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Interference equals uncertainty

Mark HAMILTON

CERTAINTY means consistency, not a certain tick of approval. Just as the community must comply with the law, it is entitled to expect the development sector, and councils, to comply with planning law in the form of council development plans.

The Rann Government's decision to strip Adelaide City Council of planning power for developments over $10 million, following the City Central Tower 8 refusal, sends a strong, albeit wrong, message to local government and the development sector.

To local government, the message is that if you refuse development applications you risk being lampooned as obstructionist and irresponsible by the government or, worse, losing your local planning powers.

The message to the development sector is to lodge ambit claims far in excess of the rights permitted by local development plans in the comfort of the extreme pressure on local government to approve virtually any development application.

The Government's Tower 8 mantra was that local government must defer rather than refuse non-compliant development proposals, apparently irrespective of the degree of non-compliance, and then negotiate compromise outcomes.

Legally, local government can only defer proposals if changes required to make them conform are not substantial, so as to ensure adequate public scrutiny of what are, in truth, new applications.

The Government spoke in ignorance of the fact that refused applications can be, and often are, compromised at the planning appeal stage. The appeal stage over Tower 8 is under way.

The key to certainty for both the development sector and community lies in the consistent application of the law.

The community's right to expect local planning authorities to uphold the law will be satisfied. Ambit claims will be discarded by developers because of financial cost caused by delay in obtaining approvals. Developers will get timely approvals.

The Tower 8 proposal bore no relationship to a building permitted on the site. The proposal, if approved, would have delivered an extra $20 million net profit to the developer as a reward for literally tearing up the development plan.

The proposal was for an extra 7000sq m floor space over the maximum 24,000sq m, and ignored the requirement to set the 17-storey glass tower back at least 6m, to a height of 21m, from the back wall of the state heritage-listed Darling House.

It also ignored the requirement to restore Darling House, and to set the main tower section back at least 12m, to a height of 21m, along the Franklin St frontage.

Property values are largely based upon development rights. Accordingly, a decision to allow a developer who has purchased a property to exceed development rights delivers a financial benefit to the developer at the expense of the previous owner. This type of market distortion and inequity arises out of an open slather development approach.

Council planners must advise developers to comply with development plans in order to obtain approval recommendations.

The City Council refused the Tower 8 proposal after planners recommended the application even though it was seriously non-conforming.

It is highly inappropriate for the Rann Government to pressure local planning authorities in the discharge of legislative duties. This political pressure, and the Rann Government's regular interference with local planning power, creates the very uncertainty which the government claims to eschew.

❑ **Mark Hamilton, a commercial solicitor in Adelaide, is a former Deputy Lord Mayor.**

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