URBAN DEVELOPMENT INSTITUTE OF AUSTRALIA (QUEENSLAND)

Submission to Crime & Misconduct Commission - Gold Coast City Council Inquiry

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EXECUTIVE SUMMARY

1.0 INTEREST AND STATUS OF THE SUBMITTER

The UDIA is the peak body representing the development industry in Queensland. Its code of ethics contains propositions that demonstrate it is totally opposed to behaviour constituting corruption or official misconduct by its members (1.1-1.2; 1.4)

UDIA members annually undertake to be bound by the code of ethics, Failure to comply with the code is enforceable through disqualification (1.3)

2.0 THE BASIS FOR THE SUBMISSION

Assessment and determination of development applications (DAs) is a crucial area for potential corruption and misconduct because of potential financial values and the volume of complaints regularly made to official bodies. ICAC has described the NSW local development control system as a recipe for corruption (2.1-2.4)

The UDIA therefore makes a two-pronged submission with respect to the second term of reference, which recognises that transgressions of rules and policies governing the conduct of councillors are the obverse of opportunities for illicit conduct given by the local development control system (2.5)

In this exercise, it is necessary to recognise that the extent to which objective professional advice is available and is relied on has a significant bearing on opportunities for corruption and misconduct by elected representatives (2.6)

3.0 THE RELEVANT TERMS OF REFERENCE

The UDIA clarifies that the concerns it represents to the inquiry with respect to the Development Assessment Forum Report (DAF Report) are focussed on the opportunities for corruption and misconduct at the local level given by the development control system. It recognises that a wholesale review of the efficiency of such system is not within the scope of the CMC's inquiry (3.1-3.3)

There is, however, considerable overlap between some of the DAF recommendations and the scope of the CMC inquiry. This is notably so with respect to objective rules and tests, the giving of public reasons, and independent decision-making so far as consistent with local political democracy (3.4)

The second term of reference is sufficiently wide to accommodate that element of the UDIA's submission concerning DAs, particularly when coupled with the Chairperson's explanation. The second term of reference should not be "read down" (3.5-3.8)

There are four reasons that support the UDIA's view that the second term of reference should be generously interpreted (3.9-3.10)

4.0 THE FOUR SPECIFIC ELEMENTS OF THE SECOND TERM OF REFERENCE

The need to examine these specifics is largely the consequence of DA assessment and approval processes. ICAC in NSW has recommended that NSW legislation be changed to require objective and transparent decision-making in this area (4.1-4.2)

Misleading Voters

Chapter 5 Part 6 of the LGA does not directly deal with acknowledgment by a candidate of financial and other support before an election (4.4-4.6)

The UDIA notes that the Local Government Association (NSW) has supported reform of laws affecting election donations at all levels of government. Two of its proposals are of particular interest. First, that a candidate be required to sign a statutory declaration of business and property interests at the time of nomination. Secondly, that such declarations should be posted in polling booths. If the second recommendation interests the CMC, the UDIA considers that such declarations should be placed on the Electoral Commission website to avoid adding to clutter in polling booths (4.7)

The UDIA notes that the recent inquiry into Tweed Sire produced detailed recommendations concerning declarations by parties, groups and individuals at local elections in NSW (4.7)

Although the proposals in 4.7 arise in relation to another jurisdiction, the UDIA considers there may be value in drawing them to the attention of the CMC. In general, the UDIA would support any recommendations the CMC thinks appropriate (4.8)

Electoral bribery

The UDIA is unaware of successful prosecutions under section 385 of the LGA, or whether it is a "dead letter" section. The offence sits uneasily with the recognition elsewhere that election gifts may be made, subject to subsequent disclosure (4.10-4.12)

The UDIA would welcome clarification of the relationship between valid electoral funding and electoral bribery, and would support any other recommendations that increase transparency and accountability (4.13-4.14)

Returns about election gifts

Returns are a complex area, attracting lengthy guidelines. Offence provisions also occur (4.16-4.17)

The UDIA is concerned that the obligation on third parties to submit a return is vaguely expressed and may not be widely known. It is the standard experience of UDIA members that candidates canvass developers rather than the other way around (4.18-4.21)

Fulfilment of a duty to disclose is a bulwark against corruption and misconduct. The UDIA would support any recommendations the CMC sees fit to make based on transparency and accountability (4.22)

Declaring and dealing with conflicts of interest and material personal interests by councillors

Personal interests are wider than material personal interests; personal interests arise from family relationships and social involvements not required to be recorded in the register (4.26)

Personal interests not counted material are subject to a sanctionless duty to disclose under the LGA. However, when councils have introduced mandatory codes of conduct by 1 March 2006, it is likely that failure in this general duty will be a statutory breach attracting a maximum penalty of suspension for two council meetings (4.27-4.28)

The UDIA considers that such maximum penalty is inadequate where failure to disclose personal interests occurs on a regular basis. The appropriate penalty for a persistent failure to disclose should include the possibility of disqualification (4.29-4.38)

Before introducing more rigorous penalties, currently blurred distinctions between the two types of interest should be clarified (4.31; 4.35)

Present prohibitions on failure to disclose a material personal interest are appropriate and carry suitable prospective penalties provided they are systematically enforced (4.39-4.42)

The current reporting and investigation system means that an offence may come to light once the time limit for commencing proceedings has lapsed. The UDIA would support any recommendations the CMC would wish to make to tighten the area of reporting and prosecution (4.43)

The separate requirements to make and maintain statements of interest seem adequate (4.44)

5.0 THE DAF REPORT AS A PLATFORM FOR PREVENTION OF CORRUPTION AND MISCONDUCT

The broad arguments about relevance of the DAF leading practices at 2.3-2.7 and 3.1-3.10, require additional focus. First, public discretion as the basis for identifying high-risk areas for corruption and misconduct. Secondly, transparency with respect to maximum possible adherence to objective rules and tests (5.1-5.2)

Discretion and the high-risk area of development applications

A CMC Survey has isolated discretion as the basis for identifying high-risk areas (5.4)

Of the high-risk areas, 3 directly connect with the DAF Report, including discretion in relation to land rezoning or development applications (5.5)

All 3 high-risk areas are represented in the area of assessment and determination of DAs (5.6-5.8)

Objective rules and tests

Complexity and possible obsolescence of planning instruments multiply the potential for undue influence and pressure (5.10-5.13)

Systemic change is required which recognises the nexus between objective rules and tests and delegated decision-making (5.14-5.15)

6.0 THE CMC's FUNCTION AND RELEVANT LEADING PRACTICES IN THE DAF REPORT

Of the 12 leading practice principles in the DAF Report, 3 are directly relevant to the CMC's second term of reference. One is to promote transparency and accountability in administration (6.3)

The UDIA's submission will not concern itself with the 6 DAF leading practices in 6.4. These are either substantially met in Queensland planning legislation, or have no local government dimension (6.4-6.5)

The remaining 4 leading practices can raise issues relevant to the CMC's inquiry, and Leading Practice 8 is particularly important (6.6-6.7)

7.0 DAF LEADING PRACTICE 8 (PROFESSIONAL DETERMINATION FOR MOST APPLICATIONS)

Results of a survey of UDIA members shows strong support for leading Practice 8. Within this support, responses were evenly divided in a preference for Option A or Option B (7.1-7.2)

Professional determination by professional staff or private sector experts

Approximately 95% of original determinations are currently made by professional staff on an Australia-wide basis. There is no doubt that a substantial percentage of decisions are presently delegated in Queensland. The practice should be extended and entrenched (7.4-7.5)

A distinction should be drawn between delegation and private certification (7.5-7.7)

Private certification

Private certification is authorised by section 5.3.1 of IPA with respect to all code assessable applications, but is currently limited to building certification (7.9-7.11)

Private building certifiers are subject to statutory processes and restrictions (7.12-7.14)

After an initial settling-in period, private certification has worked usefully and effectively since IPA came into effect in 1998. The Planning and Environment Court has policed and cured occasional errors (7.15-7.16)

The UDIA believes that the option of private certification should be extended to all code assessable applications (7.17-19; 7.24)

Codes have proliferated in modern IPA schemes, and in the Gold Coast it is possible that a single application may require assessment against a total of 9 codes of three different types (7.20)

Code assessment is intended to be limited to technical matters, since codes have policy fed into them. A considerable level of expertise is required in dealing with potentially numerous codes in respect of DAs. It is not an area where elected representatives should either have responsibility or interfere (7.21)

The UDIA draws attention to sections 3.5.3 and 3.5.6 of IPA, and to the judicial doctrine expressed in the *Coty* principle. If private certification and delegated decisions by professionals are to be recommended as suggested at 7.9-7.59 existing modifications to section 3.5.3 may need to be reconsidered (7.22)

The proposition in 7.21 is supported by Leading Practice 7 (private sector involvement) separately dealt with at 9.18-9.35 (7.25)

The advantages of a general extension of private sector involvement are listed in the DAF Practice Guideline (7.26)

There are three important dimensions of the advantages charted in the DAF Practice Guideline that connect with potential corruption and misconduct (7.27-7.30)

- Private certification is a choice for an applicant.
- A private certifier is not subject to pressure from elected councillors.
- Councillors can currently intervene in decisions on code assessable applications, and produce decisions that contradict professional advice.
- Local governments have difficulty in attracting and retaining qualified staff. An officer who is hard pressed is more likely to accede to political interference.

Private certifiers of code assessable DAs should be subject to the same transparency and accountability requirements as council officers, and should have legislative support in respect of functions, accreditation, liability and auditing (7.31-7.33)

Decisions under delegated powers

Delegation of assessment and determination of DAs is less controversial than extending private certification to all code assessable applications (7.35)

There are two reasons why extension of delegation with respect to DAs is a more appropriate process. First, transparency. Secondly, insulation from interference by lay councillors (7.36)

The role of planning consultants is important in relation to delegations (7.37-7.38)

Local governments already have powers to delegate to the CEO, who has powers of subdelegation. A consultant who contracts with a local government to provide services counts as an employee (7.39-7.40)

Planning consultants who exercise delegated powers are subject to the same safeguards against corruption and misconduct as salaried council officers (7.41)

There are three formal weaknesses in delegation powers: delegation is discretionary, terms of delegation to a CEO may exclude further power to delegate, and a delegation may be withdrawn (7.42-7.43)

Other potential weaknesses concern the practice of delegation (7.44-7.47):

- A charged political atmosphere within a council may persuade a delegate to offer advice rather than exercise the power.
- Unless strong minded, a delegate may not resist intimidation by councillors.
- Local governments frequently decide DAs in closed meetings where they can decide DAs against advice of experts.

The mandatory conduct codes to be introduced by local governments by 1 March 2006 provide limited remedies for the weaknesses of delegation (7.48-7.50)

Conduct code safeguards are insufficient to guarantee necessary delegations. Delegations should be institutionalised, and be removable only on instances of

specified misconduct. A local government should be under a duty to reinstate a delegation if so terminated, or if an officer or consultant becomes unavailable for their own reasons (7.57-7.59)

8.0 DAF LEADING PRACTICE 8 – IMPACT ASSESSABLE APPLICATIONS

The DAF Report offers two alternatives for dealing with DAs that have policy dimensions – Option A (delegation and call-in power) or Option B (independent expert panel) (8.1)

In Queensland this category is essentially represented by impact assessable applications, although some applications of this type will be outside the DAF policy category (8.2-8.5)

Difficulties with policy-based impact assessable applications are that a councillor's role as DA decider and the local "mandate" on which election was achieved may conflict (8.6)

More poignant are the opportunities given by the current system to councillors who are willing to act under external guidance, or otherwise corruptly (8.7)

The dangers of unconstrained council decisions – the Daly Reports

The two Daly Reports into Tweed Shire disclose improper practices by councillors that are directly relevant to the CMC's corruption and misconduct function (8.9-8.11)

The findings and recommendations in the Daly Reports have resonance in Queensland (8.11)

It is important to note that in what Commissioner Daly identified as improper practices, instances of developer pressure were consistently less important than fundamental problems stemming from the structures of government. In particular, a complex and legalistic planning regime (8.11)

The UDIA disagrees with the alternative remedies of an Independent Hearing and Assessment Panel (IHAP) or a Planning Commission as is standard in the USA (8.12-8.14)

The UDIA prefers the alternatives advocated in the DAF report. They have been canvassed on an Australia-wide basis, and are more persuasive. Whichever option is chosen, it is clear systemic reform is required (8.15)

Local call-in powers – Option A

The DAF proposition is that what are in Queensland impact assessable applications can profitably be delegated, while retaining the ability to call in significant policy applications for determination by the council (8.17-8.19)

The success of local call-in powers will depend on a resilient and enforceable structure. There are 6 areas that require attention to give maximum transparency and accountability. In order to provide a context of maximum transparency, debates and decisions on applications that are called in should occur an open meeting (8.20-8.21)

First, delegations to assess and determine DAs should standardly be given on the same basis as for code assessable applications. If an application is called in, the delegate remains assessor but becomes adviser to the council with respect to determination (8.23-8.24)

Officers should be protected from interference and their advice and recommendations should be objective and impartial. Section 1131 of the LGA should be amended to give a CEO the duty of ensuring this. Councillors are already prohibited under section 230 of the LGA from directing staff, and this prohibition will be reinforced by mandatory codes of conduct (8.25)

Secondly, local call-in should be clearly identified as a reserve power (8.26)

In exercising this reserve power a council should (1) consider the need for independent advice and (2) not act as to unreasonably delay a decision (8.27)

Thirdly, criteria for the exercise of this local reserve power should be tightly drawn (8.28-8.29)

It should be made clear that there is no power to call in where a DA is consistent with codes and otherwise conforms with policies (8.30)

Fourthly, published reasons should be given for instituting a local call-in (8.31)

Fifthly, published reasons should be given where the council's decision contradicts professional advice (8.32-8.33)

Sixthly, the call-in power must be exercised within the boundaries of section 3.5.14 of IPA (8.34-8.35)

Independent expert panel – Option B

The DAF proposal is more radical than the call-in power, and is unknown in Queensland (8.37-8.39)

The UDIA considers there is value in adopting Option B because of the types of impermissible conduct that were identified by Commissioner Daly with respect to Tweed Shire (8.40-8.42)

There are two Australian initiatives since the DAF Report was compiled. First, NSW is to introduce Independent Hearing and Assessment Panels (IHAPs) that will give technical advice to the responsible minister. The operation of such panels is not recommended by the UDIA because IHAPs have no decisional power (8.43-8.46)

Secondly, in the intended South Australian model, decisional power is shifted from the absolute control of elected representatives. Reforms refine current provisions relating to regional development assessment panels (RDAPs) and council development assessment panels (CDAPs) by requiring a mix of elected members or council officers and independent members. In defined circumstances, RDAPs can be made decision-makers rather than councils (8.48)

The reforms are directed to impartial and timely decisions on DAs. The UDIA supports the South Australian distinction between the making of policy and decisions on DAs (DAF Report, 25). Provided proposals for CDAPs are strengthened, the UDIA believes that CDAPs can provide an acceptable model for Queensland (8.49)

CDAPs can act as delegate in accordance with the Development Act 1993. This limitation should be removed, and the CDAP model be applied to all impact assessable applications in Queensland (8.50-8.51)

The composition and source and method of appointment are (8.52-8.59):

- Normally, a panel consists of seven members, four of whom are independent members.
- The presiding member and the three independent members must be fit and proper persons and must have a reasonable knowledge of the Act and appropriate qualifications.
- The three other members may be councillors or officers (including planning consultants).
- The council appoints the President and three other members. In the case of the President and three other independent members, the Minister's concurrence is required. Appointment of councillors or officers is wholly a matter for the council. The original term of office is three years.

The South Australian proposals have five weaknesses (8.60):

- A council appears to be under no duty to delegate decision-making.
- Three members are appointed by the council without the need for ministerial concurrence.
- Appointment of the President and three independent members rests initially with the council, subject only to ministerial concurrence.
- There are no provisions for delegates or substitutes in the case of absences.

The UDIA considers that the proposed South Australian model is indicative of a necessary trend to independent decision-making. However, the UDIA considers that in Queensland the Minister should appoint the President and the three other independent members, Ministerial appointments should be made from a list of names recommended by the council. The list of names should extend beyond the number of positions to be filled (8.61)

An alternative solution to meet DAF requirements is to have a completely independent decisional panel (8.62-8.64)

The UDIA suggests that independent decisional panels be established for all impact assessable applications. The benefit of such panels is exemplified by advantages identified in respect of IHAPs in NSW (8.64-8.65)

An independent panel should consist of a President and two other members (8.66-8.67)

If a wider approach is adopted, it is tentatively suggested that consideration might be given to construction of a Register of Panellists representing a wide variety of qualifications and experience (8.68)

Any hearings by a panel should deal with the recommendations by the officer/consultant acting under initial delegation with respect to assessment of impact assessable applications (8.69-8.70)

Conclusions concerning Options A and B

The UDIA believes that the merits of Option A and Option B should persuade the CMC to make appropriate recommendations in respect of its second term of reference. It is necessary to have a system of decision-making that accords with either Option A or Option B to better secure transparency and accountability in decision-making. The UDIA considers that inaction in this area is not acceptable (8.72)

9.0 OTHER DAF LEADING PRACTICES

There are three other leading practices that connect with the need for transparency and accountability (9.1)

DAF Leading Practice 1 (Effective policy development)

Modern IPA planning schemes are too long, and a nightmare to navigate. Confusion can contribute to the existence of corruption and misconduct (9.3-9.5)

The making of Temporary Local Planning Instruments requires a compulsory period for public consultation of 10 business days (9.6-9.12)

DAF Leading Practice 2 (Objective rules and tests)

The identification of numerous codes in new IPA planning schemes is indicative of compliance with this leading practice (9.15)

The thrust of Leading Practice 2 supports that aspect of Leading Practice 8 which recommends professional determination of most applications (9.16)

DAF Leading Practice 7 (Private sector involvement)

The four components of the DAF recommendations have connections with avoidance of corruption and misconduct at the local level (9.18-9.20)

Extended justification is given by the relevant DAF Practice Guideline, and is consistent with local democracy (9.21-9.22)

The UDIA supports proposals made by the DAF Report and the DAF Practice Guideline (9.24-9.35)

In particular, it draws attention to the need for a “non-acceptance” notice to be given with respect to lodgement of DAs (9.29-9.30)

10.0 CONCLUSION

UDIA supports the analysis by ICAC of a development control system constituting a recipe for corruption (10.1)

Queensland DA applications and approval processes are counted the worst in Australia based on a recent RAIA survey. Many of the criticisms contained in responses to the RAIA survey are echoed in this submission, and remedies are suggested (10.2-10.4)

The Queensland DA assessment and approval process demonstrates the greatest potential autonomy with respect to decision-making by elected local

representatives. Few of the mechanisms introduced in other jurisdictions have occurred in Queensland (10.5)

The UDIA is grateful for the opportunity to make this submission, and invites the CMC to make appropriate recommendations (10.6)

SUBMISSION

1.0 INTEREST AND STATUS OF THE SUBMITTER

1.1 The UDIA Queensland is the peak body representing the development industry in Queensland, and currently has over 900 corporate members and 2020 individual members. All the major development corporations in Queensland, including publicly listed companies and private companies, are members. In total, the UDIA represents some 168 developers. In addition, the UDIA represents a broad range of suppliers and consultants to the development industry, including construction organisations, engineers, architects, town planners, legal practitioners and design experts.

1.2 One element in the UDIA's code of ethics requires members to demonstrate ethical principles and to observe the highest standards of integrity and honesty in all professional and personal dealings. A second is a requirement for a UDIA member to uphold and promote the reputation of the UDIA and not misuse authority of office for personal gain. Yet a third is the necessity to show respect for the rights of consumers and maintain the public's confidence and trust in the development industry.

1.3 UDIA members undertake to be bound by the code of ethics on an annual basis. Failure to comply with the code is enforceable through disqualification from membership of the UDIA.

1.4 These recitals demonstrate that the UDIA is totally opposed to behaviour constituting official misconduct by its members, whether in relation to council elections or the development approval process. This principled position is sharpened by the effect of sections 14 and 15 of the *Crime and Misconduct Act* 2001, whereby trying to influence a public officer to act improperly is also classed as official misconduct.

2.0 THE BASIS FOR THE SUBMISSION

2.1 On the basis of the Minister's letter to the CMC, it would appear that the allegations which prompted the Minister to refer matters to the CMC involved three main allegations:

- A team of candidates was purposely brought together by Gold Coast development interests – as was the case with the adjacent Tweed Shire Council, ultimately leading to sacking.
- Successful candidates (now councillors) are regularly voting on matters directly benefiting electoral donors.

- Councillors are voting in favour of the development proposals of electoral donors in cases where those developments directly contravene the council's planning scheme.

2.2 The CMC's terms of reference are in two parts. The UDIA does not wish to make a submission in respect of the particular people or events which may fall within the first term of reference. It notes, however, that in outline the allegations appear to cover much the same ground as allegations dealt with by the CJC's 1991 inquiry chaired by Sir Max Bingham QC, which also concerned payments made by land developers to candidates for election to the Gold Coast City Council. In the upshot, the CJC found there was no evidence of any person breaching statute or engaging in conduct that was official misconduct (CJC Inquiry 1991, 129).

2.3 The UDIA does not draw attention to the 1991 inquiry by way of unlicensed prediction of the outcomes of the CMC's investigation of the constituent elements in its first term of reference. It does, however, believe that the parallel is apt to demonstrate two propositions. First, that assessment and determination of development applications (DAs) under the *Integrated Planning Act* 1997 (IPA) is critically important because of the potential financial values involved. It is the area of council business where incentives for official misconduct are most obvious. So crucial is the area in this respect that the Independent Commission Against Corruption in NSW (ICAC) has identified the role of councillors in granting consent for individual DAs as fundamentally different from all other council functions (Position Paper 2002, 9). ICAC went so far as to describe the NSW development control system at the local level as a recipe for corruption (Discussion Paper 2001, 10).

2.4 Secondly, the potential impact of implemented DAs on localities and neighbourhoods means that council assessment and determination of DAs is a principal focus of concern for local citizens. This often leads to a high level of indignation and suspicion. In the reporting year 2000/2001, about 35% of all complaints the ICAC received about local government (294 of 830) related to decisions on development applications and related matters. Similar figures were reported with respect to the NSW Department of Local Government and the NSW Ombudsman (Discussion Paper 2001, 4). Comparable figures are no doubt available for equivalent Queensland bodies, including the CMC.

2.5 The UDIA therefore makes a broad two-pronged submission which recognises that transgressions of rules and policies governing the conduct of councillors are the obverse of opportunities for illicit conduct given by the local development control system. They are two sides of the same coin. The extent to which the development control system opens windows for the potential entry of corruption and official misconduct is as important as questions of the responsibilities of elected local representatives. The one cannot be disentangled from the other.

2.6 In this exercise, it is necessary also to recognise the appropriateness of the separate functions of councillors and council officers. The extent to which objective

advice is available, and is relied on by councillors, has a significant bearing on opportunities for corruption and official misconduct by elected representatives.

2.7 The UDIA believes that a broad two-pronged approach is justified by the second and third terms of reference, and by the further explanation of them given by Mr Robert Needham, the Chairperson of the current inquiry.

3.0 THE RELEVANT TERMS OF REFERENCE

3.1 It is important to set out the second and third terms of reference, because of the CMC's letter of 30 September 2005 to Mr Brian Stewart, Chief Executive of the UDIA. In that letter, the CMC indicated that Mr Stewart's original letter to the Commission envisaged a breadth of submission that was "probably broader than what is intended to be encompassed within paragraph two" of the announced terms of reference. Further, that the term of reference is "meant to allow the inquiry to deal with any issues relating to recommendations designed to prevent any official misconduct from occurring within councils, rather than dealing with efficiencies in administration of the process of dealing with development applications."

3.2 Mr Stewart's letter concerned the UDIA's endorsement of A Leading Practice Model for Development Assessment in Australia (Development Assessment Forum, March 2005), hereinafter the DAF Report. The UDIA has approved in principle Leading Practice 8 in the DAF Report, and generally supports other recommendations.

3.3 In this submission, the UDIA clarifies that the concerns it represents to the inquiry are focussed on opportunities for corruption and misconduct at local level that may be engendered by deficiencies in the current assessment and approval system with respect to DAs. It fully recognises that a wholesale review of the efficiency or otherwise of the local development control system is not within the scope of the CMC's inquiry.

3.4 Nevertheless, there is considerable overlap between the efficiency-based DAF recommendations and the CMC's concern to prevent corruption and official misconduct. This is notably so in respect of objective rules and tests, the giving of public reasons, and independent decision-making so far as consistent with local democracy. In short, transparency and accountability.

3.5 In support of this contention, it is important to set out the second and third terms of reference [with emphases added]:

"(2) to examine the adequacy of existing legislation in relation to the conduct of local government elections and local government business, including provisions relating to –

(a) misleading voters
(b) electoral bribery
(c) returns about election gifts

(d) declaring and dealing with conflicts of interest and material personal interests by councillors.

(3) to make any recommendations as may be considered appropriate in relation to (2) including recommendations for any necessary changes to current policies, legislation and practices."

3.6 The UDIA also points to the Chairperson's contemporaneous explanation of the scope and the purposes of the current inquiry [emphases again added]:

> "This inquiry's terms of reference won't be limited to just examining official misconduct.
>
> Pursuant to the Commissions misconduct prevention function, I have broadened the public hearing to allow the Commission to examine local government issues that have the potential to foster an environment where corruption and misconduct can exist and flourish.
>
> The CMC's public inquiry will have a far-reaching effect on all local councils in Queensland and will assist in preventing misconduct from occurring in the first place."

This statement was disclosed by a visit to the CMC's Gold Coast Inquiry website on 16 September 2005. It is also contained in the Commission's Media Release of 12 September 2005.

3.7 The CMC's website concerning the Gold Coast Inquiry now contains the following [emphasis again added]:

> "The inquiry will also use the results of its investigation to look at possible recommendations to enhance the standards of integrity and conduct in local government councils generally."

3.8 Provided that propositions fall within the CMC's misconduct jurisdiction, the UDIA contends that submissions about the development control system at the local level are within the second and third terms of reference, particularly as explained by the Chairperson of the inquiry. The second term of reference should not be "read down."

3.9 In support of this contention, it points out the following. First, the second term of reference refers to local government business generally, and the four specifics which follow are inclusory not exclusory. Secondly, the Chairperson's explanation shows that the inquiry is not limited to official misconduct, with its constituents of a criminal offence or a disciplinary breach in terms of the CMC Act, section 15. The scope presumably includes conduct defined in section 14, as influenced by the statutory framework within which it occurs. Thirdly, the Chairperson's reference to "local government issues that have the potential to foster an environment where

corruption and misconduct can exist and flourish" is amply wide enough to encompass what the UDIA wishes to say about DA approval processes. Save for applications called in for ministerial decision, local governments have sole responsibility in this area. They are subject only to appeals and proceedings in the Planning and Environment Court (PEC).

3.10 Fourthly, and generally, the DA assessment and approval process has fertile potential for corruption and misconduct. ICAC has recognised this, and in 2001 produced a Discussion Paper and in 2002 a Position Paper on this area. The ambit of the Discussion Paper covers the spectrum from pre-lodgement inquiries to decisions and compliance checks (ICAC 2001, 7-9). The UDIA believes that to limit the current CMC inquiry to matters covered by the *Criminal Code* or the *Local Government Act* 1993 would seriously and unnecessarily constrain the utility of any recommendations the Commission may ultimately wish to make.

4.0 THE FOUR SPECIFIC ELEMENTS OF THE SECOND TERM OF REFERENCE

4.1 Consistently with its conviction that its submission should be broad and deal with both sides of the coin, the UDIA makes brief comments on these four specifics. It does this in the belief that the need to examine these specifics is largely the consequence of the statutory context of DA assessment and approval processes.

4.2 In 2002, ICAC concluded that the role of councillors in granting approval to individual DAs is fundamentally different from all other council functions. It recommended that there should be simple recognition of this role by separating decisions of such matters from council's other business (Position Paper 2002, 9). It also recommended that a council's charter within the NSW *Local Government Act* should be amended to require objective and transparent decision-making in respect of matters arising under planning legislation (Position Paper 2002, 9).

4.3 Misleading voters

4.4 There are already provisions in place that relate to this issue. Section 383 of the LGA prohibits false or misleading statements, while section 384 bans false, misleading and incomplete electoral documents. There are other provisions in Chapter 5 Part 6 of the LGA which control details of the conduct of local elections.

4.5 However, Chapter 5 Part 6 does not directly deal with acknowledgment by a candidate before an election of financial and other support the candidate has received from third parties. The issue is not so much the deliberate misleading of voters, but of silence about the candidate's basis of support. It is an issue which also has possible resonance with respect to electoral bribery and election gifts. However, currently election gifts are primarily monitored through mandatory disclosure of such gifts and third party expenditure within specified periods after election results are declared.

4.6 It is particularly important that voters are not misled in relation to council elections. Outside Brisbane, there is no explicit party political identification of candidates for election who may become councillors. Candidates run as independents. This means that they are more likely than candidate's backed by an experienced party organisation to produce silence or obfuscation with respect to not only their own interests but also to financial or other support before electors have their say. This may be as a result of innocence or inexperience, but is clearly an issue with which the CMC should deal. There should be transparency in this area.

4.7 By a draft resolution presented to its Annual General Meeting in 2005, the Local Government Association of NSW supported reform of laws affecting electoral donations at all level of government (Media Release, 17 August 2005). Two of the elements of the draft resolution are of particular interest. First, that each candidate be required to sign a statutory declaration of business and property interests at the time of nomination. Secondly, that such declarations should be posted on public display in polling booths. The UDIA considers these proposals to be of interest, but would prefer such declarations to be placed on the Electoral Commission website rather than add to clutter on the walls of polling booths. The UDIA also notes that the inquiry into Tweed Shire produced detailed recommendations concerning declarations made by parties, groups and individuals at local elections in NSW (Daly Second Report, 950-951).

4.8 Although the proposals for reform in 4.7 arise in relation to another jurisdiction, the UDIA considers there may be value in drawing them to the attention of the CMC. In general, the UDIA would support any recommendations the CMC thinks appropriate to make that are based on openness and accountability.

4.9 Electoral bribery

4.10 The UDIA notes that bribery for electoral purposes is an offence under section 385 of the LGA. See also s 98C of the *Criminal Code.*

4.11 Election conduct covered by section 385 includes nomination as a candidate and support for a candidate at an election. Candidates and third parties are prohibited from asking for or receiving property or a benefit of any kind on the understanding that the candidate's conduct will be influenced or affected.

4.12 The UDIA is unaware of any successful prosecution under section 385, or whether it is a effectively a "dead letter" section. The offence of electoral bribery appears to sit uneasily with the recognition elsewhere in the LGA that election gifts may be made, subject only to a subsequent disclosure requirement. See s 247 of the LGA and the *Local Government Regulation* 2005.

4.13 The UDIA would support any recommendations the CMC may wish to make to clarify the relationship between valid electoral funding and the offence of electoral bribery.

4.14 The UDIA would also welcome any recommendations the CMC may make for improvement of this area based on transparency and accountability.

4.15 Returns about election gifts

4.16 This is a complex area. It attracts lengthy guidelines from the Department of Local Government covering multiple situations where the duty to disclose arises (Disclosure of Election Gifts 2004).

4.17 If an elected candidate fails to make a return by the due date, offence provisions may result in that person being no longer qualified to hold office as councillor. Failure to lodge a return may also constitute misconduct under the *Crime and Misconduct Act* 2001. The CEO of a local government has a duty to report official misconduct to the CMC.

4.18 The UDIA notes that, in certain circumstances, section 430 of the LGA compels disclosure by way of a return to the CEO of the relevant local government. A variety of possible expenditures are covered, including gifts to a candidate in an election.

4.19 There is an obligation on third parties to submit a return in the approved form (Disclosure of Election Gifts, 10) if:

- the third party incurred expenditure for a *political purpose* during the disclosure period in relation to an election for a particular local government;
- the total amount was $1000 or more;
- the third party used, in whole or in part, gifts received during that period to incur such expenditure or as reimbursement for incurring such expenditure; and
- the amount or value of the gift thus applied was $1000 or more.

4.20 The UDIA believes that the location of their duty is vague and uncertain. By section 430(1)a, third parties are simply the residuum of a detailed list of specified persons or bodies who are unaffected by the obligation. Failure to comply is nevertheless an offence under section 436.

4.21 Nor is it likely that existence of the duty is widely known. The obvious target is a lobby group (Disclosure of Election Gifts, 10). It is unclear, for example, whether the obligation extends to campaign contributions made by a developer who may be approached by a candidate. It is the experience of an overwhelming number of UDIA members that candidates standardly approach developers, rather than the other way around. Legitimate payments may be made in the anticipation of securing access, rather than directly to influence the outcome of decisions on DAs. The UDIA would welcome any recommendations by the CMC that would clarify this area.

4.22 Fulfilment of the duty to disclose is an important area and a bulwark against corruption and misconduct. Equally important is rigorous enforcement, whether by

prosecution or disqualification from elected office. The UDIA would support any recommendations the CMC sees fit to make based on transparency and accountability.

4.23 Declaring and dealing with conflicts of interest and material personal interests by councillors

4.24 There are three separate issues in this element of the second term of reference. First, the general duty to disclose personal interests. Secondly, the making and maintaining of statements of interests on a local government's register. Thirdly, the management of material personal interests, including mandatory disclosure of such interests in appropriate circumstances.

4.25 This aspect of the submission relates to the duties of councillors, and does not deal with similar provisions concerning council officers. It also focusses on the first and third issues in 4.24.

Personal Interests

4.26 Personal interests are wider than material personal interests. They include interests that arise from personal and family relationships, or from involvement in sporting, social or cultural activities (CMC Prevention Pointer No 3, 2004). Conflicts arise where the private and personal interests of a councillor run counter to the public interest, and have the potential to adversely affect the way a councillor performs public duties (CMC Prevention Pointer No 3, 2004)

4.27 At the statutory level, a sanctionless duty is imposed on councillors by section 229(3) of the LGA. Each councillor must ensure there is no conflict, or possible conflict, between a councillor's private interests and the honest performance of the councillor's role of serving the public interest. In the absence of a code of conduct, the sanctions appear to be reputational and social (CMC Prevention Pointer No 3. 2004).

4.28 When council have fulfilled the requirement to introduce a code of conduct by 1 March 2006, it appears likely that failure in this general duty will be covered by the relevant code. If so, it will count as a statutory breach, provided the matter is not pursued by the CMC as official misconduct. The maximum penalty for statutory breach of this character would ordinarily seem to be a statutory breach constituting minor misconduct, and attracting a maximum penalty of suspension for up to two consecutive ordinary council meetings (Local Government Bulletin June 2005, 6).

4.29 The UDIA considers that such a penalty is inadequate for breaches of the disclosure requirements for personal interests contained in section 229(3) of the LGA. Further, it is a punishment imposed imposed by a defaulting councillor's colleagues, and is not a truly independent process.

4.30 Separately from breaches of material personal interests, the UDIA considers that conflicts of personal interests should be dealt with more severely than by sanctionless statutory duties, buttressed only by the domestic disciplines of a code of conduct.

4.31 The dividing line between personal interests within section 229(3) of the LGA and material personal interests which are potentially subject to condign punishments is blurred and unclear. It must be difficult for lay councillors to make appropriate distinctions.

4.32 The current situation is that a local government's CEO has no duty to report failures to comply with general non-pecuniary breaches of disclosure of personal interest. The CEO's duty is limited to reporting to the CMC with respect to failures to comply with material interest provisions.

4.33 Official misconduct is limited by section 15 of the *Crime and Misconduct Act* 2001 to a criminal offence, or a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment. Only the first ground is relevant to councillors, and is not met by section 229(3) of the LGA or a code of conduct.

4.34 The UDIA believes that the gap should be filled, at least with respect to breaches of disclosure of personal interest that do not count as material personal interests. There is, perhaps, a role for an independent tribunal here, such as the Local Government Pecuniary Interest and Disciplinary Tribunal in NSW (PIDT). In any event, the gap between minor disciplinary punishments and sanctions for criminal offences should be closed.

4.35 The distinction between general personal interests and material personal interests is not sufficiently identified in a plethora of official advice. Once this is adequately done., the UDIA considers that where there are repeat breaches of the duty in section 229(3), the penalty of disqualification should be available.

4.36 For example, the brother-in-law of a councillor is not automatically within the category of a "related person" for the purposes of section 247(1)(b) of the LGA. *Local Government Regulation* 2005, section 22. The UDIA does not consider that domestic punishments under a code of conduct are sufficient to deal with repeat breaches of a statutory breach if there is failure to disclose the relevant relationship on a succession of occasions.

4.37 A decision of the Pecuniary Interest and Disciplinary Tribunal in NSW can illustrate the point: (PIDT Annual Report 2005, 4). The NSW example concerns a pecuniary interest and not a personal interest, but that apart the pattern of conduct makes the point. The councillor participated in three meetings of the council in breach of his duty. He acted contrary to official advice, and his conduct amounted to breaches of NSW local government legislation that were committed with "reckless disregard of his responsibilities." He was disqualified from civic office for twelve months.

4.38 The UDIA believes that repeat breaches of personal (as opposed to material) interests should be similarly punished in Queensland.

Material personal interests

4.39 Requirements with respect to material personal interests are more focussed. Such interests are defined as non-financial as well as financial. Non-financial interests include membership of a political party, an association, and a trade union or professional organisation (CMC Prevention Pointer No 4 2004, 2).

4.40 By section 244 of the LGA, a councillor who has a material personal interest in an issue to be considered at a local government meeting, or the meeting of a committee –

- must disclose the interest to the meeting;
- must not be present at or take part in a meeting while the issue is being considered or voted on; and
- must not be in the chamber where the meeting is conducted, including any area set out for the public.

4.41 Penalties for breaches are provided by section 246, the more stringent of which being where the councillor voted on the issue with an intention to gain an advantage. Where a councillor is convicted of an offence under section 244, such person can also disqualified from local government office for four years: LGA, section 222. The only relief from the punishment of disqualification is if a court considers that it would be just to give an absolving direction: LGA, section 222(3).

4.42 The UDIA considers these punishments to be appropriate, provided they are systematically enforced. In nearly all cases, conviction and punishments are likely to follow a report by the CEO to the CMC, followed by an adverse finding and reference to the prosecution authorities. This is a roundabout way of achieving criminal justice and penalties.

4.43 The difficulty with offences against disclosure of material personal interests is that they seem rarely to come to light, and if they do it is often too late. The CMC gives an example of dubious behaviour concerning a tender for a low-loader (CMC Building Capacity Series No 4 2004). The time limit for commencing proceedings had elapsed, and no action was able to be taken. The UDIA would support any recommendations the CMC may wish to make to tighten the area of reporting and prosecution.

4.44 The separate requirement to make and maintain statements of interest on the public record seems to be adequately catered for under existing law. As the CMC has itself pointed out, failure to register an interest may result in a penalty of up to $6375. Additionally, a convicted person can be disqualified from becoming a councillor for 4 years, while an existing councillor may have to vacate office (CMC

Prevention Pointer No 4 2004). Those controls seem sufficient to guarantee transparency and accountability.

5.0 THE DAF REPORT AS A PLATFORM FOR PREVENTION OF CORRUPTION AND MISCONDUCT

5.1 This submission has already justified in outline the relevance to the CMC's inquiry of particular leading practices in the DAF Report to the CMC's current inquiry. See paras 2.3-2.7 and 3.1-3.10 The Commission has received a copy of that Report from Brian Stewart, CEO of the UDIA.

5.2 It is now necessary to sharpen that analysis to provide a rigorous platform to enable the CMC appropriately to consider the UDIA submission under its misconduct powers. In providing this basis, the UDIA relies on material already produced by the CMC and ICAC. There are two elements. First, public discretion is the basis for identifying high-risk areas for corruption and official misconduct. Secondly, a critical remedy in terms of transparency consists of maximum adherence to objective rules and tests, so far as is consistent with local political democracy.

5.3 Discretion and the high-risk area of development applications

5.4 The CMC (2004 Survey, 19) has identified 14 high-risk functions across the whole of the Queensland public sector. The basis for identification of those areas is:

- the discretion exercised by the position-holder, and the potential importance of the outcome to members of the public;
- the client group; or
- the fact that they provide both the opportunity and temptation for fraud.

Corruption and official misconduct can safely be added to fraud in the third element of the definition.

5.5 Of the 14 high-risk areas, at least three directly concern the DAF Report and the UDIA's submission in respect of it:

- Provide a service to the community where demand exceeds supply.
- Has regular dealings with the private sector other than for the routine purchase of goods and services.
- Has discretion concerning land rezoning or development applications.

5.6 With respect to the first element, local government may be said to provide a service to the community when exercising powers of approval of development applications. Supply of land for housing, commercial and industrial purposes at the right time and in the right place is the outcome of development approvals. Demand exceeds supply. For example, the SEQ Regional Plan notes that South East Queensland is Australia's fastest growing region, attracting an average 55,000 new residents a year over the past two decades. The region is also experiencing rapid employment

growth and is emerging as a significant economic hub with national and international recognition (SEQ Regional Plan, Preamble).

5.7 The second high-risk area is amply satisfied. The General Manager of a NSW council has said (ICAC Discussion Paper 2001, 19):

> "I have far more problems on the periphery of council than with staff. Councillors, developers, community, particularly councillors. I'm forever fighting the battle of trying to keep them at arm's length. There is a lot of pressure on staff from any Mayor's office. The huge problem is developers and consultants in the Mayor's office trying to lodge development applications."

There is no reason to think that matters are different in Queensland.

5.8 The third high-risk area is self-explanatory, and is connected with the second.

5.9 Objective rules and tests

5.10 This is a companion to the exercise of discretion in high-risk areas. Objective rules and tests operate to reduce the area of risk represented by the exercise of public discretion in vulnerable areas.

5.11 Development control is governed by Chapter 3 of the *Integrated Planning Act* 1997 (IPA). This is complex legislation, and is difficult to understand (ICAC Discussion Paper 2001, 10). Further, "the planning instruments at the local level may be 'out of date' and not reflect the visions of the majority of members of the development assessment authority, that is, the councillors (but they are instruments that applicants must have regard to in the preparation of their applications)" (ICAC Discussion Paper 2001, 10).

5.12 Both propositions are equally valid in Queensland. IPA provides mechanisms for reconciling conflicts with respect to code assessment (section 3.5.13) and impact assessment (section 3.5.14) where planning instruments arguably are out of date. For comment on the interaction of sections 3.5.3 and 3.5.6 of IPA with respect to code assessable applications, see 7.22.

5.13 Complexity and possible obsolescence of planning instruments multiply the potential for undue influence and pressure to be exerted during the assessment process to produce a particular outcome (ICAC Discussion Paper 2001, 10).

5.14 One device suggested by ICAC for sanitising contacts is for councils to inform people about public sector values and ethical business practices (ICAC Discussion Paper 2001, 12-13). However, this may have only marginal effect.

5.15 More important is systemic change in the usual corporate governance of local governments. This requires a recognition of a nexus between objective rules and

tests and delegation of decision-making. ICAC regarded as commonsense the delegation to officers of the power to assess and determine what in Queensland are code assessable development applications (ICAC Discussion Paper 2001, 15) Appropriate delegations mean separation of responsibilities of councillors and experts, and the reduction of the scope for improper decisions by councillors.

5.16 Where objective rules and tests do not supply the complete answer, transparency and accountability may be served by checks and balances. These can extend from delegated decision-making with call-in powers to determination by independent panels.

6.0 THE CMC's FUNCTION AND RELEVANT LEADING PRACTICES IN THE DAF REPORT

6.1 The Development Assessment Forum (DAF) is an organisation that operates under the aegis of the Department of Transport and Regional Services of the Australian Government. DAF was created to identify leading edge approaches to development assessment in Australia.

6.2 The DAF Report of March 2005 is the ultimate conclusion of a lengthy period of consultation with representatives of eight State and Territory governments and local governments, and other stakeholders. At a joint meeting of the Local Government and Planning Minister's Council in August 2005, the Council agreed that the DAF model of leading practices in development assessment "was an important reference for individual jurisdictions in advancing reform of development assessment" (Communique 2005, 1).

6.3 There are twelve leading practice principles (DAF Report 2005, 7),. Of these, three are directly relevant to the second term of reference of the CMC current inquiry:

- Promote transparency and accountability in administration.
- Be streamlined, simple and accessible.
- Promote continuous improvement.

6.4 Some of the ten DAF leading practices are already met, or substantially met, in Queensland planning legislation, or have no local government dimensions. They are:

- Leading Practice 3 – Built in Improvement Mechanisms.
- Leading Practice 4 – Track-based assessment.
- Leading Practice 5 – A single point of assessment.
- Leading Practice 6 – Notification.
- Leading Practice 9 – Applicant appeals.
- Leading Practice 10 – Third party appeals.

6.5 This submission will not concern itself with the leading practices listed in 6.4. This is not because the UDIA considers those areas of Queensland planning law are

necessarily beyond criticism and subsequent reform. Some of them are essentially matters for State government rather than local assessment and decision-making. For example, the appeal provisions in Leading Practices 9 and 10. Others may be estimable, but carried out badly by those responsible. For example, applicants for approval frequently make errors in notifying impact assessable applications, despite legal requirements which meet Leading Practice 6. Finally, the track-based assessment recommended by Leading Practice 4 is stipulated at State level, although the allocation of particular levels of assessment is a local matter.

6.6 The remaining four leading practices directly raise issues that are relevant to the CMC inquiry, since they affect local issues that potentially produce confusion or corruption or official misconduct, or all three of them.

6.7 The UDIA regards Leading Practice 8 as particularly important to the prevention of corruption and official misconduct.

7.0 DAF LEADING PRACTICE 8 (PROFESSIONAL DETERMINATION FOR MOST APPLICATIONS)

7.1 The UDIA has surveyed its membership with respect to the DAF leading practices. Components of its membership of 902 are developers, consultants, suppliers and government/local authorities. A total of 144 responses were available at the date this submission was prepared.

7.2 The results show extremely strong support for the whole of Leading Practice 8. Where development applications are calculated to involve a significant impact on the achievement of policy, UDIA members overwhelmingly endorsed the thrust of the DAF report with respect to transparency and accountability. So far as Option A (local call-in powers) and Option B (independent expert panels) are concerned, UDIA members were evenly divided about which was the preferred option.

7.3 Professional determination by professional staff or private sector experts

7.4 The central proposition in Leading Practice 8 is that most development applications should be decided by professional staff or private sector experts. Objective and expert evaluation of applications against known policies and objective rules and tests provides efficient and transparent assessment of most applications (DAF Report 2005, 25).

7.5 On an Australia-wide basis, DAF estimates that approximately 95% of original determinations are currently made by the professional staff of agencies and councils (DAF Report 2005, 25). There is no doubt that a substantial percentage of decisions are presently delegated in Queensland. The practice can sensibly be extended and entrenched with respect to applications that are governed by objective rules and tests.

7.6 A distinction should be drawn between delegation and private certification. Both mean that a decision is taken by relevant experts rather than by elected councillors, but private certification is the more radical solution. It offers a complete alternative to assessment and decision by a local government through its councillors.

7.7 In this submission, private certification and delegation are treated separately. However, they can operate side-by-side within the planning system.

7.8 Private certification

7.9 Private certification means that instead of having to apply to the nominated assessment manager (almost invariably the local government), an applicant will have the choice of making the application to a private certifier. The private certifier can receive, assess and decide applications, and issue development approvals. (The Integrated Planning Act: An Explanatory Guide, 168).

7.10 Under IPA, private certification can apply only to assessable development requiring code assessment, and cannot apply to impact assessable development: IPA, section 5.3.1. Although IPA gives authority for private certification of all code assessable applications, the legislature has moved cautiously in this area. Private certification is only available with respect to building certifiers, i.e, the equivalent of council building inspectors. By section 3 of the *Building Act* 1975 a building certifier is defined to mean an individual licensed as a building certifier by the Queensland Building Services Authority.

7.11 A private certifier may currently only accept a development application for code assessable building work: IPA, s 5.3.1 and *Building Act* 1975, s 31(1). The Standard Building Regulation 1993 is a code for Chapter 3 of IPA (IDAS): *Standard Building Regulation* 1993, section 2. The building code of Australia forms part of, and is to be read as one with, the *Standard Building Regulation*. See section 8 of that regulation.

7.12 A private certifier must enter into a contract with the applicant: IPA, section 5.3.3(1). The contract must be in writing and must state the certification fee, which is to be paid to the private certifier whether the private certifier approves or refuses the application: IPA section 5.3.9(1). A building certifier must notify the assessment manager (local government) of the engagement in writing within five business days: IPA, section 5.3.9(2).

7.13 There are two important constraints upon a building certifier. First, if the development application a private certifier is assessing relates to a current development approval given by the assessment manager (local government), the building application must not be inconsistent with the earlier development approval: IPA, section 5.3.4.

7.14 Secondly, and importantly, by section 5.3.5(4) of IPA, a private certifier must not decide a development application for building works until:

- All necessary development permits are effective for other assessable development related to the development.
- All necessary preliminary approvals are effective for other assessable aspects of the development.
- All necessary approvals under Standard Sewerage Law have been given for an on-site sewerage facility related to premises not in a declared service area for a sewerage service under the *Water Ac*t 2000.

7.15 There are other restrictions as to jurisdiction that are unimportant for the thrust of this submission. After an initial settling-in period, private building certification has worked usefully and effectively in the seven years and more that IPA has been in force. The courts have policed the occasional transgression. Where a private certifier granted building approval contrary to requirements of the *Standard Building Regulation* and section 5.3.5 of IPA, the Planning and Environment Court declared the approval invalid (*Livingstone Shire Council*, PEC). Not the least of considerations leading to that declaration was the importance of protecting the integrity and public standing of the private certifier system introduced by IPA. The safety measures in section 5.3.5 were also applied to make a development permit ineffective because a necessary preliminary approval had not been issued (*Catchpole*, PEC). Similarly, an applicant could not start building work because a private building certifier was prevented from deciding the building application under section 5.3.5(4) (*Mingara*, PEC).

7.16 Occasional infractions of Chapter 5 Part 3 do not invalidate the utility of the existing system of private building certification. The system is not only a microeconomic reform, but also assists transparency and accountability. The private certifier is insulated against political interference, and is solitarily identifiable as the assessor and determiner of applications.

7.17 Chapter 5 Part 3 of IPA is structured to admit of private certification of all code assessable development. The UDIA believes that the option of private certification should be so extended. The reason that private certification is presently limited to building certification is likely to be because of resistance by local governments to any extension.

7.18 The statute recognises code assessment as “bounded assessment.” It is defined as the assessment of development only against the common material and applicable codes: IPA, section 3.5.4. Decisions on code assessable applications are equally limited: IPA, section 3.5.13. The assessment manager must approve the application if satisfied the application complies with all applicable codes, whether or not conditions are required for the development to comply with the codes: IPA, section 3.5.13(2). An assessment manager’s decision may only conflict with an applicable code if there are enough grounds to justify the decision, having regard to specified matters: IPA, section 3.5.13(3) and (4).

7.19 Each code will contain its own category of Specific Outcomes, and all development that complies with those outcomes will be approved. To assist with complying with a code, each code is expected to have Probable Solutions. The local government's IPA planning scheme performs the critical function of nominating levels of assessment (code or impact) and of identifying which of the codes within the scheme comprise applicable codes for assessable development.

7.20 Codes have proliferated in modern planning schemes made in accordance with Chapter 2 of the *Integrated Planning Act*. The Gold Coast planning scheme can stand as an example. Two Gold Coast planners employed by the council have explained the types and content of codes under that local government's scheme (Papageorgiou and Somers, 2004).

7.21 There are three types of code: Place Codes, Specific Development Codes and Constraint Codes. In total, there are 101 codes in the Gold Coast scheme, and this number is likely to grow (Papageorgiou and Somers 2004, 10). As they explain, it is possible that a single application may require assessment against 1 place code, 2 specific development codes and 6 constraint codes. Code assessment is intended to be limited to technical matters, because policy issues have already been fed into relevant codes when they were made. A considerable level of professional expertise is clearly required in the assessment and decision process. It is not an area where elected local representatives should have responsibility or interfere.

7.22 There is a connected point. The UDIA draws attention to sections 3.5.3 and 3.5.6 of IPA. Section 3.5.3 makes the relevant official documents those which are in effect when the application is made. Section 3.5.6 gives exemption from this rule, inter alia with respect to code assessable applications. An assessment manager is authorised to give weight to official documents which have come into effect before the decision stage has started. By judicial extension, the *Coty* doctrine authorises the potential relevance of such draft official documents at any time before a decision is given (*Coty,* LVC NSW: *Lewiac,* CA Qld). In the light of suggestions at 7.9-7.59 that private certifiers or delegates should decide code assessable applications, the UDIA believes these modifications of section 3.5.3 may require to be reconsidered.

7.23 Code assessment here contrasts with impact assessment. The latter means assessment of the environmental effects of development and the ways of dealing with those effects (Explanatory Guide, 66). Notification is not necessary for code assessable development, but is required in relation to impact assessable development. Impact assessable development attracts the opportunity for third party submissions and the subsequent exercise of appeal rights.

7.24 The DAF Report is clear. Stakeholders generally agreed that professional officers (either public or private as appropriate) should determine proposals in the code track (DAF Report, 25). The UDIA endorses that view. Private certification should be extended to all code assessable applications as prospectively envisioned by Chapter 5 Part 3 of the *Integrated Planning Act*, notably section 5.3.1.

7.25 Leading Practice 7 (private sector involvement) is dealt with at 9.17-9.34, and includes certifying compliance where objective rules and tests are clear and essentially technical.

7.26 The advantage of a general extension of private sector involvement in the development assessment and decisional processes have been separately dealt with by DAF (DAF Practice Guideline, undated). They include:

- Higher quality applications being submitted.
- Better relations with neighbours (due to pre-application meetings to explain proposals).
- Reducing the need for additional information requests, a common delay in the process.
- Improved information that assists with decision-making in relation to complex or major development proposals.
- Reduced application decision times (and a reduction in holding or other costs).
- Allowing council staff to spend time on merit-based rather than technical issues/matters-allocating resources to larger, more significant developments and to strategic planning and policy development.
- Potentially quicker assessment processes for minor, routine and low impact proposals.

7.27 The UDIA appreciates that the list of advantages in 7.26 are essentially utilitarian. They are directed to efficiencies in the assessment and approval process for development applications. There are, nevertheless, important dimensions of potential corruption and misconduct which support those reasons.

7.28 First, private certification is not compelled, but is a choice for the applicant. Secondly, and apart from external concurrence agencies, the private certifier is sovereign in his or her assessment and decision, subject only to an applicant's right of appeal to the Planning and Environment Court. This means that the certifier is not subject to pressure from elected councillors. Currently, a council can intervene and take decisions that contradict expert technical opinion. In such instances, it is rare for a council to give reasons for its opposite conclusion. The absence of council reasons in such circumstances has been criticised by the Planning and Environment Court and by ICAC, both of which consider a council should be obliged to give reasons (*Mackay Conservation Group*, PEC; ICAC Position Paper 2002, 10). ICAC would further require a council to record the reasons for its contrary decision in council records and notices of determination (ICAC Position Paper 2002, 10).

7.29 A third reason connects with the current difficulty that local governments have in attracting and retaining suitably qualified and experienced planners. Council officers currently work under stress because of staff shortages in relation to the volume of development applications (Leong and Smith, 25-27). A council officer who is hard pressed is more likely to accede to interventions by councillors.

7.30 These three additional reasons are all concerned with avoiding potential corruption and misconduct by adopting private certification. They can properly be regarded as improving transparency and accountability.

7.31 Of course, private practitioners who are private certifiers should be subject to the same transparency and accountability requirements as council officers. They should be seen to be fair, open, accessible to all users and not prone to conflicts of interest or inappropriate intrusion by stakeholders. Disciplinary actions should apply (DAF Practice Note, undated).

7.32 Authorisation for extended roles for private certifiers requires legislative support in the following areas (DAF Practice Note, undated):

- Provide a clear description of the limits of private certification.
- Specify the role of the private certifier.
- Introduce classes of development and stages in the process appropriate for certification.
- Establish a system for accreditation of the certifier.
- Clarify responsibility and liability (including mandatory insurance cover).
- Provide for auditing of practice and appropriate enforcement and penalty procedures.

7.33 Chapter 5 Part 3 of IPA already supplies a model for the extended role of private certifier with respect to code assessable applications. Given appropriate subordinate legislation, the object can readily be achieved.

7.34 Decisions under delegated powers

7.35 Delegation of assessment and determination of development applications is less controversial than extending private certification to code assessable applications. Delegations are already frequently made. As noted, approximately 95% of DAs are presently decided by officers or consultants under delegated powers on an Australia-wide basis. Delegation is a useful device that is endorsed in the DAF Report as an alternative to private certification for DAs in the code track (DAF Report, 25).

7.36 Delegation has obvious efficiency benefits, since it is likely to engender the swiftest and more appropriate assessment and determination of DAs. It also leads to a more transparent process (DAF Report, 25). There are two reasons. First, technical assessment and determination is against the requirements of a code which has policies built into it during its original construction and approval by both State and local government. This bedrock produces objective rules and tests suitable for professionally qualified delegates. Secondly, the professionally qualified delegate is in principle insulated from interference by lay councillors. The second point is not always true in practice, and difficulties are identified in this submission at 7.42-7.47. Remedies for weaknesses are suggested at 7.48-7.59.

7.37 The role of planning consultants is important in relation to delegations. Consultants presently play a significant role in the Queensland planning system. They may advise local governments on the making of planning schemes, including codes. They may also assess DAs and advise local governments about appropriate determinations on DAs. Finally, they may assess and decide DAs under delegated powers.

7.38 Shortage of qualified staff in many of Queensland local governments means that planning consultants already play an indispensable role in the operation of the planning system. Research for the Local Government Association of Queensland (LGAQ) in 2003 shows that 53% of local governments had difficulty in attracting appropriately qualified and experienced staff, with another 42% reporting they had difficulty in retaining such staff (Leong and Smith, 25).

Existing powers of delegation

7.39 A local government has power, by resolution, to delegate the assessment and determination of code assessable DAs to its CEO: LGA, section 472(1) and (2)(d). The CEO has the powers the local government may delegate to him or her: LGA, section 1131(4)(b). A CEO may in turn delegate those powers to another employee of the local government: LGA, section 1132(1). However, the CEO may not further delegate in this way if the local government has directed to the contrary: LGA, section 1132(2)(a).

7.40 Independent planning consultants may be given delegated powers by a CEO. A person who contracts with the local government to provide services to it counts as an employee for this purpose: LGA, section 1132(6).

7.41 When exercising functions delegated by the CEO under section 1132, it is important to note that planning consultants are subject to the same safeguards against corruption and misconduct as are salaried council officers. They must subscribe to the register of interests: LGA, section 1139(6). Consistently with this, they must disclose an interest in particular issues, and must not further deal with such issues save under the CEO's written directions: LGA, section 1142(1) and (3). They are equally affected by the prohibitions against improper conduct, eg asking for a fee or other benefit or making improper use of information: LGA, section 1143(1), (2) and (5). The main exemption for planning consultants is that they cannot be dismissed by disciplinary action under sections 1146 and 1147. However, their contracts for services can be terminated.

Weaknesses of the current provisions for delegation

7.42 Delegation arrangements with respect to DAs can work well. However, there are inherent weaknesses which may militate against the professional assessment and determination against the objective rules and tests relevant to code assessable applications.

7.43 Three deficiencies are formal. First, although delegation and sub-delegation is authorised, it remains a practice that is discretionary for local governments. Secondly, the terms of the delegation to a CEO may exclude a further power to delegate. Thirdly, a delegation can be withdrawn at any time. It is not set in stone.

7.44 Other weaknesses concern possible practices at ground level. First, the charged atmosphere within a local government may persuade those acting under delegated authority to make recommendations to the council, rather than exercise powers of assessment and determination given to them. An instance of this is identified in the inquiry by Commissioner Daly into the Tweed Shire (Daly First Report 2005, 287). The NSW Land and Environment Court imposed conditions that required a dune management plan to be prepared to the satisfaction of the council's Director Development Services. The delegation was direct and unqualified. Despite the terms of the delegation, the Director brought the matter to council with the recommendation that the dune management plan be not accepted. The council resolved to contradict the recommendation, and to confirm its acceptance of the plan.

7.45 A second practical point concerns bullying and intimidation of council officers or consultants exercising delegated powers. Unless strong-minded, a council officer may not resist such pressures because of fears concerning job tenure and powers of dismissal. Similarly, planning consultants may run the risk of having their contracts for services terminated. The inquiry into the Tweed Shire found prima facie evidence of intimidation and the generation of fear (Daly First Report 2005, 295).

7.46 Thirdly, where local governments take the opportunity to decide matters that are initially the subject of delegation, this may occur at a closed meeting. A local government may presently resolve that a meeting be closed to the public if its councillors or members consider it is necessary: LGA, section 463. Such a decision is authorised with respect to any action to be taken regarding DAs: LGA, section 463(1)(g).

7.47 The inquiry into Tweed Shire roundly condemned the regular practice of deciding DAs in closed meetings, where members of the public are excluded. Commissioner Daly recommended that councillors provide explanations, in an open and minuted council meeting, for their decisions when they are made against the advice of professional officers (Daly Second Report 2005, 955).

Remedies for the deficiencies of a system of delegation

7.48 Some remedies are either available, or will shortly become available. Councillors are already forbidden to direct, or attempt to direct, an employee of the local government about the way in which the employee's duties are to be performed: LGA, section 230(2). The supplementing of this otherwise unenforceable duty is an important element in codes of conduct. Local governments are required to make a code of conduct for councillors by 1 March 2006. One requirement in the draft

Model Code issued by the Minister is that councillors must ensure that they deal with council staff appropriately. For example, they must not attempt to unduly influence council employees in their roles and responsibilities (Discussion Paper 2005, 10). Further, councillors must ensure that all communications with council staff on the operations of the council are within guidelines set out by the CEO (Discussion Paper 2005, 10). Such guidelines may include, for example, restrictions or prohibitions on councillors approaching council staff for information on sensitive matters, controversial matters, or matters in which the councillor has a conflict of interest or a material personal interest.

7.49 Finally, the draft Model Code of Conduct requires that councillors must ensure, where the council's adopted development application processing policies and delegations restrict or regulate councillor communications with applicants, that they comply with such policies (Discussion Paper 2005, 10).

7.50 The Model Code envisages that such a policy may require, for example, that councillors do not meet with development applicants or potential development applicants unless (Discussion Paper 2005, 10):

- Such meetings are sanctioned by the council in advance.
- Have a council officer in attendance.
- A record is kept and made available to council through the CEO.

In addition, such a policy may, for example, place a prohibition on a councillor attending such a meeting if the councillor has a conflict of interest or a material personal interest (Discussion Paper 2005, 10).

7.51 The UDIA understands that the CMC was involved in the creation of the draft model code. In many ways, it is an excellent document with estimable ambitions. It does, however, have deficiencies which result in something less than a watertight guarantee that delegations will be made, and when made will be persisted with without unjustified withdrawal or unwarranted interference.

7.52 First, the Model Code is only a default mechanism. It will only come into force in all its terms if a council fails to make a code. The framework of a council code of conduct is stipulated by Chapter 4 Part 3A Division 2 of the LGA. Within these limits, choice of provisions in a local code of conduct is substantially discretionary.

7.53 Secondly, a local government is basically judge and jury of breaches of the code. Subject to complaints made to the CMC or the Ombudsman about statutory breaches, there is no trammel on a local government's jurisdiction. Further, where the CMC or the Ombudsman decides to take no action or refers the matter back to the local government, the local government's jurisdiction is enlivened: LGA, section 250U.

7.54 Thirdly, penalties for breaches identified by a local government are limited. There are two penalties: written reprimand and meeting suspension: LGA, section 250X.

The maximum meeting suspension is for up to two consecutive ordinary council meetings for a statutory or repeat breach, and up to one ordinary council meeting for a minor breach.

7.55 It would seem that a councillor abusing a council employee counts only as a minor breach (Discussion Paper 2005, 7), with the maximum penalty of suspension for a single ordinary council meeting. The breaching of the local government's guidelines for contact between a councillor and an employee counts as a statutory breach (Discussion Paper 2005, 8). The maximum penalty for such statutory breaches is suspension for two council meetings.

7.56 These are only sample observations. In general, the UDIA does not consider that the nature and function of mandatory codes of conduct is sufficient to secure protection of necessary delegations.

7.57 The UDIA considers that the direct route of legislative amendment should be taken. It suggests that one of the recommendations the CMC should make at the conclusion of its current inquiry is that the relevant amendment should be made. It should require local governments to make irrevocable delegations to suitably qualified professionals, whether planning officers or planning consultants, in respect of assessment and determination of code assessable DAs.

7.58 Such delegations should be institutionalised. The delegations should only be removed if a council officer or consultant commits improper conduct in contradiction of section 1143 of the LGA. Additionally, and in the case of a council officer, if disciplinary action is successfully taken for misconduct in terms of sections 1146 and 1147 of the LGA. Obviously, if a matter is reported to the CMC and the CMC finds that there has been official misconduct, this should also automatically terminate the delegation.

7.59 If a delegation is terminated in the terms outlined in 7.58, a local government should be under a duty immediately to institute an irrevocable delegation to another suitably qualified and experienced person. Similarly, the delegation should be swiftly reinstated if the relevant professionals leave for their own reasons.

8.0 DAF LEADING PRACTICE 8 – IMPACT ASSESSABLE APPLICATIONS

8.1 The DAF Report offers two alternatives for dealing with larger or more complex applications. These are described as "applications that will have a significant impact on policy or which, by their nature, are likely to establish policy" (DAF Report, 25). The first alternative is Option A, whereby a local government may delegate determination power while retaining the ability to call in an application for decision by council. Option B is to have an expert panel to determine the application. It is clear from the context of DAF's analysis that the expert panel should be independent of local government.

8.2 In Queensland, the obvious targets for such a redistribution of responsibilities are impact assessable applications. For new IPA planning schemes, they are applications for which this level of assessment is prescribed by the scheme. Some local governments have yet to achieve new schemes of this type. For them, identification of an impact assessable track is controlled by Chapter 6 of IPA: IPA, section 6.1.28. The touchstone for a transitional impact assessable application is whether it required public notification under repealed legislation. Whether an impact assessable application is transitional or otherwise, it attracts the necessity for public notification with a right to make written submissions and consequent submitter appeal entitlements.

8.3 Although impact assessable applications substantially represent the policy dimensions of DAs, there are types of such applications which do not. Many new IPA schemes contain the category "Impact Assessable - Generally Appropriate." The Brisbane Town Plan contains such a category. Such modern applications echo the area of consent (not rezoning) applications made under repealed legislation, and do not usually generate policy issues. Where codes are sufficiently respected, it is unrealistic to suggest that it would have been better to achieve the generally applicable objectives in a scheme in another way (*Gorman* and *Crane*, PEC).

8.4 With this reservation, impact assessable applications will encompass the possibilities envisaged by the DAF Report and require treatment under its recommendations in Leading Practice 8.

8.5 The extent of requirements for decision-making on impact assessable applications is shown by basic provisions of section 3.5.14 of IPA. The assessment manager's decision (local government) must not compromise the achievement of desired environmental outcomes for the planning scheme area. Alternatively, the decision must not conflict with the planning scheme unless there are sufficient planning grounds to justify the decision.

8.6 Those criteria for decision-making are extremely wide. There is no constraint upon unlawful and illicit practices that can corrupt the independence of decisional processes. A basic problem is identified by ICAC (ICAC Discussion Paper 2001, 18). A councillor wears multiple hats. The two roles that, quite understandably, appear most frequently to intrude on a councillor's statutory function as development assessor are those of elected representative and strategic planner. It is easy for councillor's to lose sight of the fact that, when wearing their development hats, they are meant apply the rules and provisions as they exist, not as they might wish them to be if their particular vision for the area, their "mandate," were to be reflected in planning instruments (ICAC Discussion Paper 2001, 18-19).

8.7 This dilemma affects even honest councillors, and is a fundamental reason for reforming local decisional systems. More poignant is the opportunity the current system affords to councillors who are willing deliberately to flout the rules and act under external guidance, or otherwise corruptly. Examples of this kind of behaviour which contradicts a true sense of local political democracy follows at 8.9-8.15.

8.8 The dangers of unconstrained council decisions – the Daly Reports

8.9 Commissioner Daly inquired into Tweed Shire. On his recommendation, all civic offices in relation to the Tweed Shire Council were declared vacant and an Administrator appointed (Daly First Report 2005, 297).

8.10 In the course of his inquiry, Commissioner Daly identified a persistence of improper practices that are directly relevant to the CMC's misconduct function in relation to corruption and misconduct in Queensland local government:

- Councillors demonstrated a commitment to sanction development without regard to expert advice (Daly First Report 2005, 297).
- In some circumstances, the proper outcomes, as proposed by suitably qualified staff, have been abrogated by councillors. To a large degree, this appears to have been at the behest of the applicant, in circumstances where the councillors have merely provided the mouthpiece for the proponent's aspirations (Daly Second Report 2005, 927).
- A decision by councillors to disregard the recommendations contained in staff reports, whether to ignore or override the recommendations or to vary or delete conditions of consent, in the absence of reasons supporting such decisions, is not indicative of good governance or best practice (Daly Second Report 2005, 929).
- Delegations to officers have been contradicted (Daly First Report 2005, 287).

8.11 The list could be extended. Although a report on planning law and practices in another State, Commissioner Daly's findings and recommendations have potential significance in Queensland. It is important to note what the Commissioner identified as improper practices. Instances of developer pressure were found to be consistently less important than fundamental problems that stem from the structures of government (Daly Second Report, 956-7). At the heart of problems is the immensely complex and legalistic [planning] regime that has been created (Daly Second Report 2005, 958).

8.12 Commissioner Daly's remedies for openness and accountability in assessment and determination of development applications differ from the DAF Report. The Commissioner recommended the introduction of Independent Hearing and Assessment Panels (IHAPs) to process controversial or large development applications (Daly Second Report 2005, 955-6; 959). Apparently alternatively, he recommended the introduction of a Planning Commission on the United States model (Daly Second Report 2005, 956; 959). In the USA, Planning Commissions are independent bodies appointed by council to oversee master planning and make decisions on development applications.

8.13 The UDIA differs from Commissioner Daly's alternative remedies. IHAPs are to be triggered by a request made by three or more councillors or whether one or more councillors has a pecuniary interest or conflict of interest. These triggers are

inadequate to ensure transparency and accountability, since the precipitating circumstances will not always clearly be identified. Moreover, IHAPs would presumably only operate to assess rather than determine applications.

8.14 Nor is the Planning Commission proposal more attractive. To deny the right of local government to make planning schemes and policies is to contradict local political democracy in a seriously unnecessary way.

8.15 The UDIA prefers the alternatives advocated by the DAF Report. These have the advantage of having been canvassed on an Australia-wide basis. They are also more persuasive. Whichever option is chosen it is clear that systemic reform is required.

8.16 Local call-in powers – Option A

8.17 The DAF proposition is that what are in Queensland impact assessable applications can profitably be delegated, while retaining the ability to call in any application for determination by council (DAF Report, 25). This power is contemplated as being limited to applications that either have a significant impact on the achievement of policy, or which by their nature are likely to establish policy.

8.18 It is clear from the DAF Report that the initial recommendation of consultants was for an independent decisional panel. See Road Map to a Model DA Process: Engaging with stakeholders (DAF News, 2004). The insertion of the alternative of local call-in powers appears to be a concession to local government representatives, who were anxious not to be deprived of all decisional powers in this area.

8.19 It is important to realise that Option A focusses on the power to determine DAs, not the duty to assess. It appears to be accepted by most stakeholders in the DAF process that assessment can be delegated to officers or a panel.

8.20 The UDIA considers that local call-in powers are a workable solution, and a viable alternative to the currently unconstrained powers of decision vested in elected local representatives who are not themselves experts. However, success will depend on a resilient and enforceable structure. In order to provide a context of maximum transparency, debates and decisions on applications that are called in should occur in a meeting that is minuted and open to the public.

8.21 A call-in system must be proofed so far as possible against corruption, misconduct and unjustified interventions. In short, there should be maximum transparency and accountability. There are six specific areas that require attention. First, it should be recognised that, in all usual circumstances, decisions on impact assessable applications should be taken by appropriately qualified officers or consultants. Secondly, it should be recognised that call-in is a reserve power. Thirdly, stringent and precise criteria must be met before an application is called in. Fourthly, published reasons should be given for instituting a local call-in. Fifthly, if a council

decides an application (or imposes a condition) directly contrary to the advice of qualified professionals, it must be required to give published reasons for the departure. Sixthly, as an overriding matter, local call-in powers must only be exercised within the confines of the relevant legislative provisions.

8.22 Ideally, the six protections in 8.21 require legislative amendment. There are, however, other measures which can be taken either by supplement or in the alternative. First, the Minister for Local Government can issue a model code of practice. Secondly, the costs power in the Planning and Environment Court can be extended. The court can be given a power to punish a local government in costs where it has seriously defaulted on one or more of the six elements in 8.21. The power should be available whatever the outcome of an appeal on the merits.

Delegations should standardly be made to qualified persons

8.23 There is no reason why delegations should not standardly be made to officers or consultants to assess and decide impact assessable applications. Such delegations should be made on the irrevocable basis indicated at 7.57-7.59 with respect to code assessable applications.

8.24 Subject to the circumstances outlined at 7.57-7.59, the only suspension of the decisional dimension of a delegation should occur where a council initiates the call-in power. The call-in power will suspend only the decisional powers of the delegate. The assessment responsibility will remain, and delegates become professional advisers to council.

8.25 ICAC has made valuable suggestions about protecting officers from interference, and reinforcing the duty of staff to provide objective advice (ICAC Position Paper 2002, 9 and 19). By amendment to section 1131 of the Queensland LGA, the CEO of a local government should have the duty of ensuring that advice and recommendations to council from the CEO and staff are objective and impartial. Duties on councillors not to direct staff about the way they perform their duties are already in place under section 230 of the LGA and will be the subject of mandatory codes of conduct.

Call-in as a reserve power

8.26 It is important that local call-in be clearly identified as a reserve power, to prevent the device being used as a matter of rote. Otherwise, if one councillor is influenced by what ICAC called a “mandate,” or if a few opponents of the development proposal loudly voice concern, the application may be called in despite the merits of the proposal and its compliance with scheme requirements and policy. This is particularly so if other councillors not directly affected resent the restrictions of the call-in power in principle.

8.27 In exercising this reserve power, a council should consider the need to seek independent advice. Further, the action should not be taken so as to unreasonably

delay a decision on the application. These two elements apply to the exercise of ministerial call-in powers in Victoria (General Practice Note November 2004). They are equally suitable for a local Queensland call-in power.

Criteria for exercise of the power

8.28 Criteria should be sufficiently tightly drawn to prevent the proverbial truck from being driven through them. The comparable basis for the exercise of the power at State level is unhelpful. Call-ins basically occur if the development involves a State interest: IPA, section 3.6.5(1). A State interest appears to be what the State thinks it is.

8.29 Assistance can be derived from Victorian practice (General Practice Note November 2004, 2). Suitably adapted for employment at the local level in Queensland, criteria might be:

- The DA concerns development that will be of genuine regional or local significance, for example -
    - where determination of the DA may have a substantial and adverse effect on achievement of regional or local planning objectives;
    - approval of the DA may have significant adverse effects beyond the locality of the site.

8.30 It should be made clear that there is no power to call in where the relevant DA is in accordance with codes, and is consistent with policies and expectations contained in the planning scheme or other local planning instrument.

Published reasons should be given for instituting a local call-in

8.31 In the interests of transparency, if a local government wishes to call-in a DA on the basis described it should publish full reasons for its action. This proposal is consistent with the similar proposal made with respect to contradiction of professional advice at 8.32-8.33 below.

Published reasons should be given where the council's decision on an application contradicts professional advice

8.32 Councils do not frequently give reasons for arriving at decisions that contradict professional advice in the current system. This again is required by transparency and accountability.

8.33 This delinquency has been judicially criticised for overriding the recommendations of expert and objective officers or consultants without giving appropriate reasons (*Mackay Conservation Group*, PEC). Parallel criticisms have been made by investigative bodies (ICAC Position Paper 2002, 10; Daly Second Report 2005, 929). ICAC went further by recommending that a local government should be

obliged to provide and record reasons for its decisions in council records and decision notices (ICAC Position Paper 2002, 10).

The call-in power must be exercised within the boundaries of relevant legislative provisions

8.34 This is a straightforward but essential requirement. It is emphasised for call-ins at ministerial level in Victoria (General Practice Note November 2004, 2). As an overriding consideration, local call-in powers must only be exercised having regard to, and within the confines of, the legislative provisions in question.

8.35 For the proposed local call-in power in Queensland, the relevant provisions are contained in section 3.5.14, set out at 8.5 of this submission.

8.36 Independent expert panel – Option B

8.37 Option B in the DAF recommendations requires determination by an independent expert panel with respect to what are, in Queensland, impact assessable applications (DAF Report, 25). Examples of current practices in other Australian jurisdictions are found in the DAF Report (DAF Report, 26).

8.38 The DAF Report states that in Queensland councils can form a development assessment panel (DAF Report, 26). The source of this assertion is unclear. It cannot refer to standing committees because these are wholly composed of councillors: LGA, section 452(a). The reference is presumably to an advisory committee, which may include in its members persons who are not councillors: LGA, section 453. Such committees are limited to advice, and cannot decide impact assessable applications. They therefore do not fully meet the requirements of Option B.

8.39 The DAF proposal in Option B is more radical than the call-in power envisaged by Option A. If implemented on an unqualified basis, it will deprive councils of the power to decide any impact assessable applications. It is not surprising that the DAF Report records the local government view that “elected representatives must retain the authority to determine applications in accordance with community expectations and policy objectives” (DAF Report, 25).

8.40 The UDIA believes there is considerable public value in adopting Option B. Examples of impermissible council behaviour in deciding applications are recorded at 8.10 above. There is no reason for assuming that such conduct cannot arise in Queensland. It is particularly likely to be prevalent in areas of high population growth and consequent demand for new developments.

8.41 This background supplies sufficient reason for adopting Option B at the expense of local political democracy. The urgent reason for such action is found in the fundamental problems that even honest councillors have in distinguishing among the various hats they may wear. In particular, the distinction between a councillor’s role as development assessor and decision-maker and the performance by a

councillor for a district that has given a local "mandate" (ICAC Discussion Paper 2001, 18-19). See 8.6-8.7.

8.42 Where deliberate corruption and misconduct occur, problems of understanding the distinction in 8.41 can serve to conceal illicit behaviour.

8.43 Various Australian mechanisms for dealing with independent assessment and determination of applications which raise significant issues are listed in the DAF Report (DAF Report, 26). There are two initiatives since that list was complied.

8.44 First, the use of independent hearing and assessment panels is to be standardised in NSW (IHAPs). Provisions are to be introduced by Part 3A of the *Environmental Planning and Assessment Act* 1979 to provide independent and impartial technical advice to the Minister on complex or controversial proposals (Draft Guideline September 2005).

8.45 It is important to note two matters with respect to the IHAP proposal in NSW. First, IHAPs have only an advice function, and not a decision-making function. Secondly, their technical advice is directed to the responsible Minister (Draft Guideline September 2005).

8.46 The operation of such panels at the local level in Queensland is not a component of the recommendations made by the UDIA in this submission. Information about proposed IHAPs in NSW is included only on the basis of providing full information to the CMC to assist its consideration of Leading Practice 8 from the crucial aspects of transparency and accountability.

8.47 Another mechanism that is directly relevant to the UDIA's submission has recently arisen in South Australia. It deserves the special treatment given below.

The South Australian proposal for council development assessment panels

8.48 In the intended South Australian model decisional power is shifted from the absolute control of elected representatives. South Australian proposals with respect regional development assessment panels (RDAPs) and council development assessment panels (CDAPs) are contained in the *Development (Sustainable Development) Amendment Bill* 2005. The Bill refines current provisions relating to development assessment panels by requiring that RDAPs and CDAPs have a mixture of elected members or council officers and independent members. In defined circumstances, RDAPs can be made decision-makers rather than councils. It would appear that proposals for CDAPs are a contentious element of the 2005 Bill, and have been postponed for further consultation with stakeholders (News Release 14 September 2005).

8.49 A major motive for reforms proposed by the 2005 Bill is to provide impartial and timely development assessment decisions based on the policies in development plans and the Building Code of Australia (News Release 14 September 2005, 1).

The UDIA supports the South Australian distinction between policy which is the responsibility of elected representatives, and development control decisions which should be the responsibility of delegates or independent panels (DAF Report, 25). Provided provisions with respect to CDAPs are strengthened in ways indicated below, the UDIA believes that CDAPs can provide an acceptable model for decisions on impact assessable applications in Queensland.

8.50 It is not clear from the 2005 Bill whether CDAPs will decide DAs as well as assess them. Their first function is to act as delegate of the council in accordance with the *Development Act* 1993: SA Bill, clause 58 amending section 56A. This formula appears to indicate a power in the council to delegate decision-making.

8.51 The extent to which SA councils have delegated decision-making powers as opposed to assessment powers is not known to the UDIA. More important, is the matrix that proposed amendments under the 2005 South Australian Bill give to the composition of CDAPs in the event that such decisional powers are unequivocally given

8.52 The proposed amendments to the SA *Development Act* 1993 are useful in identifying the components of a council development assessment panel, and the method of appointment and necessary qualifications of members.

8.53 In all ordinary circumstances, a panel consists of seven members. Variation of these members requires approval of the Minister: SA Bill clause 58, inserting section 56A(3)(a).

8.54 It is essentially immaterial whether or not SA councils delegate decisional functions, and the extent to which they will do so if the 2005 Bill passes into law. The SA Bill supplies an interesting hybrid of independence which is proactive in terms of meeting the requirements of Option B.

8.55 Assuming a standard panel of seven members, appointment and composition is intended to be governed by certain requirements. First, the presiding member of a DAP must not be a member or officer of the council: SA Bill clause 58 amending s 56A, inserting 56A(3)(b)(i). Further, the president must be a fit and proper person to be a member of a DAP, and must be determined by the council to "have a reasonable knowledge of the operation and requirements of the Act, and appropriate qualifications or experience in a field that is relevant to the activities of the panel": SA Bill, amendments to clause 56A(3)(b)(ii).

8.56 Half (or three) of the remaining members of a DAP may be councillors or officers of the local government (including planning consultants): SA Bill, amendments to clause 56A(3)(c). If an officer is involved, such officer must not have been directly involved in assessment of DAs generally, or in the preparation of any council report to the panel on the assessment of particular applications.

8.57 The other three independent members of the panel must be fit and proper persons, and "have a reasonable knowledge of the operation and requirements of the Act".

They also must have appropriate qualifications and experience: SA Bill clause 58, amending clause 56A(3)(c).

8.58 The concurrence of the Minister is required before a President is appointed: SA Bill clause 58, amending section 56A. The three independent members also require the concurrence of the Minister to their appointment: SA Bill clause 58, amending section 56A. Appointment of the three councillors/officers is at the discretion of the relevant council.

8.59 The original term of office of members of a DAP is three years renewable. Protections are inserted by the 2005 SA Bill with respect to disclosure of financial interests, prohibitions on taking part in deliberations where a material interest arises, code of conduct requirements and vacation of office in specified circumstances.

8.60 The SA proposals are a hybrid which leaves important matters to the council concerned. The UDIA has the following reservations. First, a council appears to be under no duty to delegate decisions on development applications to a CDAP. This may occur, but appears not guaranteed. Secondly, three of a seven member CDAP are appointed by the council without the need for ministerial concurrence. Thirdly, the appointment of the President and the three independent members of the CDAP rests initially with the council. The Minister has merely concurrence powers, and considerable political will may be required of a Minister to refuse concurrence in particular cases. Fourthly, the SA Bill makes no provision for delegates or substitutes where a member is ill or absent for other reasons. Without such provisions, membership of a CDAP at a particular meeting may be skewed in favour of the council representatives. This is despite the President having a casting vote in case of voting being equal: SA Bill clause 58, inserting section 56A(18) (b).

8.61 The UDIA regards the proposals in the SA Bill as indicative of a necessary trend towards independent decision-making. They are valuable reforms. However, the UDIA considers that in Queensland form the Minister should appoint the President and the three independent members on the recommendation of the council with respect to a list of names that extends beyond the number of positions to be filled. The Minister should not be limited to a concurrence power with respect to council appointments. Alternatively, the Minister could establish a Register of Independent Panellists consistently with the NSW proposal referred to in 8.64. There are, however, possibilities that satisfy the Option B in the DAF Report and are not so hedged with reservations concerning the independence of the decisional body expressed as above.

The alternative of a fully independent panel

8.62 A different solution to meet the DAF requirements for Option B is to completely sever any links with local government, whether as to the initial requirement to delegate, the power of appointment of members, or the necessity for ministerial concurrence to the appointment of the President and other independent members.

8.63 The DAF Report left for future consideration issues of how independent panels might work, including information concerning the make-up, their period of tenure, their funding, and their relevance to both local and regional circumstances (DAF Report, 26). The next step is to develop guidelines.

8.64 The benefits of such a panel can be illustrated by adaptation and selection of propositions concerning IHAPs in NSW (Draft Guideline 16 September 2005, 1)

- Improved opportunity for independent evaluation and decisions for complex and/or controversial matters.
- Transparent evaluation – in addition to the decision notice to the applicant, the panel's assessment and decision will be made public.
- An impartial process to prevent any perceived conflict of interest in controversial planning matters, including spot rezonings.
- Faster decision-making with expert panellists and peer-reviewing, information (where necessary).
- Cost effectiveness – panels can be constituted as required with appropriate expertise to resolve issues.

8.65 It is important that the equivalent panels in Queensland also have a decisional role with respect to impact assessable applications. The advice should initially be presented by the council's relevant officer or planning consultant. It is not considered necessary for third parties to have rights to participate in panel hearings or to present submissions. They already have generous rights to make submissions with respect to impact assessable applications, and subsequently to exercise appeal entitlements in an independent court.

8.66 The composition of an independent panel might be:

- President – perhaps a retired member of the local government service of proven integrity whose service is unconnected with the local government in which the application is made.
- Members - a limit of two. One might, for example, be appointed from a list of planning consultants approved by the Planning Institute of Australia. Such members should have no connection by a contract for services with the local government concerned. A second member might be a person of proven integrity, who has no current or previous association with the local government in question. For example a businessman.

For a wider approach, see 8.68

8.67 The UDIA considers that panellists should be limited to three for particular decisions. Any larger number may cause unnecessary delays in the consideration and decision of individual applications. Panellists could be appointed either on a regional basis, or on a basis of a single local government where development demand and the number of impact assessable applications warrants.

8.68 If a wider approach than what is tentatively suggested in 8.66 is taken, consideration might be given to the construction of a Register of Panellists. If so, the Register should include a list of experts selected from a broad range of disciplines with experience in environmental and planning assessment, including environmental science, urban landscape planning, infrastructure planning and management, environmental and planning law, industries, natural and other hazards, transport, architecture, urban design, engineering, economics and social science (NSW Draft Guideline September 2005, 3).

8.69 Any hearings conducted by a panel should deal with the recommendation of the officer/consultant with respect to impact assessable applications. Both the assessment panel's questions and the decision should occur in public.

8.70 No doubt other matters should be attended to including funding. But the UDIA considers that this sketch of a wholly independent panel can serve as a basis for consequent decisions of this kind.

8.71 Conclusions concerning Options A and B

8.72 The UDIA believes that the merits of Option A and B should persuade the CMC to make appropriate recommendations in respect of its second term of reference. It is necessary to have system of decision-making that accords with either Option A or Option B to better secure transparency and accountability in decision-making. The Daly Reports show that inaction in this area is not acceptable.

9.0 OTHER RELEVANT DAF LEADING PRACTICES

9.1 There are three other DAF Leading Practices with which the UDIA agrees, and which it wishes to bring to the attention of the CMC. All three have direct connection with need for transparency and the avoidance of misconduct at the local level, and all three attracted strong majority support in the UDIA's survey of membership.

9.2 DAF Leading Practice 1 (Effective policy development)

9.3 Policy is defined to include schemes and policies of all types (DAF Report, 35). Save for the process of making Temporary Local Planning Instruments (TLPIs), there is no absence of transparency in the making or amendment of IPA planning schemes and other local planning instruments.

9.4 However, the complexity of new IPA planning schemes is worth comment. Some are more than a thousand pages long. This compares with a coverage of 20 pages under the former *Local Government Act* 1936 and 120 pages under the repealed *Local Government (Planning and Environment) Act* 1990 (Leong and Smith 2004, 23). In large part the length of modern schemes is due to the multiplicity of codes they contain.

9.5 Modern IPA schemes are a nightmare to navigate. Complexity produces confusion, and ICAC has pointed out that confusion can contribute to the existence of corruption and misconduct (ICAC Discussion Paper 2002, 10). See 5.11-5.13 of this submission. Further, and separately, the prevalence of codes supports the UDIA's submission that code assessable applications should be decided by experts. See 7.1-7.59.

9.6 The making of TLPIs is an area where transparency is notably absent. A TLPI may suspend or otherwise affect the operation of a planning scheme for more than 1 year or a lesser period stated in the TLPI, but cannot amend the planning scheme: IPA, section 2.1.10(1). TLPIs are intended to deal with emergency situations. Local governments originate them and the Minister for Local Government approves. They then have effect as a local planning instrument and a statutory instrument.

9.7 TLPIs may be made on a basis that allows the exercise of considerable discretion. There are two cumulative tests that must be satisfied: IPA, section 2.1.10(2). In essence there must be a significant risk of serious environmental harm or other serious dangers. Additionally, delays in using the standard amendment process in Schedule 1 would increase the risk.

9.8 The absence of public consultation can have significant consequences. TLPI 4 proposed by the Brisbane City Council is a poignant example. In short terms, the provisions of the original TLPI 4 would have had a profound effect on development assessment in the Brisbane CBD. Lack of consultation in the drafting process meant its contents were vague and inappropriate, and risked crippling development in the inner city for three or four years (UDIA Update June/July 2005, 2).

9.9 Informal political pressure on the council and the Minister resulted in a dilution of the more draconian aspects of TLPI 4. In its original version it proposed comprehensive conversion of code assessable applications into impact assessable applications. In the substituted version, the TLPI limited the scope for impact assessment through a series of triggers, so that not all developments will be subject to impact assessment.

9.10 The initial proposal to substitute impact assessment for code assessment would have meant a considerable enlargement of discretion vested in the Brisbane City Council. Increase in discretionary power in the high-risk area of development control widens opportunities for corruption and misconduct (CMC Survey 2004, 19).

9.11 No perceived emergency circumstances will ordinarily justify failure to provide for a short period of public consultation. The need for such a requirement is reinforced when it is realised that there is almost certainly no compensation for the effects of a TLPI (Nicholls 2004, 10-11).

9.12 It has been suggested that there should be a compulsory but short consultation period of 10 business days, to allow the public to make simultaneous submissions to the relevant local government and the Minister (Nicholls 2004, 8). This would

necessitate the proposed TLPI being publicly exhibited with a statement of reasons. In the case of extreme emergencies, the Minister could have a power to waive public consultation on the grounds of serious risk to the public interest. In those circumstances, the Minister should be required to table reasons in the Legislative Assembly. The Minister should also publish those reasons in the gazette when notifying approval of the TLPI (Nicholls 2004, 8).

9.13 The UDIA strongly supports the suggestion in 9.12, and submits that the CMC should make appropriate recommendations.

9.14 DAF Leading Practice 2 (Objective rules and tests)

9.15 The relevant part of this Leading Practice states that development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions (DAF Report, 14). The identification of numerous codes in new IPA planning schemes is indicative of compliance with Leading Practice 2.

9.16 The thrust of Leading Practice 2 also supports that aspect of Leading Practice 8 which recommends professional determination of most applications, including code assessable applications. See 7.1 – 7.59 of this submission.

9.17 DAF Leading Practice 7 (Private sector involvement)

9.18 There are four components of the DAF recommendations that private sector experts should have a role in development assessment (DAF Report, 22).

9.19 First, in undertaking pre-lodgement certifications of applications to improve the quality of those applications. Secondly, providing expert advice to applicants and decision makers. Thirdly, certifying compliance where the objective rules and tests are clear and essentially technical. Fourthly, making decisions under delegation.

9.20 All four have connections with the avoidance of corruption and misconduct at the local level. They are not simply utilitarian recommendations. Increased private sector involvement carries the benefit of relieving the workload of overtaxed council officers, and means that they are not subject to intimidation and improper pressure by councillors.

9.21 One basis for Leading Practice 7 is the DAF Practice Guideline Extending Private Sector Involvement in the Development Assessment Process: Towards a Certification Model, to which the Commission is referred.

9.22 The Practice Guide explains (at 5) why its proposals are consistent with local democracy:

> "It is in the interest of all parties for complete and higher quality applications to be submitted and for administrative actions and post-determination checks to be promptly and thoroughly undertaken. Private involvement in such tasks, subject to clear pre-set rules and procedures, does not threaten Councils' roles and responsibilities. On the contrary, if undertaken carefully, private action can free Council staff from non-discretionary duties, allowing more time for merit-based assessments."

9.23 The four particular propositions in the DAF Report are dealt with below.

Undertaking pre-lodgement certification of applications

9.24 Many Queensland local governments provide pre-lodgement advice, and most of those charge for advice of this nature given by council officers. Such advice is frequently sought, because of the complexity of Form 1, the approved form for the vast majority of applications.

9.25 Form 1 is adapted to accommodate roll-ins of other land-related processes into the IDAS system contained in Chapter 3 of IPA. Apart from common details there are 22 separate parts to Form 1 ranging from building applications to contaminated land. These additional parts are buttressed by 23 separate official guides, which cover the making of an IDAS application through to a guide concerning referrals in relation to public passenger transport, and rail safety and efficiency.

9.26 This is a confusing challenge, where an applicant often needs a torch as well as a compass. Pre-lodgement certification is an area where the private sector can assist local government officers. The DAF Practice Guideline (at 5) records the practice in the ACT where a Design Response Report is required for most major applications. Such report is required to be signed off by the ACT Planning and Land Management Agency before the development application can be officially lodged.

9.27 The current legislative system in Queensland is different. A local government is the recipient of applications in its capacity as assessment manager. It is under no duty subsequently to receive an application that is not properly made (although it may do so): IPA, section 3.2.1(8) and (9). Major applications may cost many thousands of dollars in fees, but a local government is under no duty to refund fees: IPA, section 3.1.13. Applications often fail because the complexity of the system causes mistakes. The cost of fees thrown away in those circumstances add to the cost of the development to the ultimate consumer, once a revised application is successfully lodged and approved.

9.28 Private certifiers can perform a valuable function in pre-lodgement certification. They should obviously be suitably accredited, and operate consistently with a local

government's policies and practices with respect to two matters. First, in the identification of an application as properly made in accordance with section 3.2.1. Secondly, in identifying whether a defective application should be received and accepted, and thereby deemed to be a properly made application in terms of section 3.2.1(9).

9.29 There is a final issue, which goes to issues of fairness and transparency. There is no duty on the local government as assessment manager to inform the applicant that the application has not been accepted because it was allegedly not properly made. An applicant can be left in a position of ignorance, and await the issue of an acknowledgment notice that will never occur.

9.30 An amending Bill of 2001 contained measures allowing for the service of "non-acceptance notices." That provision never came into effect, and was subsequently repealed. The UDIA considers that a requirement for a "non-acceptance notice" should be reintroduced. There is also uncertainty about how the assessment manager's decision to "accept" a defective application under section 3.2.1(9) should occur. The Planning and Environment Court found that the exercise of the power to accept required a local government acting as assessment manager to give deliberate consideration to the defect. Some specific record of the decision to accept should be made. Merely embarking on the IDAS process did not, in the court's opinion, suffice (*Cunningham*, PEC). The UDIA supports this judicial view.

Providing expert advice to applicants and decision makers

9.31 The provision of expert advice to applicants already occurs, and needs no comment. The proper and useful function of offering advice to decision makers will occur in relation to call-in applications if the UDIA's suggestion at 8.17-8.35 are adopted. It is also possible for private sector advice to be available in the alternative of an independent expert panel. See 8.37-8.70 of this submission.

Certifying compliance where the objective rules and tests are clear and essentially technical

9.32 This element is met by the submission with respect to code applications at 7.9-7.59. It combines with the need to increase decisions made by private certifiers or under delegated powers.

Making decisions under delegation

9.33 The involvement of the private sector as decision-makers for a local government is a crucial component of previous analysis and submissions.

9.34 This element of DAF Leading Practice 7 supports submissions made with respect to code assessable applications at 7.36-7.59. Nor should private practitioners acting under delegated powers be excluded from assessing and deciding impact

assessable developments if the call-in power is exercised. They are then converted into assessors and advisers. See 8.1-8.35.

9.35 Private certification was debated by DAF stakeholders, and there were divided views (DAF Report, 22). Private certification is not delegation, but can supplement it as an alternative of choice for an applicant. It is analysed in this submission at 7.9 –7.33. The UDIA supports the extension of the availability of private certification to all code assessable applications.

10.0 CONCLUSION

10.1 The UDIA makes this submission on the basis that requirements for councillor conduct in the LGA and codes of conduct cannot be disentangled from dangers of corruption and misconduct inherent in the system of local development control. ICAC has correctly described the comparable NSW system as a "recipe for corruption."

10.2 Queensland has the DA application and approval processes that are counted the worst performing in Australia (RAIA 2005 Survey). 68% of Queensland respondents considered the existing system was poor.

10.3 Among criticisms identified by the 2005 RAIA survey are (at 2):

- Difficulties faced by planners, particularly in being under-resourced, over-worked and having to meet the "supervisory demands" of local government councillors and other related policy makers.
- Reports of regular planning disputes between councillors and planning consent staff.
- Reports of some councillors overturning the advice received from their planning consent staff to cater for local political considerations.
- Widespread examples of high turnover of planning compliance staff.

10.4 The RAIA inter alia recommends that local government councillors should be involved in establishing local policies but not compliance. In addition, the RAIA urges State and Territory planning ministers to adopt all 10 of the leading practices identified in the DAF Report (RAIA 2005 Survey, 2). The RAIA's concerns are echoed in the UDIA's submission in relation to those leading practices that have a corruption and misconduct dimension.

10.5 The Queensland DA assessment and approval process demonstrates the greatest potential autonomy of any Australian jurisdiction with respect to the taking of DA decisions by elected local representatives. Few of the mechanisms introduced in other jurisdictions have occurred in Queensland.

10.6 The UDIA is grateful for the opportunity to make this submission. It invites the CMC to construct the recommendations referred to its third term of reference consistently with suggestions made.

This submission was authored by Professor Alan Fogg, Emeritus Professor, University of Queensland.

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