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The Hon Bob Carr
The Premier
Level 40 Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Premier

The major cause of dissatisfaction with the performance of local government in this State is the manner in which government require Councillors to make decisions on individual development applications. There are constant allegations of undue influence and conflicts of interest. Even if in those cases where there are not problems of this nature, all too often the process makes it look as though there are. There are continuous complaints to the review bodies about council performance in this role.

As a recent ICAC Report rightly pointed out, Councillors have conflicting roles as representatives and as members of a development control authority. And they are required to conduct the development control function in a parliamentary mode.

We do not ask members of the State or Federal parliaments to conduct judicial type roles in parliamentary mode. We therefore should not expect Councillors to be able to do it successfully.

No amount of exhortation for Councillors to behave better will solve this problem. The problem is the result of poor system design. The solution therefore lies in a system redesign.

Independent Hearing and Assessment Panels provide a simple system solution to the problem Councillors have. IHAPs have been trialled very successfully at Liverpool and Fairfield City Councils. They have achieved a high degree of satisfaction with applicants, objectors, staff and Councillors.

An IHAP consists of three independent persons – lawyer, urban designer, and community interests- drawn from outside the area. The Panel conducts a simple hearing where there are still objections to a development proposal, or where the Council is itself the Applicant. The hearing is conducted after the Planning staff have made their assessment of the development application. The Panel's report and recommendation goes to the Council, which usually, but not always, accepts the Panel's decision.

Since the IHAPs have been operating the two Councils have more than halved the legal costs associated with Planning Appeals. With some Councils in NSW spending about up to a million dollars per annum on Planning Appeals, a general adoption of this reform would provide massive savings which could then be spent on more worthwhile things. It should be noted that the cost per annum to operate an IHAP is about the cost of one Planning Appeal - \$20-30,000.

What is needed is not to force Councils to establish an IHAP but to facilitate the opportunity for them to do so. (Given a Rockdale situation, there may be a case for requiring a Council to establish a IHAP.) The accompanying document explains the nature of the problem and the solution. It suggests that the State Government through the Commissioners of Inquiry should establish a list of names of people who would be suitable to serve on an IHAP. There should also be a pro forma set of procedures. With these in place it will be an easy step for a Council to establish an IHAP.

As the accompanying document explains, unfortunately there is nobody in State Government who seems to have the task of providing advice on what might be a more transparent and effective system in this area. Both of the Ministries of Planning and Local Government have important roles but, while the Department of Local Government is interested in transparency issues, the solution lies with Planning which does not seem to be interested in this aspect of the administration of the Planning system. And while it supports the concept of independent Panels, the ICAC does not think it is the body that should be pursuing the solution to what is clearly local government's major transparency problem.

As it appears that nobody has a clear role, I am writing to a number of bodies in the hope that one will take the necessary lead.

The problem with councils and their role in development control decisions is a real one. It undermines the public's faith in local government and government generally. It encourages corruption and the exercise of undue influence. There are social justice issues to do with the access to the un-transparent current system. Poor urban design often results from poor or corrupt decision processes. And legal actions resulting from poor decision processes are costing the community money.

There is a better way.

Please feel free to contact me if you wish to have any further details, although the accompanying paper details most of the issues.

Yours sincerely

John Mant

cc.
The Premier
The Attorney General
The Minister for Planning
The Minister for Local Government
The Leader of the Opposition
The Commissioner, ICAC
The Ombudsman
The Office of the Commissioners of Inquiry
Director-General of Local Government
Director-General Planning NSW
The Local Government and Shires Associations
Transparency International