

The Tribunal's view is that where a council competes directly with the private sector in the provision of contestable services under the EP&A Act, it should adopt competitively neutral pricing principles in full, subject to legitimate community service obligations. To do otherwise will harm competition and hinder the efficient delivery of those services, by council or private certifier.

The Tribunal invites comments, particularly from the private sector, on the effectiveness of the above complaints handling procedures.

8 OTHER ISSUES

This chapter considers:

- council registration of certificates under the new system
- other miscellaneous fees under regulation, including s149 (planning) fees, building certificates, certified copy of a document held by a consent authority
- fees under LGA s608
- performance standards and service charges
- communication issues.

8.1 Registration of all certificates issued - is a new fee necessary?

Under the new system, there are requirements for councils to register and hold copies of all certificates issued on a property. Accredited certifiers are required to forward a copy of certificates to councils for registration. This creates a new cost for councils. Whilst it is the accredited certifier who receives the certification fee, the council bears the costs of maintaining a registry.

Some submissions advocate a new administrative fee to cover councils' costs for providing this service. An alternative option is that the costs of registration be funded by general rates.

In principle, a new fee is justified, given the work involved. However, the Tribunal believes that new fees should be set at a nominal level or based on avoidable costs as they are considered to be ancillary activities. In the South Australian fee structure, a fee equal to 4 percent of the statutory council building assessment fee is payable by the applicant if the building application is assessed by private certifiers.

The submissions received generally support councils recovering registration costs through an explicit charge payable by the applicant or the accredited principal certifier. However, the Tribunal is mindful that this fee should not become another cost burden to the applicant or a barrier to competition. The Tribunal considers that to achieve competitive neutrality, councils should be required to charge the same registration fees to themselves when they are appointed principal certifier as they charge to accredited certifiers.

It is noted that:

- Some councils have adopted a registration fee of $20 per certificate.
- Other proposed fees include $50 for the registration of construction certificates, and $25 for compliance certificates and occupation certificates.

These fees will add between $100-200 to the cost of a new single dwelling and even more for complex developments. Whilst there are additional filing and record management costs, the Tribunal questions the level of registration fees currently adopted and proposed by some councils. The Tribunal notes that councils have to maintain record management systems to support their core functions. Thus, registration of certificates should be charged on an avoidable costs basis. On this basis, the Tribunal considers that incremental labour costs and filing costs are likely to be within the range of $5-$10 per certificate.

The Tribunal's initial views are that:

- ***Councils should be allowed to recover registration costs through a nominal explicit charge payable by the applicant or the accredited principal certifier. However, the Tribunal is mindful that this fee should not become another cost burden to the applicant.***
- ***Where councils remain provider of post approval certifications, the same registration fees as for accredited certifications should be made explicit and charged to the applicants.***
- ***The registration fees should be set on an avoidable costs basis. The current registration fees of $20-$50 per certificate adopted by some councils appear excessive.***

8.2 Other miscellaneous fees

In addition to the development assessment system, councils provide a range of certificates, eg to assist in completing conveyancing transactions. Exclusively, councils provide these services. The fees are regulated.

There have been concerns that the existing fees may not be cost-reflective. In particular, the BIS Shrapnel report comments on over cost recovery for s149 certificates. The survey shows that the issuing of s149 certificates provides considerable revenue for councils.

The major cost components in providing these ancillary services are:

- direct variable labour cost (including labour oncost) of providing these certificates
- other resources used in providing services, such as transport costs (for building certificates)
- fixed costs such as share of equipment, computer hardware and information system
- overheads.

The issues are cost reflectivity and recovery. Fees will vary depending on the cost allocation approach adopted. The key question is whether these services should be charged on the basis of marginal costs, avoidable costs, or fully distributed costs.

8.2.1 s149 planning certificates

Planning certificates (previously called "s149 certificates" under the old legislation) specify planning controls relating to any land within the area of a council. s149 (2) covers zoning and planning restrictions etc. S149(5) includes council's advice on such other relevant matters affecting the land of which Council may be aware. For property transactions, solicitors representing vendors and purchasers must obtain both an s149(2) planning certificate for $40 and an s149(5) certificate for $60 at a total fee of $100.

The costs involved are:

- Labour costs in processing the application (a small proportion as the process is computerised).
- A share of fixed system costs (including maintenance costs). This is a major cost item.
- Computer software costs: some councils have developed a special computer program to generate the certificates.

Planning certificate information is retrieved from the geographical information system (GIS) which is updated continuously to support the core functions of council. Arguably, s149 certificates are largely a spin off from a land database system installed principally for rating and planning purposes. If councils were not required to issue s149 certificates, the fixed system costs would still be incurred to maintain council's planning functions.

The Tribunal's Secretariat met with a number of councils to discuss the cost recovery of s149 planning certificates. It finds that there is evidence for over recovery, particularly if system costs are excluded. However, further investigation indicates that whilst most metropolitan and large rural councils maintain a computerised GIS system, most rural councils do not have a computerised GIS or property database.

For councils which do not have a computerised system, the avoidable costs of processing s149 certificates is greater, as the labour cost to manually prepare s149 certificates is higher for councils which have a computerised GIS system.

At present, the s149 planning certificate is commonly provided on a per lot basis. This means, for a property on several lots, fees are multiplied by the number of lots. Some councils charge on a per property basis rather than a per lot basis.

The Tribunal's initial assessment is that fees for issuing planning certificates (formerly known as s149 certificates) should be set at avoidable costs ie incremental labour costs and incremental software costs. The Tribunal seek councils' comments on:

- ***what the estimate the avoidable costs of issuing s149 planning certificates to be, and***
- ***what will be the likely revenue impact on councils if avoidable costs pricing is adopted.***

8.2.2 Building certificates and other services

Building certificates specify that a council, within seven years of the issue date, shall not take proceedings for an order or injunction requiring the demolition, alteration, addition or rebuilding of an existing structure. These certificates are sometimes required as part of conveyancing for property transactions.

The current fee is set at $50 per residential dwelling. For other developments, an additional fee is payable, depending on the floor area.

When an application is received, council undertakes an inspection. This may take one – two hours, depending on travel time.

For some property transactions, the building inspection costs several hundred dollars. However, this is for a detailed inspection including structural aspects of the property.

The fees for these miscellaneous certificates and services should be based on avoidable costs. This proposal, if accepted, will mean that while some fees may fall (eg for planning certificates), others may increase (eg building certificates for single dwellings). Further investigation will be undertaken.

8.3 s608 charges

Fees charged under section 608 of the Local Government Act are outside the scope of this review. However, developers have argued that miscellaneous charges are levied by councils

in development/building activities under s608. The survey reveals some creative charges by councils under s608. This is a matter for the DoLG, which administers the Local Government Act, which is currently under review.

The Tribunal stresses that under the new fee arrangement, councils should not charge applicants fees other than those prescribed in regulations.

8.4 Performance standards and service agreements

It could be argued that customers should have a greater say regarding the quality of the services they are paying for. Some councils are either examining or have implemented guaranteed standards for the services they provide. For the development assessment function these service agreements might address timeliness for specific aspects of processing applications or for undertaking site inspections, list contact officers at the council, or provide mechanisms for public consultation on developments.

Liverpool Council asserts that councils should be allowed to charge higher fees for "deluxe applications" and "speedy applications". At the same time, Liverpool Council advocates the use of customer service guarantees (CSGs) to promise the processing and investigation of a development application process within a specified time frame. If a CSG is not met, the applicant is entitled to a refund of 2 percent of the application fee for each working day the application exceeds the CSG.

Whilst the Tribunal supports the use of service agreements, it has some reservations about the appropriateness of guaranteeing to "fast track" or priority process an assessment if the applicant agrees to pay a higher fee. This may lead to the undesirable perception that applicants who can afford a higher fee can enjoy preferential treatment. The Tribunal considers that the primary goal of having service agreements is to lift the quality and level of services (including turnaround time) for all applications.

If councils wish to offer priority or fast track processing, the Tribunal suggests that contracting out (ie engagement of a contractor/consultant to assess the application) should be pursued. This will ensure minimum disruption to the assessment of other applications.

8.5 Communication issues

DUAP has arranged training sessions and workshops for councils about the new legislation. The Tribunal notes that seminars on the planning reforms are being held by the building and development industries for their members. Some councils have used communication mechanisms such as developer forums, Internet and the media. Given the substantial changes which were introduced on 1 July 1998, more effort will need to be devoted to increasing public awareness and understanding of the new system.

Public education on the contestability of certification is critical so that applicants are aware of change and can decide whether to use council or a private certifier. This will assist in the development of the market for those services open to competition.

The Tribunal seeks council feedback on the effectiveness of the communication mechanisms adopted to date to advise the public of the reforms.

GLOSSARY AND ABBREVIATIONS

ABC	Activity based costing
ACCC	Australian Competition and Consumer Commission
BA	Building application
BCA	Building Code of Australia
CPI	Consumer price index
CSG	Customer service guarantee
CSO	Community services obligation
DA	Development application
DCP	Development control plan
DoLG	Department of Local Government
DUAP	Department of Urban Affairs and Planning
EP&A	Environmental Planning and Assessment
FDC	Fully distributed cost
GIS	Geographical information system
GFA	Gross floor area
HIA	Housing Industry Association
IPART	Independent Pricing and Regulatory Tribunal
LEP	Local environmental plan
LGA	Local Government Act
LGSA	Local Government and Shires Associations
LRMC	Long run marginal cost
PAC	Public Accounts Committee
PCA	Property Council of Australia
RAPI	Royal Australian Planning Institute
SA	Subdivision application
SEPP	State Environmental Planning Policy
SHOROC	The Shore Regional Organisation of Councils
SRMC	Short run marginal cost
SSD	State significant development
UDIA	Urban Development Institute of Australia
WSROC	The Western Sydney Regional Organisation of Councils

ATTACHMENT 1 TERMS OF REFERENCE

I, Bob Carr, Premier of New South Wales, refer under Section 12A of the *Independent Pricing and Regulatory Tribunal Act 1992* the following matter to the Independent Pricing and Regulatory Tribunal:

> *… the review and development of a pricing policy and recommended indicative fees charged by Local Government and other consent authorities for development control services under the Environmental Planning and Assessment Amendment Bill 1997, recently passed by the NSW Parliament.*

The purpose of the review is to:

1. develop principles and indicative fees for the development assessment system (excluding complying development); and
2. provide guidelines to assist in the setting of fees for complying development and post-approval processes, which are to be opened up to competition.

In particular the Tribunal shall:

a) review the overall current pricing policies and fee structures of consent authorities as they relate to the development, building and subdivision functions under the Environmental Planning and Assessment Act 1979, Local Government Act 1919 and Local Government Act 1993

b) identify those fees that may warrant continuing government regulation having regard to the guiding principles for legislation review specified in clause 5(1) of the Competition Principles Agreement

c) examine through case studies, current practice with respect to the charging of fees and the principles established in this respect

d) review the extent and type of research that has been undertaken in respect to the development of these pricing policies and fee structures

e) report on the level and structures for the charging of fees by Local Government and other consent authorities for development control service**s** as proposed under the Environmental Planning and Assessment Amendment Bill 1997

f) make recommendations covering monopoly development assessment functions in respect to a transparent pricing policy, with indicative fees for a range of Councils having regard to consumer satisfaction and community participation and the balance of efficiency, effectiveness, quality delivery of service and equity consideration

g) develop principles which will provide guidance for the setting of fees for complying development certificates and for post-approval processes, having regard to competition policies.

ATTACHMENT 2 PUBLIC HEARINGS AND CONSULTATION

As part of the consultation process for this review, meetings were held with organisations involved in local government, and with metropolitan and rural councils. Representatives of these organisations also provided presentations at public hearings held as part of the review. The input provided these meetings and public hearings was of significant value to the review, and the Tribunal is grateful for the high level of co-operation and participation from all those involved.

Organisations which participated in meetings during the review

Bankstown City Council
Baulkham Hills Council
Blacktown City Council
Building Control Commission, Victoria
Corowa Shire Council
Department of Infrastructure, Victoria
Department of Local Government
Department of Urban Affairs and Planning
Hastings Council
Health and Building Surveyors Association
Housing Industry Association
Institution of Surveyors
Julie Bindon & Associates
Kogarah Council
Liverpool City Council
Local Government and Shires Associations
North Sydney Council
Office of Local Government, Victoria
Parkes Shire Council
Penrith City Council
Property Council of Australia
Royal Australian Planning Institute
Scott Carver Pty Ltd
Singleton Shire Council
Sutherland Shire Council
Sydney City Council
Total Environment Centre
Tweed Shire Council
Urban Development Institute of Australia
Western Sydney Regional Organisation of Councils
Wagga Wagga City Council
Willoughby City Council
Woollahra Municipal Council

Members of the Working Group on development control fees

Alan Wells, Singleton Council
Elsie Choy, Independent Pricing and Regulatory Tribunal
Eric Groom, Independent Pricing and Regulatory Tribunal (Chairperson)
Ian Glendinning, Housing and Building Surveyors Association
John Scott, Department of Local Government
Keith Richardson, Royal Australian Planning Institute
Kerry Bedford, Department of Urban Affairs and Planning
Leone Dennis, Housing Industry Association
Michael McMahon, Waverley Council
Michael Rolfe, Total Environment Centre
Murray Kidnie, Local Government and Shires Association
Patricia Gilchrist, Urban Development Institute of Australia
Warwick McInnes, Property Council of Australia

Presenters at public hearings

Sydney, 9 March 1998

Department of Urban Affairs and Planning	Kerry Bedford, Manager – Regulatory Reform
Local Government and Shires Associations	Sean McBride, Policy Officer Darrell Fitzgerald, Policy Officer
Wyong Shire Council	Daniel Smith, Manager Development Services
Housing Industry Association	Leone Dennis, Assistant Director – Planning and Development
Blacktown City Council	Wayne Gersbach, Manager Statutory Planning

Sydney, 10 March 1998

Property Council of Australia	Mark Quinlan, Executive Director Julie Bindon, Chair – Planning and Economic Development Committee Warwick McInnes, Development Manager
Institution of Surveyors	Peter Price, Federal Councillor John Monteath, Federal Councillor Richard Phillips, Executive Officer NSW Division
Eurobodalla Shire Council	Peter Tegart, Director Environmental Services
Urban Development Institute Of Australia	Patricia Gilchrist, Executive Director Laurie Rose, Councillor
Liverpool City Council	Tanya Antony, Senior Environmental Health and Building Surveyor Owen Sergeant, Principal Building Surveyor

ATTACHMENT 3 LIST OF SUBMISSIONS

Submissions to Draft Terms of Reference

Organisation	Name
Armidale City Council	S. Gow
Blue Mountains City Council	P. Bawden
Casino Council	R. Schipp
Department of Urban Affairs and Planning	K. Bedford
Department of State and Regional Development	L. Harris
Gosford City Council	J. Murray
Hornsby Shire Council	R. Ball
Housing Industry Association, NSW Division	P. Fielding
Institute of Municipal Management	C. Gregg
Institution of Surveyors	R. Phillips
Local Government and Shires Associations	M. Kidnie
Maclean Shire Council	R. Donges
Mosman Municipal Council	V. May
Pittwater Council	D. Fish
Pittwater Council	A. Gordon
Royal Australian Planning Institute	D. Broyd
Ryde City Council	S. Weatherley
Snowy River Shire Council	P. Reynders
Sutherland Shire Council	J. Rayner
Tweed Shire Council	D. Broyd
Urban Development Institute of Australia	P. Gilchrist
Vaucluse Progress Association	M. Rolfe

Submissions to Issues Paper

Organisation	Name
Armidale City Council	S. Gow
Bankstown City Council	G. Beasley
Bathurst City Council	C. Pitkin
Baulkham Hills Shire Council	M. Watt
Blacktown City Council	W. Gersbach
Blue Mountains City Council	P. Bawden
Broken Hill City Council	K. Boyle
Byron Shire Council	R. Kent
Cessnock City Council	J. Tupper
Concord Council	R. Marshman
Department of Urban Affairs and Planning	S. Holliday
Environment Protection Authority	N. Shepherd
Eurobodalla Shire Council	P. Tegart
Fairfield City Council	C. Weston
Gosford City Council	R. Benson
Holroyd City Council	J. Thompson

Hornsby Shire Council	P. Hinton
Housing Industry Association, NSW Division	S. Kerr
Institution of Surveyors NSW Inc.	R. Phillips
Institution of Surveyors NSW Inc.	P. Price
Inverell Shire Council	D. Pryor
Kempsey Shire Council	B. Casselden
Kogarah Municipal Council	G. Clarke
LandCom	M. Burt
Greater Lithgow City Council	S. McPherson
Liverpool City Council	T. Antony
Local Government and Shires Association	M. Kidnie
Long Service Leave Payment Corporation	K. Napper
Maclean Shire Council	R. Donges
Maitland City Council	D. Evans
Master Builders' Association	C. Bourne
Meriton Apartments Pty Ltd	H. Triguboff
Muswellbrook Shire Council	C. Gidney
NSW Treasury	J. Pierce
Pittwater Council	D. Fish
Port Stephens Council	P. Westin
Property Council of Australia	M. Quinlan
Queanbeyan City Council	H. Percy
Rockdale City Council	S. Blackadder
Rockdale City Council	G. Raft
Royal Australian Planning Institute	D. Broyd
Shoalhaven City Council	W. Gee
Strathfield Municipal Council	D. Smith
Sutherland Shire Council	J. Rayner
Total Environment Centre	J. Angel
Tweed Shire Council	R. Paterson
Urban Development Institute of Australia	P. Gilchrist
Vaucluse Progress Association	M. Rolfe
Willoughby City Council	J. Owen
Wollongong City Council	A. Roach
Woollahra Municipal Council	G. Fielding
Wyong Shire Council	K. Yates

ATTACHMENT 4 SUMMARY OF SUBMISSIONS TO ISSUES PAPER

50 organisations provided submissions in response to the Issues Paper and public hearings. Of those, 35 were councils.

This summary of submissions generally follows the discussion items raised by the Issues Paper.

Should fees be based on fully distributed costs, marginal costs or some other method?

The majority of councils favour cost recovery based on fully distributed costs. It is suggested that as each application is professionally assessed, it would be inappropriate to apply marginal costs.

A few councils suggest that there might be a case for marginal and avoidable costs:

- where significant development is occurring, or where the rate of development fluctuates from year to year
- as the market matures marginal cost pricing could become a factor
- some marginal costs practices can be identified through work redesign studies, eg undertaking multiple inspections by locality.

Organisations representing developers support the application of marginal costs.

How can council overheads or joint costs be identified and allocated?

Several councils propose that overheads and joint costs be allocated by reference to activity based costing (ABC) assessments.

A few councils have identified and allocated overheads. Other councils indicate that they would find allocation difficult.

Overheads identified and allocated by councils include accommodation, human resources, information technology and finance. One submission indicates that policy formulation is probably part of councils' general governance role. Another proposes that indirect costs such as policy development and council decision making processes be included in development control costs.

Do council accounting systems provide adequate costing information?

About half the submissions from councils indicate that current accounting systems and procedures are adequate, the other half indicate that current systems do not provide full costing information. A few councils advise that they are currently monitoring and recording the time spent on assessments.

Cross subsidies

Representatives of developers assert that applicants for major projects pay in excess of the costs of assessment, whereas fees for small applications such as alterations to a house, do not cover assessment costs. One response to this assertion was that there are no significant cross subsidies from business to residential applications. However, the cost of assessing a BA in rural areas is considerably higher than in urban developments, and there may be a degree of cross subsidisation occurring across those two groups of residential developments.

To what extent should public benefits affect fee structures, or are such benefits better addressed through other mechanisms?

There was limited support for an across-the-board discount for 'public good'. One proposal was that a general public benefit be calculated, and a discounting factor applied. One submission supports the BIS Shrapnel proposal for a 30-40 percent discount; another suggested that the public good component be set at 20 percent.

The majority of submissions do not support this concept of an across-the-board discount. A few councils state that any decision to subsidise fees should be made by individual councils. They claim that such a decision does not discourage compliance with national competition policy as long as it is documented. A few councils provide further details of this concept. They claim that if developments attract increased employment, or have environmental or heritage considerations, council would undertake a community consultation. (Any studies such as of threatened species are undertaken as a cost to the developer). The procedure should be to charge the fee, then provide a rebate to the developer, exhibit for 28 days as required by the Local Government Act, and report the assessment as subsidised works through the annual reporting process.

What is the scope for efficiency improvements in the processing of assessments? How can we ensure that cost recovery does not also recover the costs of inefficient work practices?

Most councils agree that there is some scope for improvements in efficiency, however, this varies from council to council. There is a lot of support for benchmarking. One council notes the importance of benchmarking quality improvements and customer satisfaction. Another council has undertaken a three year process benchmarking exercise which has resulted in improvements in processes and customer service. An additional benchmarking process involving some Sydney councils has provided valuable data on comparative performance. A non-metropolitan council has been examining the staff hours required to process different applications, eg rural dwellings, duplexes, multi-unit over two storeys etc, and will determine the time needed to efficiently assess various types of application to produce an efficient benchmark.

It is suggested that the establishment of common protocols, forms and monitoring procedures would also assist in improving efficiency. Another improvement process already implemented by one council was the use of activity based costing (ABC) to identify value added and non-value added components of assessment services, enabling inefficient work practices to be identified and eliminated. Another council submission notes that efficiency would improve if applicants submit adequate applications.

However, some comments express concern about the use of benchmarking to improve efficiency, they claim

- if development control is defined as a minimum cost operation, public participation may be discouraged
- no council should be bound by what is deemed by an outside authority to be best practice
- the quality aspects of assessments need to be considered eg to minimise environmental impacts
- the public is, with some justification, becoming increasingly critical of council development control, and quality assessment is not best served by the lowest cost assessment.

Do size, location etc affect processing costs?

There is general agreement that size, location and other factors strongly influence processing costs.

For state significant development, factors that impact on costs include legal advice, taskforce inquiries, workshops, external consultancies on noise levels, air quality, water contamination etc, Commissions of Inquiry, and prolonged approval monitoring.

Factors mentioned by urban councils include:

- an increasing need to seek professional advice in more areas, eg ecology
- types of zoning
- traffic generation
- noise, odour and air pollution
- political considerations.

Factors mentioned by rural councils include:

- travel costs
- problems of attracting planning staff
- differences in delegation of approval decision
- flora and fauna impacts
- Aboriginal heritage
- the number of objections to development
- availability of infrastructure
- impact of changing State legislation
- coastal policies, acid sulphate soils, prime agricultural land
- low population density and relatively low rates of development.

Are there economies of scale? How can these be assessed?

Several metropolitan councils indicate that economies of scale do exist, and could be assessed through ABC. However it is also pointed out that a small efficiently operated rural assessment unit is just as likely to achieve a high level of efficiency as a large metropolitan council. There may be little scope for economies of scale where large numbers of similar applications are not received.

Should fees be based on the cost of construction?

It is pointed out that fees for building and development approvals cannot simply be combined, because the new legislation effectively removes the double merit assessment process.

Most submissions do not support a continuation of the current fee system whereby fees are based on the cost of construction, as this system does not adequately reflect costs, and it is difficult for applicants to see what they are paying for. Two submissions support the existing system for its simplicity, transparency and ease of administration. Another does not express objections to the current system, with the proviso that the scale set for DAs should not exceed $10m.

There is a lot of support in submissions for a fixed base administration fee, with additional fees for individual applications. It is suggested that the fixed base fee could differ across groups of councils, or that it might vary for different types of development.

Proposals for the basis for calculating add-on fees include:

- establish principles for add-ons to cover three areas pre-application services, application services and post approval services. Add-on fees would be for advertising, integrated approvals, Commissions of Inquiry etc
- base add-ons on the cost of construction
- calculate an hourly service fee
- as private contractors may undertake only parts of a project, the initial fixed base fee could be accompanied by quotes for all additional requirements such as assessment of working plans, inspections etc. These additional requirements would be determined on the basis of an hourly fee, or a flat fee for less complex tasks.

Some submissions propose that a maximum be set for the initial base fee. One council proposes a minimum fee instead.

Other suggestions on how a fee system might be structured are:

- a separate fee for each particular *type* of development
- an organisation representing developers proposes that fees be set with reference to externally set, industry-wide benchmarks. Another organisation suggests a figure of $75 per hour
- fees should take into account a combination of factors:
  - value plus land constraints such as significant flora and fauna, access problems, contaminated site

  - value plus likely time to assess (including recognition of ongoing monitoring requirements)
- all fees should be competitively based, not regulated
- a time-based cost should be charged for different approvals tasks
- fees should be based on the actual cost of carrying out the assessment, based on ABC.

What communication or networking mechanisms can be used to help councils develop and implement new fee structures?

One suggestion is use of the Financial Professionals arm of the Institute of Municipal Management. This group has a network which includes seminars and regional discussions, and addresses topics such as ABC.

Other networking mechanisms suggested include ROCs, DUAP Regional Planners' meetings, Royal Australian Planning Institute and the Australian Institute of Building Surveyors.

How should the public be advised of new fee structures?

Both metropolitan and rural councils state that management plans will be used to advise the public. However, as one council points out, management plans are not widely read by the public. In addition, procedures to change plans are not sufficiently responsive to market changes.

Other communication mechanisms put forward include: newsletters sent to regular users of development control services, weekly newspaper columns, the Internet, developer forums, LGSA seminars, State Government conferences, or information with rate notices.

How can private certificate registration costs be recovered?

Apart from one council, which suggests that the information submitted by private certifiers could be included in existing registers without any significant imposition on councils, there is wide support for councils charging fees for registration costs.

The general view is that private certifiers should be charged a fee by council for the registration of certificates, for maintaining the register, and for making information from the register publicly available. There are suggestions that payment should be made on lodgement of the certificate, or identified during the development consent to allow a single payment for all certificates. Another alternative is that fees be charged annually, with pro-rata payments for part of a year.

There is a suggestion that councils be able to offer an advertising service to certifiers, with the fee included as part of the certificate registration fee.

Customer service agreements

The majority of submissions support the incorporation of customer service agreements into the development control system. One council currently using customer service agreements points out that the agreements clarify, for the customer as well as the council, the responsibilities of third party professionals such as external building inspectors. However,

service agreements need to be developed and refined in consultation with customers. It is suggested that statewide guidelines on the development and implementation of customer service agreements would be helpful, but that it should not be mandatory for all councils to have such agreements in place.

Some councils raise concerns about agreements. It is noted that political aspects can cause delays in assessments, and suggested that councils could identify median or average processing times to allow customers to make comparisons with private certifiers. One council suggests that agreements need to include a number of savings clauses for situations such as inadequate applications, which would reduce the value of the agreements.

A development organisation proposes that penalties be imposed on councils when guaranteed service standards are not met, and that penalties be enforced by the Land and Environment Court.

Other customer service issues

It is submitted that flexibility in fee payments definitely helps the customer. Councils could offer timed fee instalments to coincide with the staging of a major development, or waive fees for charitable institutions or community events.

A non-metropolitan council has been developing an information kit which will include the policy objectives of council defined through planning instruments, and pre-lodgement requirements such as site analysis, adjoining site analysis, and neighbour consultation.

Complaint handling mechanisms for contestability

A few councils state that they are currently developing appropriate complaint handling mechanisms. One is expanding its existing mechanism so that service request complaints can be handled separately from complaints about performance or anti-competitive behaviour.

There is a proposal that if a council's mediation process is unsatisfactory to the customer, an external conciliation and mediation panel should be available, providing access to further mediation rather than going straight to litigation in the Land and Environment Court.

One council expresses concerns about the accountability of private sector operators.

Can councils' current costing systems and structures price contestable work?

A few councils indicate that they are currently able to account for costs and set reasonable fees.

A large number of council submissions note that councils either have no detailed financial or administrative systems in place, they hope to have systems in place for 1998/99, or that they believe it is possible to develop adequate systems. It is suggested that guidelines would help them develop costing systems.

Ringfencing contestable and non-contestable activities

Some councils indicate that ringfencing is being undertaken. However, most have not achieved this yet, or are unsure if it can be achieved.

Tax equivalent regimes

Three councils indicate that they have either adopted tax equivalent regimes, or are developing systems to cater for this. Other councils have not developed systems, and some see problems in doing so.

Should councils have the option of pricing in a non-competitively neutral way to pursue community goals?

There is wide support for the view that councils should have this option, provided that the level of subsidy is clearly stated and is the wish of the community.

Two councils express concern that if the private sector is able to increase and decrease fees, and councils don't have the same degree of flexibility, that will certainly affect the ability of councils to compete. There is a proposal that councils be subject to the same pricing mechanisms as private sector organisations, setting prices to gain a market edge, or being able to run at a loss in the short term.

Introducing competitive services and pricing

There are suggestions that a timetable and guidelines for implementation be developed, and that implementation be piloted by a variety of councils. There is also a suggestion that pricing guidelines be established in conjunction with the private sector.

One council suggests that LEPs are the key to introducing contestability. Local government needs to identify complying development in its area. DUAP may need to provide direct support to councils needing assistance.

It is noted that in Victoria councils have become watchdogs ensuring that development is properly certified and constructed by the private sector. Councils should have the right to recover monitoring costs from the applicant to protect community interests, public health and safety.

Planning issues

One non-metropolitan council has developed a Strategic Environment Management Plan. This is on top of rural and urban LEPs, and looks at the cost of delivering infrastructure to the area as well as potential environmental and heritage impacts. This allows developers to see where council would encourage development to occur and which areas will be least costly to develop.

There is a suggestion that an application involving a SEPP1 objection should incur a 25 percent surcharge for each variation. Variations to a Development Control Plan should incur a 10 percent surcharge.

Modification of consent

It is suggested that the current system under-estimates the costs of assessing modifications, which can often be equally, if not more complex or controversial than the original application.

Representatives of developers contend that councils take too long to process modifications, and that councils should incur penalties if modifications are not processed within a certain time.

Subdivisions

Developers claim that they are not concerned with the quantum of the existing basic application fee. However, other additional fees are much too high, particularly strata title subdivision fees. There are concerns about enormous discrepancies in subdivision fees across councils. Developers need to have a better idea of what the fees will be.

Advertising

Developers suggest there should be a maximum cost, with any additional advertising required by council to be funded by council.

However, it is pointed out that in metropolitan areas particularly, the costs of advertising can be significant.

s149 certificates

One council states that the time taken to issue an s149(2) certificate compared with a 149(5) is inverse to the current pricing structure. The fees should be $60 for a 149(2), plus an additional $40 for an s149(5) certificate.

Post-approval services

It is suggested that there should be a fee for post approval services which include environmental monitoring. Environmental monitoring can be a central feature of the approval and modification of consents.

ATTACHMENT 5 A COMPARISON OF FEES AND CHARGES UNDER THE EP&A AMENDMENT REGULATION

Fees for Development Application (Maximum Fee Payable)

Estimated cost of development	*EP&A Regulation 1994*	*EP&A Amendment Regulation 1998*
Less than $250,000	$150, plus an additional $3 for each $1,000 (or part of $1,000) of the estimated cost	$170, plus an additional $3 for each $1,000 (or part of $1,000) of the estimated cost
$250,000-$500,000	$900 plus $1.50 for each $1,000 (or part of $1,000) by which the estimated cost exceeds $250,000	$1,000 plus $1.70 for each $1,000 (or part of $1,000) by which the estimated cost exceeds $250,000
$500,001 - $1,000,000	$1,275 plus an additional $1 for each $1,000 (or part of $1,000) by which the estimated cost exceeds $500,000	$1,420 plus an additional $1 for each $1,000 (or part of $1,000) by which the estimated cost exceeds $500,000
$1,000,000 - $10,000,000	$1,775 plus an additional $0.75 for each $1,000 (or part of $1,000) by which the estimated cost exceeds $1,000,000	$1,975 plus an additional $0.80 for each $1,000 (or part of $1,000) by which the estimated cost exceeds $1,000,000
Exceeding $10,000,000	$8,525 plus an additional of $0.50 for each $1,000 (or part of $1,000) by which the estimated cost exceeds $10,000,000	$9,475 plus an additional of $0.55 for each $1,000 (or part of $1,000) by which the estimated cost exceeds $10,000,000

Source: Environmental Planning and Assessment (EP&A) Amendment Regulation 1998

Examples of Development Application (DA) Fees

Value of Construction	Old EP&A Regulation	New Amendment Regulation	% Increase
<$100,000	$100	$115	15.0
$100,000	$450	$470	4.4
$200,000	$750	$770	2.7
$249,000	$897	$917	2.2
$250,000	$900	$1,000	11.1
$300,000	$975	$1,085	11.3
$400,000	$1,125	$1,255	11.6
$500,000	$1,275	$1,425	11.8
$600,000	$1,375	$1,520	10.5
$700,000	$1,475	$1,620	9.8
$800,000	$1,575	$1,720	9.2
$900,000	$1,675	$1,820	8.7
$1,000,000	$1,775	$1,920	8.2
$10,000,000	$8,525	$9,175	7.6
$20,000,000	$13,525	$14,975	10.7
$30,000,000	$18,525	$20,475	10.5
$40,000,000	$23,525	$25,975	10.4
$50,000,000	$28,525	$31,475	10.3

Subdivision of Land – DA Fees

	Old EP&A Regulation	New Amendment Regulation	% Increase
New road	$150 plus $25 per additional lot	$500 plus $50 per additional lot	
No new road	$150 plus $25 per additional lot	$250 plus $40 per additional lot	
Strata	$150 plus $25 per additional lot	$250 plus $50 per additional lot	
Examples			
10 lots	$400	$650	62.5%
New Road	n/a	$1,000	
Strata	n/a	$750	
20 lots	$650	$1,050	61.5%
New Road	n/a	$1,500	
Strata	n/a	$1,250	
30 lots	$900	$1,450	61.1%
New Road	n/a	$2,000	
Strata	n/a	$1,750	
40 lots	$1,150	$1,850	60.9%
New Road	n/a	$2,500	
Strata	n/a	$2,250	
50 lots	$1,400	$2,250	60.7%
New Road	n/a	$3,000	
Strata	n/a	$2,750	
75 lots	$2,025	$3,250	60.5%
New Road	n/a	$4,250	
Strata	n/a	$4,000	
100 lots	$2,650	$4,250	60.4%
New Road	n/a	$5,500	
Strata	n/a	$5,250	

Other Fees and Charges

Fee (maximum fee payable unless otherwise specified)	Old EP&A Regulation	New Amendment Regulation	% Increase
Hospital, school or police station	$100	$115	15.0
Work not involving the erection of a building, the carrying out of a work, the subdivision of land or the demolition of a building or work	$150	$170	13.3
Minimum fee for Designated Development	$500	$555	11.0
Development that requires advertising (refund if not spent)			
- Designated Development	$1,500	$1,665	11.0
- Advertised Development	$750	$830	10.7
- Prohibited Development	$750	$830	10.7
- Other	$750	$830	10.7
Additional fees for Integrated Development	NA	$250 payable to each approval body	
Application for modification of a consent	If the original DA fee is <$100, 30% of that fee or alternatively, the greater of $100 or 30% of original DA fee + notice fee (of not more than $500) if required	*Minor modifications* If the fee for the original application was <$100, 50% of that fee; or alternatively the greater of 50% of the original DA fee or $350. *Other modifications* If the fee for the original application was <$100, 50% of that fee; or $100 or 50% of the original DA fee plus a notification fee of up to $500 if required	
Request for a review of a determination	NA	$500	
Planning certificate			
• Section 149(2)	$40	$40	0.0
• Section 149(5)	$60	$60	0.0
Certified copy of a document, map or plan	$40	$40	0.0
Building Certificates (Class 1 or 10 building)	$50 per dwelling	$50 per dwelling	0.0
Other classes of buildings (according to the floor area)			
• <200 m^2	$50	$50	0.0
• 200-2000 m^2	$50 + 10 cents per m^2 over 200	$50 + 10 cents per m^2 over 200	0.0
• > 2000 m^2	$230 + 1.5 cents per m^2 over 2000	$230 + 1.5 cents per m^2 over 2000	0.0
If more than one inspection is required	$25	$25	0.0

Notes to Attachment 5

Under the new integrated development approval system, a proposal that previously needed a Building Application (BA) now requires development consent and a construction certificate. This is due to the effect of clause 29 of the EP&A (Savings and Transitional) Regulation 1988.

On 30 June 1998, the Minister for Urban Affairs and Planning issued an Order regulating certain fees under the new integrated development approval system. The Order:

- regulates fees for construction certificates for building work (schedule 1)
- sets a special fee for applications that before 1 July 1998 required only a BA (schedule 2).

The Order relates to applications for building work only. The Order does not regulate fees for construction certificates for subdivision work or override the other fees in the EP&A Amendment Regulation 1998 pertaining to development applications (DAs).

In broad terms, a council cannot charge a fee for a construction certificate associated with an application that before 1 July 1998 required only a BA. Details of the Order are published on the Department of Urban Affairs and Planning Website at - *www.duap.nsw.gov.au* - under What's New.

The fee in the two schedules is the old BA fee under the Local Government (Approvals) Regulation. The fee is $50, plus an amount calculated in accordance with the following table:

Cost(a)	Component amount
Not exceeding $5,000	0.5%
Exceeding $5,000 but not exceeding $100,000	0.5% for the first $5,000, plus 0.35% of the amount in excess of $5,000
Exceeding $100,000 but not exceeding $250,000	0.5% for the first $5,000, plus 0.35% of the next $95,000, plus 0.2% of the amount in excess of $100,000
Exceeding $250,000	0.5% for the first $5,000, plus 0.35% of the next $95,000, plus 0.2% of the next $150,000, plus 0.1% of the amount in excess of $250,000

(a) the contract price or if there is no contract, the cost of the proposed building as determined by the consent authority

Examples of fees for a construction certificate or a DA fee for applications that before 1 July 1998 required a building application are shown below:

Contract price or the cost of the proposed building	Maximum fee under EP&A (Savings and Transitional) Regulation 1998
$5,000	$75
$10,000	$93
$25,000	$145
$75,000	$320
$100,000	$408
$200,000	$608
$250,000	$708
$300,000	$758
$400,000	$858
$500,000	$958
$600,000	$1,058
$700,000	$1,158
$800,000	$1,258
$900,000	$1,358
$1,000,000	$1,458
$10,000,000	$10,458
$20,000,000	$20,458
$50,000,000	$50,458

ATTACHMENT 6 A COMPARISON OF DA FEES IN VICTORIA, SOUTH AUSTRALIA, QUEENSLAND

Recent reforms and development application fees in Victoria, South Australia and Queensland. The Tribunal is grateful for the assistance provided by the Housing Industry Association.

Victoria

In Victoria, the issuing of planning permits (equivalent to the DA in NSW) and building permits (equivalent to the construction certificate or the former BA in NSW) are separate processes:

- Planning permits are required for a variety of land uses and development.
- A building permit is a written consent from a building surveyor stating that the plans have been checked, they comply with the building regulations, and the applicant is authorised to proceed with the building works. Minor projects are exempted.

The Victorian government is in the process of standardising councils' local planning schemes, including their content and format. The new schemes are to be assessed and approved by an independent panel appointed the Minister. The standard approach aims at achieving consistency (in format) and clarity for applicants.

Planning permits
At present, planning permit fees are prescribed under the Planning and Environment (Fees) Regulations 1988. As with other local government activities, assessment of planning permit applications is subject to the Victorian Government's compulsory competitive tendering policy.

The current planning permit fees were introduced in 1987/88. The fees were due for review last year but have been extended for another year. The future regulation of fees will depend on the outcome of a government review of the national competition policy.

The Victorian fees for planning applications consist of 26 distinct charges, including:

- 20 classes of application for permits, each class defines the type of application and a specified range of the estimated cost of development
- one fee for planning certificates
- five fees for considering a request to amend a planning scheme.

Regulated fees may be adjusted and indexed by the Government. After being frozen for four years, fees were increased by 5 percent from 1 January 1998.

Building permits
Issuing of building permits is now open to competition. The Building Control Commission (BCC) was established as a regulator of building control matters. Each Victorian council has its own schedules of fees. Some councils may have referred to the Australian Institute of Building Surveyors (AIBS) guideline for minimum scale of building permit fees. The AIBS minimum fees are based on the value of building work and are based on two categories of residential work and commercial work. In addition to the basic fee scale, the following costs apply:

- A state government levy based on construction value, which is used to fund the operation of BCC.
- Special performance-based assessment, applications for reporting authority consents (councils & heritage approvals), modification applications, preparation of protection works notices or any other necessary Building Notices or Orders. These fees are calculated at an hourly rate.
- Additional inspection fees.

The introduction of competition has resulted in a significant reduction in the turnaround time for obtaining building permits.

South Australia

In 1993, the South Australia Development Act and Regulations came into effect, combining the planning and building systems, and introducing a new fee structure, as follows:

1. A lodgement fee ($26).
2. A Development Plan Assessment Fee based on the estimated development cost. (Complying development is exempt from this fee).
3. A schedule for division of land including a Land Division Fee which varies with the number of allotments and a Statement of Requirement Fee.
4. A Non-complying Fee ($52) if the application relates to a proposed development as a non-complying development.
5. A referral fee ($52) where applicable.
6. A public notification fee ($52) where applicable.
7. An Advertisement Fee (for category 3 development) which is determined by the relevant authority as being appropriate to cover the reasonable costs of giving notices.
8. A fee for assessment in line with the provisions of the Building Rules. This uses a formula based on the floor area (or the projected area of the largest side or plane of the building), the construction index determined by the Minister from time to time, and a complexity factor.
9. A fee of $73, where the relevant authority must modify the application of the Building Rules to the particular development.

Private certification is allowed for assessment against building rules (ie under component 8). If a matter involves an application to a private certifier for an assessment of a development against the provisions of the Building Rules, a fee equal to 4 percent of the fee that would apply if a council were the relevant authority for that assessment is payable by the applicant.

HIA submits that the new arrangements have resulted in a reduction in scheduled fees of approximately 30 percent and time efficiencies as well.

Queensland

The Integrated Planning Act 1997 (IPA) has changed the approval process in a fundamental way. The development approvals process is now administered under the Integrated

Development Assessment System and the transitional provisions of the Integrated Planning Act 1997. Assessments are classified into:

- self assessable development.
- assessable development - Code assessment or Impact assessment.

Code assessment refers to the assessment of a development application in terms of a stated code which may be referred to in the Planning Scheme or a Local Planning Policy. Public notification requirements do not apply to Code Assessment.

Impact assessment refers to the assessment of the likely effects of a development and determination of the ways in which these effects may be minimised or overcome. In certain cases, an Impact Assessment procedure may be required. Public notification is required for all applications requiring Impact Assessment.

Queensland has deregulated development control fees. This means development control charges are set at the discretion of local government. The charges vary from council to council.

The Tribunal's Secretariat has examined the development and planning fee schedules for two major local councils in Queensland, Brisbane City Council and Maroochy Shire Council. As each council sets its own schedule of fees, it is difficult to compare developments. Neither uses assessed value or estimated costs. The following table provides an indication of variability between the two councils.

	Brisbane City Council [(1)]	**Maroochy Shire Council**
Categories	- Prohibited development - General (include detached house) - Demolition - Subdivision etc	- Residential uses - Commercial uses - Industrial uses - Rural uses - Other uses
Basis	Floor area / site area	A base fee times a fee multiplier, plus other surcharge
Fee schedule	By categories of development	Very detailed for different types of development under each category
Minimum fee	For most developments	$300
Detached house	$505	$310
Other general development	Gross floor area or site area subject to a minimum fee of $709	
Subdivision Example	Based on number of lots	A minimum fee + per lot fee on a sliding scale
- 5 lots	$4,285	$1,035
- 10 lots	$8,790	$1,710
Modifications	25% of current applicable fee or $790 minimum	$320 (minor matter) $1400 (substantial matter)

Note: For Brisbane City Council the fee schedule incorporates the fees for a Preliminary Approval for Building Work which is not part of an integrated approval.

ATTACHMENT 7 PRICING OPTIONS CONSIDERED BY THE WORKING GROUP

The Working Group has considered four pricing options. Its comments on these options are summarised below:

Standard fee with add-ons

This involves a standard fee to cover the efficient costs of assessing a "standard" development application, including a fixed amount of cost for the time spent in consultation and mediation with objectors. Depending on the cost information, this standard fee may be separated into fees for different types of development application and/or different types of council.

To the standard fee are added specific charges for advertising, consideration of SEPP1 amendments, referrals to other agencies and other "add-ons".

Comment: This is the Working Group's preferred model because it gives the industry certainty while allowing council to recover some additional fees for additional services and/or costs. The standard fee is discussed in Chapter 6.

Prescribed fees set for different types of applications

Proposal: The two alternatives are:

- Fee based on the value of construction (or some other value such as gross floor area) and then differentiated between the different development applications.
- Standard fees for each category of development with add ons.

Comment: This second option is a variation of the proposed fee structure discussed above. The standard fee would include separate fees for each category of development (depending on the cost information).

Time based charges

Proposal: The Tribunal would set an hourly rate based on industry standards and publish indicative benchmarked times for typical assessments. Councils would then set predetermined fees based on this hourly rate and benchmarked time. Council would have the right to charge additional fees where extra costs are incurred through objections and other complications, but would be under an obligation to detail the causes of the additional fees. The applicant would be given a right to appeal to the General Manager/council where fees are excessive.

The advantage of this proposal is that it would be more cost reflective than any centrally prescribed fee, which must necessarily be based on an "average" of costs for typical developments.

Arguably, the risk of inefficient councils charging excessive fees is minimised because they are accountable to their local community through the political process. Where a council is continually charging above the set fee, it might be forced to confront its inefficiencies.

Comment: The major concern from industry is the uncertainty this system creates and the potential for overcharging and for ongoing disputes over fees. If such a scheme was introduced, it might need to be backed by compulsory service guarantees with financial penalties for failure to deliver. Councils are also concerned that such a proposal would be an administrative nightmare to manage, particularly given that no council currently time records its labour.

Full deregulation

Proposal: Each council is given full discretion to set its own fees (as it does for many other services). Fees should be deregulated because:

- each council and the assessment services it provides is different and depends on the nature of the local environment, council's planning policies, and community expectations
- councils are best placed to understand those services, the costs of providing them and thus the appropriate level of fees
- (as noted above) councils are directly accountable to the community through management plans and their elected representatives. If the local community is unhappy with fees it can change them.

Comment: Industry is concerned that, in respect of development control services, councils provide a monopoly service, a service which cannot be provided by any other supplier in that locality. This is compounded by the fact that the demand for development control services from council is price inelastic (ie it does not respond significantly to changes to fees for development control services). In the absence of adequate costing systems, it is also difficult for councils to fairly determine the cost of providing development services and to price accordingly. The lack of cost information also makes it difficult to determine whether the services are being provided efficiently.

As such, there is a need for ongoing regulation to avoid the potential for monopoly pricing and monopoly abuse and to give councils an incentive to provide efficient services. One compromise proposal the working group explored, was allowing councils to apply to an independent body for a fees variation when a council could demonstrate that local conditions and circumstances justified a different set of fees to those prescribed.

ATTACHMENT 8 LIST OF COUNCILS RESPONDING TO THE SURVEY OF DEVELOPMENT CONTROL FEES

Albury City Council	Hay Shire Council	Richmond River Shire Council
Armidale City Council	Hornsby Shire Council	Rockdale City Council
Bathurst City Council	Inverell Shire Council	Shoalhaven City Council
Bega Valley Shire Council	Kempsey Shire Council	Singleton Shire Council
Bellingen Shire Council	Kiama Municipal Council	Strathfield Municipal Council
Berrigan Shire Council	Kogarah Council	Sutherland Shire Council
Bingara Shire Council	Ku-ring-gai Municipal Council	Sydney City Council
Blacktown City Council	Kyogle Council	Tamworth City Council
Bland Shire Council	Lachlan Shire Council	Greater Taree City Council
Bogan Shire Council	Lake Macquarie City Council	Temora Shire Council
Bombala Council	Lane Cove Council	Tweed Shire Council
Boorowa Council	Leeton Shire Council	Ulmarra Shire Council
Broken Hill City Council	Leichardt Municipal Council	Uralla Shire Council
Burwood Council	Lismore City Council	Urana Shire Council
Camden Council	Greater Lithgow City Council	Wagga Wagga City Council
Canterbury City Council	Liverpool City Council	Walcha Council
Carrathool Shire Council	Lockhart Shire Council	Warren Shire Council
Casino Council	Manilla Shire Council	Waverley Council
Central Darling Shire Council	Manly Council	Weddin Shire Council
Cessnock City Council	Marrickville Council	Wellington Council
Cobar Shire Council	Mudgee Shire Council	Wentworth Shire Council
Concord Council	Mulwaree Shire Council	Willoughby City Council
Coolah Shire Council	Murrumbidgee Shire Council	Windouran Shire Council
Coolamon Shire Council	Murrurundi Shire Council	Wingecarribee Shire Council
Corowa Shire Council	Nambucca Shire Council	Wollondilly Shire Council
Crookwell Shire Council	Narrabri Shire Council	Woollahra Municipal Council
Dubbo City Council	North Syndey Council	Wyong Shire Council
Dumaresq Shire Council	Nymboida Shire Council	Yallaroi Shire Council
Fairfield City Council	Oberon Council	Yarrowlumla Shire Council
Forbes Shire Council	Parkes Shire Council	Young Shire Council
Gloucester Shire Council	Penrith City Council	
Goulburn City Council	Queanbeyan City Council	
Great Lakes Council	Quirindi Shire Council	
Griffith City Council	Randwick City Council	
Gundagai Shire Council		
Guyra Shire Council		
Harden Shire Council		
Hastings Council		
Hawkesbury City Council		

ATTACHMENT 9 PROFILE OF LOCAL COUNCILS

Council	Area (Sq. kms)	Residential Population (Est.) at 30/6/96	Population Density at 30/6/96	No. of BAs Determined 1995/96	No. of DAs Determined 1995/96	Median Time for BAs 1995/96 (Days)	Median Time for DAs 1995/96 (Days)	Legal Costs as a % of Development Control Costs 1995/96 (%)
Group 1 – Urban Capital City								
Sydney	6.2	7,950	1,286.4	1,479	877	7	30	14.3
Group 2 – Urban Developed, Small and Medium								
Ashfield	8.3	41,950	5,066.4	321	270	36	39	14.7
Auburn	32.1	50,100	1,563.2	526	358	39	61	6.0
Botany Bay	26.8	36,000	1,345.8	572	202	29	54	33.4
Burwood	7.3	29,350	4,042.7	453	178	65	63	32.0
Concord	10.9	24,500	2,237.4	407	124	26	70	2.2
Drummoyne	8.1	31,400	3,881.3	513	139	65	95	10.1
Hunters Hill	5.7	13,050	2,277.5	240	173	41	56	36.3
Hurstville	24.8	68,400	2,761.4	895	460	41	87	28.4
Kogarah	19.5	48,450	2,483.3	680	283	39	62	5.2
Lane Cove	10.4	30,450	2,933.5	361	135	71	63	20.8
Leichardt	12.3	59,950	4,893.9	842	414	65	72	32.9
Manly	15.5	36,750	2,371.0	426	358	60	60	16.9
Mosman	8.7	27,400	3,145.8	462	347	45	66	7.0
North Sydney	10.5	53,400	5,105.2	881	660	50	69	25.4
Pittwater	125.0	52,500	419.9	1,286	296	106	122	11.7
Strathfield	13.9	27,050	1,947.4	354	62	57	89	10.4
Waverley	9.0	60,200	6,696.3	1,008	336	39	34	3.9
Willoughby	12.2	56,800	2,560.9	1,221	654	45	61	10.3
Woollahra	12.2	50,550	4,146.8	1,284	1,280	84	91	23.1
Group 3 – Urban Developed, Large and Very Large								
Bankstown	77.8	163,650	2,104.0	2,002	823	26	53	N/A
Blacktown	241.0	236,050	979.3	4,450	732	11	38	4.1
Canterbury	33.4	135,050	4,044.6	1,220	1,104	32	45	0.4
Fairfield	102.5	188,200	1,836.1	2,157	702	22	49	7.4
Holroyd	39.2	82,100	2,091.7	874	337	35	51	6.4
Ku-ring-gai	81.9	107,450	1,312.0	2,025	445	40	41	24.2
Marrickville	16.5	77,900	4,726.9	802	629	42	51	10.9
Parramatta	60.1	138,850	2,311.9	1,815	938	28	58	15.0
Randwick	36.5	119,700	3,278.6	1,470	582	32	103	14.3
Rockdale	29.3	87,800	2,993.5	806	369	34	65	6.9
Ryde	40.1	96,500	2,403.5	1,188	523	34	51	2.7
South Sydney	17.8	73,800	4,148.4	1,086	1,090	43	43	14.1
Sutherland	370.9	203,400	548.4	3,148	1,424	39	67	15.2
Warringah	138.4	129,600	936.7	1,798	663	45	85	20.8
Group 4 – Urban Regional, Small and Medium								
Albury	103.1	42,080	408.3	1,004	318	14	21	6.9
Armidale	33.6	23,450	696.9	295	150	18	29	12.1
Ballina	486.9	35,780	73.5	754	288	15	24	11.2
Bathurst	239.6	30,840	128.7	610	258	18	34	6.7
Bega Valley	6049.8	28,850	4.8	740	362	9	34	0.5
Broken Hill	69.7	23,720	340.5	482	65	2	15	-
Byron	561.3	27,170	48.4	623	298	26	58	54.6
Casino	91.1	11,700	128.4	242	68	19	50	17.7
Cessnock	1,950.6	46,790	24.0	1,079	380	13	53	4.1
Coffs Harbour	946.4	57,460	60.7	1,243	226	9	32	4.0
Deniliquin	129.5	8,570	66.2	191	41	13	39	-
Dubbo	3,339.4	36,940	11.1	864	243	14	26	1.2
Eurobodalla	3,402.2	31,090	9.2	1,041	292	20	40	3.3
Glen Innes	68.9	6,570	95.3	140	42	11	27	-
Goulburn	53.8	22,220	412.7	444	114	42	35	1.1
Grafton	80.1	18,190	227.0	342	99	18	40	8.3
Great Lakes	3,339.1	29,040	8.7	847	387	20	61	1.6

Council	Area (Sq. kms)	Residential Population (Est.) at 30/6/96	Population Density at 30/6/96	No. of BAs Determined 1995/96	No. of DAs Determined 1995/96	Median Time for BAs 1995/96 (Days)	Median Time for DAs 1995/96 (Days)	Legal Costs as a % of Development Control Costs 1995/96 (%)
Greater Lithgow	3,468.9	20,550	5.9	427	191	24	42	2.6
Greater Taree	3,752.8	44,660	11.9	883	333	23	35	1.5
Griffith	1,605.5	22,040	13.7	515	189	14	24	0.8
Hastings	3,692.8	56,440	15.3	1,565	388	22	40	1.0
Kempsey	3,355.0	27,150	8.1	572	273	23	33	3.5
Kiama	256.0	18,770	73.3	408	168	29	45	11.5
Lismore	1,267.1	45,860	36.2	899	343	18	46	3.9
Maitland	396.3	52,700	133.0	1,171	320	24	43	13.4
Orange	286.9	35,260	122.9	765	266	11	26	4.0
Pt Stephens	978.7	53,260	54.4	1,467	481	18	38	3.2
Queanbeyan	52.5	28,680	546.8	496	186	19	44	11.5
Shellharbour	154.2	52,560	340.9	1,062	213	18	45	3.7
Singleton	4,810.2	20,670	4.3	634	300	32	40	5.2
Tamworth	183.1	36,890	201.5	734	205	13	24	7.9
Tweed	1,303.4	64,020	49.1	1,677	435	19	45	3.8
Wagga	4,886.4	57,750	11.8	902	273	23	24	5.5
Wagga Wingecarribee	2,700.5	37,920	14.0	997	551	30	44	5.2
Group 5 – Urban Regional, Large and Very Large								
Lake Macquarie	748.8	179,450	239.7	4,144	1,002	29	36	2.5
Newcastle	213.5	138,820	650.2	2,368	568	22	44	5.0
Shoalhaven	4,660.3	80,840	17.4	2,340	1,734	19	31	3.1
Wollongong	713.9	184,410	258.3	2,378	1,083	24	34	12.2
Group 6 – Urban Fringe, Small and Medium								
Camden	206.1	29,500	143.1	1,454	368	38	48	6.1
Hawkesbury	2,792.6	57,450	20.6	1,054	254	19	40	12.2
Wollondilly	2,558.0	34,600	13.5	971	350	22	37	6.7
Group 7 – Urban Fringe, Large and Very Large								
Baulkham Hills	381.0	130,550	342.7	2,449	543	24	50	22.1
Blue Mountains	1,404.8	75,550	53.8	1,707	1,500	37	43	4.6
Campbelltown	311.8	151,100	484.6	2,765	749	23	30	1.7
Gosford	1,028.2	149,500	145.4	3,639	1,478	46	71	7.8
Hornsby	504.1	144,750	287.1	2,380	744	39	69	16.2
Liverpool	313.3	114,350	365.0	3,948	948	21	46	3.5
Penrith	406.6	168,450	414.3	3,438	607	12	54	11.7
Wyong	825.9	119,350	144.5	3,520	946	25	30	2.5
Group 8 – Rural Agricultural Small								
Conargo	3,737.4	1,500	0.4	5	9	3	4	-
Jerilderie	3,397.3	1,890	0.6	41	25	10	14	-
Nundle	1,592.7	1,400	0.9	43	33	7	7	-
Urana	3,361.5	1,520	0.5	16	4	5	35	-
Windouran	5,091.9	440	0.1	-	-	N/A	N/A	-
Group 9 – Rural Agricultural Medium								
Balranald	21,418.5	2,950	0.1	75	17	N/A	N/A	2.9
Barraba	3,074.6	2,360	0.8	26	10	5	19	-
Bingara	2,859.3	2,110	0.7	26	6	5	5	-
Bogan	14,610.3	3,210	0.2	53	2	5	14	-
Bombala	3,944.7	3,010	0.8	64	22	8	28	-
Boorowa	2,599.9	2,640	1.0	55	15	7	28	-
Bourke	43,116.6	4,310	0.1	50	17	14	30	33.3
Brewarrina	18,874.6	2,200	0.1	31	7	62	47	-
Carrathool	18,975.7	3,100	0.2	45	9	28	13	-
Central Darling	51,395.1	2,580	0.1	32	-	16	N/A	-
Coolah	4,791.7	4,020	0.8	52	-	15	N/A	-
Coolamon	2,424.2	4,060	1.7	57	104	3	3	-

Council	Area (Sq. kms)	Residential Population (Est.) at 30/6/96	Population Density at 30/6/96	No. of BAs Determined 1995/96	No. of DAs Determined 1995/96	Median Time for BAs 1995/96 (Days)	Median Time for DAs 1995/96 (Days)	Legal Costs as a % of Development Control Costs 1995/96 (%)
Copmanhurst	3,143.6	4,150	1.3	86	43	23	34	3.4
Crookwell	3,439.5	4,710	1.4	148	59	16	19	-
Culcairn	1,580.9	4,500	2.9	54	44	18	21	-
Dumaresq	4,168.4	3,880	0.9	79	47	22	29	7.1
Evans	4,278.0	4,970	1.2	103	118	25	26	7.8
Gilgandra	4,817.8	4,980	1.0	99	29	16	24	-
Gloucester	2,918.4	4,900	1.7	119	93	29	46	0.3
Gundagai	2,447.5	3,850	1.6	67	-	7	N/A	-
Gunning	2,199.8	2,340	1.1	83	46	27	29	7.9
Guyra	4,370.7	4,880	1.1	65	22	13	16	-
Harden	1,862.7	4,200	2.3	87	15	17	22	-
Hay	11,438.5	3,880	0.3	73	15	12	29	-
Holbrook	2,590.0	2,600	1.0	38	15	18	27	-
Lockhart	2,930.1	3,740	1.3	60	64	11	21	-
Manilla	2,244.7	3,490	1.6	77	29	13	25	-
Merriwa	3,508.0	2,480	0.7	42	61	21	22	-
Murrumbidgee	3,407.9	2,470	0.7	72	26	11	28	-
Murrurundi	2,470.8	2,440	1.0	29	14	7	25	-
Nymboida	5,082.4	4,700	0.9	155	62	21	72	6.3
Oberon	2,924.0	4,520	1.6	184	209	24	30	2.6
Rylstone	3,832.3	4,040	1.1	49	70	30	40	-
Severn	5,826.1	3,090	0.5	39	31	7	20	10.4
Tallaganda	3,351.3	2,670	0.8	124	86	29	42	0.5
Tumbarumba	4,379.7	3,680	0.8	73	45	15	21	-
Walcha	6,409.9	3,630	0.6	43	69	10	25	-
Warren	10,860.2	3,700	0.3	34	36	23	11	-
Yallaroi	5,348.3	3,510	0.7	64	75	14	14	-
Group 10 – Rural Agricultural Large								
Berrigan	2,048.7	8,410	4.1	183	118	10	11	4.3
Bland	8,456.8	6,600	0.8	76	89	10	21	-
Blayney	1,618.9	6,530	4.0	106	131	28	19	0.6
Cobar	44,250.4	5,340	0.1	215	59	19	28	0.01
Cooma-Mon.	4,881.2	9,850	2.0	217	73	15	43	6.3
Coonabarbran	7,674.2	7,250	0.9	119	67	8	29	25.9
Coonamble	9,954.8	5,160	0.5	52	10	15	18	-
Cootamundra	1,525.0	8,270	5.4	187	54	5	9	-
Corowa	2,193.7	8,570	3.9	206	73	7	10	-
Dungog	2,247.7	8,350	3.7	269	106	25	24	0.8
Hume	1,924.1	7,130	3.7	195	118	7	19	3.3
Junee	2,045.1	6,200	3.0	107	30	12	40	-
Lachlan	15,359.0	7,640	0.5	92	28	16	13	-
Mulwaree	5,207.5	5,870	1.1	312	182	7	23	21.9
Murray	4,328.5	5,400	1.3	128	101	7	21	12.6
Narrandera	4,139.7	7,270	1.8	111	50	9	30	9.6
Narromine	5,224.2	7,320	1.4	99	66	10	17	-
Quirindi	3,046.5	5,380	1.8	93	22	9	19	-
Snowy River	6,034.7	6,090	1.0	155	184	20	34	9.9
Temora	2,812.5	6,500	2.3	105	23	6	23	-
Tenterfield	7,123.5	7,010	1.0	92	50	8	7	-
Ulmarra	1,790.3	6,400	3.6	174	53	32	39	8.7
Uralla	3,214.5	6,420	2.0	114	52	19	35	12.8
Wakool	7,548.6	5,300	0.7	46	65	29	49	35.7
Walgett	22,007.4	8,200	0.4	90	33	20	40	59.1
Wellington	4,075.7	9,490	2.3	116	73	12	30	-
Wentworth	26,170.2	7,290	0.3	181	67	8	23	0.3
Yarrowlumla	2,969.8	9,400	3.2	283	229	28	30	4.5
Yass	3,416.3	9,840	2.9	303	156	31	39	4.5

Council	Area (Sq. kms)	Residential Population (Est.) at 30/6/96	Population Density at 30/6/96	No. of BAs Determined 1995/96	No. of DAs Determined 1995/96	Median Time for BAs 1995/96 (Days)	Median Time for DAs 1995/96 (Days)	Legal Costs as a % of Development Control Costs 1995/96 (%)
Group 11 – Rural Agricultural Very Large								
Bellingen	1,604.6	12,870	8.0	315	194	20	36	4.3
Cabonne	6,017.5	12,500	2.1	232	165	26	24	-
Cowra	2,724.4	12,680	4.7	363	115	6	10	10.1
Forbes	4,713.2	10,570	2.2	198	69	7	19	-
Gunnedah	5,092.4	13,440	2.6	242	82	5	30	0.5
Inverell	8,623.4	16,420	1.9	285	183	10	17	2.5
Kyogle	3,589.0	10,500	2.9	223	161	20	28	0.4
Leeton	1,131.7	11,250	9.9	193	110	13	30	-
Maclean	1,041.9	15,560	14.9	448	195	21	52	28.6
Moree	17,874.0	16,390	0.9	186	99	21	40	1.9
Mudgee	5,480.5	18,090	3.3	322	156	11	21	1.1
Muswellbrook	3,401.5	16,110	4.7	321	141	23	17	2.5
Nambucca	1,442.6	18,220	12.6	339	181	20	31	3.7
Narrabri	13,065.3	14,480	1.1	187	175	17	31	1.9
Parkes	5,915.1	14,760	2.5	467	87	16	18	-
Parry	4,386.1	12,930	3.0	273	109	17	19	7.6
Richmond R.	2,458.7	10,060	4.1	602	292	N/A	N/A	5.3
Scone	4,027.5	10,390	2.6	242	112	28	31	37.9
Tumut	3,752.1	11,570	3.1	263	106	11	36	1.9
Young	2,669.9	11,400	4.3	219	37	19	25	-

Source: Department of Local Government