

High Buildings to Jump Off

All round Australia city councils are being condemned for the conduct of their town planning responsibilities. In Perth, criticism of the City of Perth's town planning procedures has erupted on television. The gravamen of the complaint is that planning committee members allow pecuniary interests to influence their decisions. In terms of likely political impact this is a serious allegation. It was probably not entirely coincidental that it was made when a State Minister was fighting the council over a planning matter.

And not just in Perth. There have been recent cases in Sydney and Melbourne where State Governments have either sacked entire Councils or removed a Council's planning powers.

State Government ministers are all Jim Hackers who avoid 'courageous decisions'. They would not take on the councils without popular support. The public is losing confidence in Local Government's ability to conduct City plans and building regulations.

The criticism of the councils begs three questions which ought to be asked, but are not:

Are all the regulations imposed by town plans and building by-laws necessary or even desirable?

Are the procedures adopted consistent with public respect for the institutions which administer the by-laws?

Are appointed committees likely to do the town-planning job better?

I think the answer to each question is 'No'. And I think the impossible strictures and bad procedures that have so damaged the cities' reputations for wisdom and impartiality will do the same to independent expert committees. When town planners try to impose too much detail and leave themselves too much discretion they defy long-understood principles for the good governance of liberal societies.

The rule of law should prevail here as elsewhere. So long as the whims of officials replace the certainty of law, an authority's impartiality must be suspect.

So long as regulations replace the demands of *free* markets, wealth is wasted and with it goes an authority's reputation for wisdom. Townplanners must accept that even if they have the wisdom of Solomon (which is questioned), and the integrity never to place private interest ahead of public interest in spite of the most extraordinary opportunity (which is also questioned), they can never have enough information about individual opportunities and preferences to find the best possible city structure. Only markets possess that information and it can never be centralised. When planners try to discriminate between ends in

order to replicate market outcomes, they are accused of favouritism and corruption.

The justification for regulation

Suppose a perfect market---one in which all property rights are clear and it costs nothing to exchange them---in which I own the right not to be shaded while you own the right to build. We must not deny each other's rights. You will pay me more than sufficient to compensate me for my lost light, but less than the rewards you expect from building. Nobody is made worse off and if our combined welfare is enhanced the building goes ahead.

Alternatively, suppose you have the right to build and cast a shadow. Then I will pay you not to shade me (or shade me for a smaller part of the day) but only so much as absence of shadow is worth to me.

It does not matter who owns a relevant property right; the economically efficient combination of buildings can be achieved by transaction---if transactions themselves have no cost. What is more, so long as the right (to cast shadows or enjoy sunlight) was clear prior to when we each purchased our plots, equity is not a problem either.

Unfortunately, in the real world transactions cost time, effort and money. Often the transaction costs are so high relative to the rewards, that gainful exchange of property rights is not feasible. Transaction cost is the *raison d'être* of the regulator and the need for some regulation is the *raison d'être* of the planner. It must be born in mind, however, that imperfect markets can be replaced only with imperfect governments. Although the idea is alien to the bureaucrat's mind, his first responsibility is not to regulate, but to make the imperfect market work better.

The perfect bureaucrat---another convenient supposition---will ask what he can do to reduce the public's transaction costs. Voluntary exchange has great potential efficiency-advantages over compulsory regulation and, cheating and lying aside, will not cause injustices. He will ask whether the governments' requirements are minimal, whether it is possible to comply with them simply and cheaply, whether publicly available information is readily available and whether dispute-settling procedures are cheap, fair and sure.

The difficulties arise when costs or benefits individually are small but, being widely dispersed, are large in aggregate. In these circumstance, although the total welfare losses/gains are not trivial, the private transaction costs are too high for the parties to come to the efficient and just agreement of the perfect market. For instance, because it is impractical to sue every passing motorist for a few cents we find regulations requiring mufflers more satisfactory than the noise.

When regulations are enforced they must apply equally to everybody, otherwise they are unfair. Regulations must be simple, otherwise compliance costs will be high, and enforceable, otherwise avoidance will be common. They must be certain, otherwise people will suffer loss unjustly: either from the

punitive provisions of the law, or from lost rights (such as a quiet neighbourhood) for which costs have been incurred.

Regulation should be minimal, simple and certain. But town planners, who have unjustified faith in their own untested judgement, by breaking well-known precepts, are putting local government at risk of take-over by the States.

The perfect legislator---yet another supposition---would ask if the relevant property rights were clear, whether he could make them more certain by legislating or, as is sometimes the case, by withdrawing legislation and relying on case law. Of course, many rights that would be clear in the best of all possible worlds are not clear in ours. He should, so far as he can, make them certain without changing them. An old law is often a good law because people and prices have adjusted to it and any change will cause windfall gains and losses. We are all familiar with demands for rezoning which would add value-without-cost to existing landholdings. Often a situation is so inefficient that something must be done by way of regulation or deregulation. Then the legislator should bear in mind that he will trade off justice for efficiency.

When the Perth City Council allowed 'bonus' plot ratios to owners who gave the public car parks, open space etc. they were trying to improve their plan's efficiency. However, the arrangement was too complicated to be predetermined in law and they now find themselves accused of favouritism. They sacrificed the fundamentals of good lawmaking. It is no wonder they are in trouble, and any other body which might inherit the regulatory nightmare they created will also be in trouble. The fault is in the system, not the people.