

AUSTRALIAN PROPERTY INSTITUTE INC.

NSW DIVISION

**INQUIRY INTO THE JOINT USE AND CO-LOCATION OF PUBLIC
BUILDINGS**

**SUBMISSION TO THE NSW LEGISLATIVE ASSEMBLY STANDING
COMMITTEE ON PUBLIC WORKS**

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ABBREVIATIONS

AAPI	Associate of the Australian Property Institute
API	Australian Property Institute Inc.
FAPI	Fellow of the Australian Property Institute
NSW	New South Wales

1. INTRODUCTION

This submission responds to the public invitation by the NSW Legislative Assembly Standing Committee on Public Works in respect of the Inquiry into the Joint use and Co-Location of Public Buildings.

The terms of reference of the Inquiry are:

The NSW Standing Committee on Public Works is to inquire into, consider and report on the design, regulatory arrangements, and cost implications of the joint use and co-location of state and local government public buildings.

In particular, the Committee will examine:

1. Options for retrofitting and adaptive reuse of existing state and local government public buildings;
2. Options for the design and construction of new public buildings with joint uses, having regard to environmental and community life cycle issues;
3. Issues arising from co-location of state and local government public buildings with private buildings; and
4. Any other related matter.

The Institute is happy to discuss any of the matters raised in its submission, or to make an oral presentation to the Standing Committee or to provide any additional information required. Arrangements can be made by contacting Ms Gail Sanders Executive Officer NSW Division on 9299 1811.

2. COMMENTS AND RECOMMENDATIONS

2.1 GENERAL

The view expressed in the Inquiry Overview that the achieving of savings in Capital Works Programmes, is supported by the Institute particularly where economies of scale can be achieved. Although it is recognised that through the joint use and co-location of public buildings such savings can be achieved, the Institute is aware that such endeavours whilst highly desirable may nevertheless prove to be extremely difficult to achieve in practice.

Whilst it is easy to be sceptical of such endeavours they should however still be attempted given the significant size of the NSW Capital Works Programmes. The savings through the joint use and co-location of State and Local Government uses will only emerge if the various government occupants are willing to agree on stereotypical facilities such as meeting rooms, lobby areas, staff facilities, loading and vehicular parking. Anecdotal information suggests that a whole –of – government approach to such facilities should be established to avoid unnecessary duplication and different supply sources.

2.2

The Institute is also of the view that where there is a joint use and or co-location of State and Local Government uses with private uses within a building, issues of Freedom of Information will arise in respect of agreements that have been entered into between the Government users and private parties. Where commercially sensitive information is embedded in such joint use and co-location agreements, the use of Freedom of Information legislative access may result in private parties to such agreements being compromised.

The private parties to such agreements could be either tenants, building owners or developers, and may be private companies or publicly listed companies. In the latter case matters of commercial confidence uncovered through the use of Freedom of Information legislation could unwittingly expose the public company to contravention of ASX disclosure and or operational rules.

3. ISSUES

3.1 TAX DEDUCTIBILITY IMPACT

The Institute believes that where State or Local Government joint use or co-location occurs with private uses or even wholly on private land, there are issues which must be resolved in terms of tax deductibility of loan interest and depreciable items which ordinarily would not arise for a private investor/developer. The new proposed Division 250, intended to replace the complex rules of Section 51AD and the associated Division 16D, is a step in the right direction. However this new set of rules still requires further work to adequately address property owners concerns regarding tax treatment of properties with a majority of government tenants.

The Institute is of the view that affected parties include:

- Property Trusts that lease buildings to Government health and medical agencies
- Utilities such as power stations owned by the private sector that have Government customers
- Businesses, which have tax exempt customers such as hospitals, schools, health and Government agencies.

3.2 DEVELOPMENT CONSENTS AND THE CROWN

Where Local or State Government jointly uses or co-locates in buildings which have been the subject of a prior development consent issued by the responsible authority under the *Environmental Planning and Assessment Act 1979*, it is open to the government occupants to accept alter or ignore the conditions in the development consent.

Where a co-location or joint use occurs with private uses or on private land, this situation may act to the detriment of the private tenants or private owner who cannot avoid the conditions in the prior development consent. The Institute is of the view that amendment should be made to the *Environmental Planning and Assessment Act 1979* to ensure that where Local/State Government uses occur on private land or with private tenancies, the government bodies do not have the ability to avoid the requirements contained within a prior development consent.

This proposed amendment of the *Act* would ensure that public and private occupants of joint facilities are treated in the same manner.

3.3 DEPRECIATION CONSIDERATIONS

It appears broadly accepted that government use of buildings is somewhat harsher than private use of buildings, due to the higher floor space occupancy of employees and the higher level of public access. Arguably this situation results in more rapid depreciation of buildings.

Also arguably where a building is part occupied by government uses, it is reported that leasing of the remaining floor space is markedly more difficult due to the above factors. However it is also recognised that State or Local government occupants are viewed in the marketplace favourably as long term stable tenancies, and this factor may offset somewhat the marketing difficulties mentioned above.

3.4 DESIGN NEEDS OF GOVERNMENT USERS

The Institute notes that the design needs in buildings for government uses often exceeds that which would ordinarily be required by private tenants or users. This special design requirement needs to be recognised where joint uses or co-location of buildings with private tenancies occurs, as the rental structure needed to amortise the additional design costs may result in a different rental formula for the government component vis a vis the private component.

3.5 OCCUPATIONAL HEALTH & SAFETY AND SECURITY

The Institute is of the view that there may be different OH & S requirements for joint users especially where private companies or publicly listed companies are concerned.

In addition the Institute believes that security issues arising from the joint use of building or sites may present significant concerns, especially where educational facilities are concerned.

APPENDIX 1 AUSTRALIAN PROPERTY INSTITUTE INC.

The Australian Property Institute, (formerly known as the Australian Institute of Valuers and Land Economists), has enjoyed a proud and long history.

Originally formed over seventy years ago in 1926, the Institute today represents the interests of more than 7000 property experts throughout Australia. As the peak professional property organisation the API has been pivotal in providing factual and dispassionate advice on a broad range of property issues addressed by the Commonwealth and State/Territory governments since the Institute was formed.

In addition, the Institute's advice has increasingly been sought by overseas bodies such as the United Nations and the World Bank, evidencing a level of expertise within the API and its membership which is recognised globally.

However, as a professional organisation the primary role of the Australian Property Institute is to set and maintain the highest standards of professional practice, education, ethics and discipline for its members.

Institute members are engaged in all facets of the property industry including valuation, property development and management, property financing and trusts, professional property consultancy, plant and machinery valuation, town planning consultancy, property law, and architecture. Membership of the Australian Property Institute has become synonymous with traits and qualities such as professional integrity and client service, industry experience, specialist expertise, together with tertiary level education and life long continuing professional development.

Members are the Institute's greatest asset, and the Australian Property Institute is committed to maintaining a strong base for the future of the property profession through the broadening of the expertise, and knowledge of the membership.

Integrity

The Membership of the Australian Property Institute is bound by:

- A Code of Ethics and
- Rules of Conduct

APPENDIX 2 SUBMISSION COMMITTEE

Mr Peter Barnes FAPI
Ernst & Young

Mr Matthew Davis FAPI
Commonwealth Bank

Mr James Eager AAPI
Kemp Strang Lawyers
Kennedy Strang Legal Group

Mr Chris Egan AAPI
Frogley Egan Valuers

Mr Stuart Prowse FAPI
Tremain Prowse
Vice President NSW Division

Mr John Sheehan , FAPI (Chair of Submission Committee)
Chair Government Liaison Committee
Immediate Past President NSW Division