Commercial and Economic Planning Association Inc.

29 November 2017

Ms Alison Frame
Deputy Secretary – Policy and Strategy
GPO Box 39
Sydney NSW 2001

Dear Ms Frame

RE: Fees for the Lodgement of Requests for the Preparation of Planning Proposals

The Commercial and Economic Planning Association Inc (CEPA) is concerned that Councils, such as the City of Sydney, are using their powers to set fees to effectively prevent proponents from lodging planning proposals. CEPA considers that this is a perversion of the purpose of these fees, which should be a "fee for service", not a hidden tax. We consider that the State should prescribe fees, or the way in which they are set, to ensure the planning system remains as intended.

The manner in which Councils can set fees for requests for the preparation of a planning proposal is outline in Section 11 of the Environmental Planning And Assessment Regulation 2000:

> (1) The relevant planning authority may enter into an agreement with a person who requests the preparation of a planning proposal under Part 3 of the Act for the payment of the costs and expenses incurred by the authority in undertaking studies and other matters required in relation to the planning proposal.
> (2) The fee payable to the relevant planning authority for the payment of those costs and expenses is:
>> (a) if the authority is a council--the fee set out or determined in accordance with the agreement, or
>> (b) in any other case--an amount (not exceeding $25,000) determined by the authority to cover the costs and expenses reasonably incurred by the authority in undertaking the studies or other matters, or such greater amount as may be agreed in the particular case.
>
> (3) A fee payable by a person under this clause is due and payable at the time notified in writing to the person by the relevant planning authority.
> (4) If the relevant planning authority is the Commission or a regional panel, the functions of the relevant planning authority under this clause are exercisable by the Secretary.
> (5) A reference in this clause to an agreement includes a reference to an arrangement.

The City of Sydney has set the following fees for a request to prepare a planning proposal:
Major application: $140,530
Minor application: $16,980

Address
PO Box 1398
North Sydney

Phone
0402 011 974

Email
info@cepa.org.au

Website
www.cepa.org.au

We understand that the City of Sydney is able to use its discretion to determine, before lodgment, whether a request to prepare a planning proposal will be major or minor. We consider that City of Sydney is using the "major application" fee as a quasi-value capture mechanism – or a discretionary tax – that is against the spirit of the regulation and counter to government policy of encouraging greater housing supply.

The scenario that faces our members is the following:

1. A proponent lodges an application to prepare a planning proposal; Council pre-determines that it is a major application and charges a fee of $140,530
2. The application is rejected with the Council refusing to consider the making of the plan to the gateway
3. The proponent lodges an appeal with the Department - $20,000
4. The appeal is upheld by the PAC and the Department issues gateway
5. Council refuses to become the RPA
6. The proponent is required to pay the Department $25,000 for the appointment of a new RPA and cover the costs of assessment
7. The total fees in this scenario is $185,000.

Of course, this brings with it the risk that, ultimately, the Minister will not make the plan in accordance with the proponent's application. Therefore, the proponent is effectively risking the initial $140,530 – at Stage 1 – on a planning proposal that may not come to fruition. The $140,530 is not refundable, does not come with any guarantees, and comes with no obligation on the Council (or Department) to a consider it in a timely way. On top of this, if the plan is made by the Minister, the proponent is still required to lodge a Part 4 DA for assessment, which will attract further fees.

This fee system affects smaller developers, who are the major supplier of housing, the most.

With this in mind, why would a proponent seek the preparation of a planning proposal, particularly where it is marginal as to whether it is "minor" or "major"?

This is in contrast to applications made under Part 4 of the Act, that attract substantially lower fees for a detailed and comprehensive development application assessment. Such an assessment is far more detailed and cost intensive for Council than what we feel could be fairly simple Part 3 applications. We therefore cannot understand how Council staff can justify a fee of $140,530 when a more intensive DA process is a fraction of the cost.

As it is rare for the Capital Investment Value for projects to be disclosed at the planning proposal stage, it is impossible for Council to determine whether a development will be minor or major. Therefore, it is effectively a discretionary tax on development that Council officers would rather did not to have proceed. Council officers therefore have a great deal of power to prevent development.

CEPA also considers the publishing of a prescribed fee is against the spirit of Section 11, which suggests an agreement of sorts over fees, not the blanket application of an arbitrary fee by Council.

We consider that, either as part of the review of the regulations coinciding with the passing of the Environmental Planning and Assessment Act Amendment Bill, or more

Address
PO Box 1398
North Sydney

Phone
0402 011 974

Email
info@cepa.org.au

Website
www.cepa.org.au

Commercial and Economic Planning Association Inc.

immediately, the regulations need to ensure that Councils cannot charge these sorts of fees. We advocate one of two options:

1. The State should prescribe a maximum fee for a proponent requesting the preparation of a planning proposal - $25,000 would be reasonable; or
2. The State should prescribe a two-stage methodology for the setting of fees for a proponent, whereby a minimal fee is charged at lodgement, and further fees can be charged at a second stage if the planning proposal is determined to be "major". We consider that the differentiation between "minor" and "major" should be determined *after* the Minister of delegate issues a gateway determination. It should be a mandatory item that the gateway makes a determination on, similar to the timeframe that the Minister places for making the plan.

A change such as suggested would prevent Councils from effectively rejecting a request to prepare a planning proposal before it is even lodged.

We consider this issue to be a major burden on smaller developers, and a hidden brake on the supply of housing. If proponents decide not the risk the fee, and decide not to lodge their application, this is housing supply that is lost that is not even known about. We are certain this happens across Sydney right now.

I look forward to your urgent response to this matter. If you have any questions regarding this letter, I can be contacted on 0402 011974 or at martin@cepa.org.au.

Yours sincerely

Martin Musgrave
EXECUTIVE DIRECTOR

Address
PO Box 1398
North Sydney

Phone
0402 011 974

Email
info@cepa.org.au

Website
www.cepa.org.au