"Use It Or Lose It"

A Discussion Paper

1. Why introduce 'Use it or Lose it'

NRAS has always had a version of use it or lose it at the heart of the program. The setting of 'Rounds' with delivery dates, the making of 'offers' of reserved allocations with conditions and the power of withdrawing allocations are all representative of a form of Use it or lose it.

However the early years of the program encountered a myriad of issues, many beyond the control of individual Approved Participant [AP] and developers. These included but were not limited to

- Insufficient pre-launch and early years market education
- The GFC
- Banks not lending [Both GFC and Credit Policy driven decisions]
- Third party systems and knowledge limited [eg land suppliers to builders, investors]
- Long approval times leading to sites lost and reduced confidence
- Regulatory uncertainty [MIS, Charity etc]

The Change Request concept, initially thought of as a low volume 'exceptions' process, became the principal way of managing delivery risk. Certainly in our case, the CR process enabled hundreds of Allocations to be delivered that may not have proceeded. It is arguable that without that level of flexibility NRAS might not be here today.

However, the foundations now in place should enable the NRAS system to be improved, providing better risk management and improving delivery certainty in a way that can enhance the ongoing integrity of the program.

2. Policy Issues

It is very important for those involved in NRAS to understand and assess the factors that can be controlled or influenced and those that are outside the direct control of the Department or Approved Participant. NRAS is not like the Social Housing Stimulus in which Government was the direct entity controlling all funds, specification and delivery arrangements.

NRAS is a policy commitment to stimulate third party resources and market based responses. As such it needs to engage with, risk assess and seek to influence the 'good, bad and ugly' aspects of the market.

The approach to date has clearly come at a price:

- The inability to accurately forecast delivery is now a weakness that is exposed at both the political level and by strong central agencies [treasury]
- The integrity of the approval of tenders can be questioned if it appears that Change Requests [CR] install another [unlike] project. Indeed projects may have been turned down in a submission only to see a CR place an Allocation in the same area or of a similar make up

- The administration of the system, and of large numbers of Change Requests, is more costly than expected, or resources are applied to CR that are needed elsewhere in NRAS
- The 'industry' has developed a culture of 'ownership' of Reserved Allocations that does not necessarily drive performance. Indeed it may drive perverse behaviour like CR fee seeking that can also undermine public confidence.

3. Use It or Lose It- A Commercial Risk Assessment Approach

There are risks that a Use it or Lose It approach can itself undermine commercial sector confidence in NRAS if it badly focussed or designed. For example, if it reduces contract certainty for key parties like the investor and developer/builder or the developers financier. [eg Bank sunset clauses].

How do we substantially strengthen political, administrative and treasury confidence without eroding commercial confidence?

We believe the answer lies in creating a balanced approach to risk management, clearer expectations from the start, and reasonable flexibility within boundaries.

The way Rounds are run and delays have caused major issues and also that Delivery Dates could be better streamed for larger scale projects and tighter for smaller projects.

After resolving the way Rounds are run and the streaming of projects, the normal process needs to reflect the new policy settings:

1. Before Applying:

Ensure the submission Guidance has a prominent section on use it or lose it and ensure all parties to the submission acknowledge the framework

2. Assessment

Greater focus on assessment of delivery risk key items and require applicants to complete a set format covering risk assessment, risk management and contingency.

This should be used as the Risk Monitoring process throughout. [As an example -see NAHC Risk Assessment Form]

3. Offer

Stronger emphasis on Reserved Allocation terms, including how use it or lose it will be triggered and what happens if it is

4. **Performance Monitoring** [Hopefully standardised and electronic]

One standard [combined] national monitoring framework using commercial risk indicators.

Project Reports trigger:

- **Green Light**
- **Amber Light – Action Required [in reasonable timeline]**

- **Red Light – issuing 'Withdrawal Warning' [Set of immediate requirements in firm timeline]**

Evidence Guides need consistency [eg sales contracts or confirmation by authorised entity]. Validity of evidence.

Withdrawing Warning needs to be in format that AP's can provide to their third party partners / suppliers

Commercial Risk Indicators – [for example-in NAHC Risk Assessment Form]

- **Land Status**
- **Development Finance Status**
- **Planning Permit Status**
- **Presales requirements or status**
- **Building Approval permit**
- **Site Works / Civil Works**
- **Building Construction**
- **Handover Stage**
- **Other – of Note [eg Sunset Clause different from RTL – Very important in large scale projects means it needs particular attention]**

Protecting Contracts: This is particularly important if investors have entered contractual agreements. If the Lose It approach is too rigid, it may damage confidence.

I realise there is some discussion of **'Trigger Timelines**" – eg if a Contract on a House and Land isn't settled 8 weeks prior to RTL then withdraw it. I believe this is too simplistic. Often [Nras] Land is purchased from one party and the Builders contract may be down the line.

The Department & Government will have to weigh up competing risks. My experience is that sales are the greatest indicator of certainty, but are obviously not a guarantee.

The risk monitoring assessment might be asking 2 different questions:-

'To what degree of certainty do we know that XYZ dwelling will be delivered'? [At all]

'To what degree of certainty do we know it will meet the RTL date?'

5. Change Requests – 3 potential categories

Change Requests will still be an important instrument, but could be streamlined

A] Minor Change Requests – Allowable by AP to be notified to Department

B] Technical Change Requests - Notified or State OK only - 1 week

C] Substantial Change Request – Delegate. 2 weeks from all relevant info

Decision making has been evolving over the last couple of years. A couple of issues should be considered:

- To what extent is the risk factor one that is outside the AP / developers control

- To what extent have the parties actively sought resolution or discussed alternative proposals
- Have the parties kept the Government reasonably informed through the Monitoring Report process
- What are the consequences of not proceeding with the CR.
- Is the decision reasonably consistent with similar decisions previously made

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