Australian Government
Productivity Commission

Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments

Productivity Commission Draft Research Report
Volume 1

February 2011

This is a draft research report prepared for further public consultation and input.

The Commission will finalise its report after these processes have taken place.

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The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au) or by contacting Media and Publications on (03) 9653 2244 or email: maps@pc.gov.au

Opportunity for further comment

You are invited to examine this draft report and to provide written comments to the Productivity Commission. Written comments should reach the Commission by 31 March 2011. If possible, these should be provided by email and be accompanied by a submission cover sheet. See 'How to Make a Submission' on the web page listed below.

After comments have been received and discussions with interested parties have been held, a final report will be prepared.

The commission will present its final report to Government by the end of April 2011.

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Terms of reference

ASSISTANT TREASURER
SENATOR THE HON NICK SHERRY

26 MAR 2010

Mr Gary Banks AO
Chairman
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear ~~Chairman~~ Gary

2010 TOPICS FOR THE PRODUCTIVITY COMMISSION'S PERFORMANCE BENCHMARKING OF AUSTRALIAN BUSINESS REGULATION

I am writing to you regarding the topics for the Productivity Commission's Performance Benchmarking of Australian Business Regulation in 2010.

This matter was discussed at the Council of Australian Governments' (COAG) Business Regulation and Competition Working Group (BRCWG) meeting of 5 February 2010. It agreed that the Commission be asked to undertake performance benchmarking in 2010 of States and Territories' planning and zoning systems and land development assessments.

The performance benchmarking of States and Territories' planning and zoning systems is to be undertaken consistent with the enclosed terms of reference. The terms of reference have been agreed in consultation between the Commonwealth and the States and Territories, and were specified by COAG at its 7 December 2009 meeting.

I look forward to receiving the reports on this further work.

I have copied this letter to the Minister for Finance and Deregulation and the Minister Assisting the Finance Minister on Deregulation.

Yours sincerely

NICK SHERRY

enc

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12 APR 2010
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PERFORMANCE BENCHMARKING OF STATES AND TERRITORIES' PLANNING AND ZONING SYSTEMS

TERMS OF REFERENCE

The Productivity Commission is requested to undertake a benchmarking study of States and Territories' planning and zoning systems, and report back by December 2010.

Context

Planning systems play an important role in managing the growth of cities. They aim to preserve the environment, provide and coordinate community services and facilities, and promote the orderly and economic use and development of land. The systems serve the valuable purposes of balancing the often competing social, environmental, and economic impacts of a development. Planning systems, and in particular the zoning of land, affect the location, quantity, and use of land for specific activities, but at the same time they can affect competition within local markets. The extent of this impact on competition within local markets varies across States and Territories, and over time.

The Productivity Commission is requested to examine and report on the operations of the States and Territories' planning and zoning systems, particularly as they impact on business compliance costs, competition and the overall efficiency and effectiveness of the functioning of cities. As part of the study, the Commission should report on planning and zoning laws and practices which unjustifiably restrict competition and best practice approaches that support competition, including:

- measures to prevent 'gaming of appeals processes;
- processes in place to maintain adequate supplies of land suitable for a range of activities; and
- ways to eliminate any unnecessary or unjustifiable protections for existing businesses from new and innovative competitors.

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The Commission's report is in two volumes. **This volume 1 contains Opportunity for further comment, Abbreviations and explanations, Overview and Chapters 1 to 12.** Volume 2 contains the Appendices and References.

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Abbreviations and explanations

Abbreviations

ABC	Australian Broadcasting Corporation
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACF	Australian Conservation Foundation
ACT	Australian Capital Territory
ACTPLA	ACT Planning and Land Authority
AEC	Australian Electoral Commission
AFR	Australian Financial Review
AHA	Australian Hotels Association
AHURI	Australian Housing and Urban Research Institute
ALGA	Australian Local Government Association
ANAO	Australia National Audit Office
ANRA	Australian National Retailers Association
ARA	Armadale Redevelopment Authority
ARA	Australian Retailers Association
BAF	Building Australia Fund
BANANA	build absolutely nothing anywhere near anything
BGRA	Bulky Goods Retailers Association
BRCWG	Business Regulation and Competition Working Group
BTRE	Bureau of Transport and Regional Economics
CAL	Canberra Airport Limited
CBA-HIA	Commonwealth Bank of Australia–Housing Industry Association
CBD	Central Business District
CBRE	CB Richard Ellis
CCCLM	Council of Capital City Lord Mayors
CEC	Canberra Estate Consortium

CIV	Community Indicators Victoria
CMC	Crime and Misconduct Commission
COAG	Council of Australian Governments
Cwlth	Commonwealth
DA	Development Assessment
DAC	Development Assessment Commission
DADTA	Durability and Damage Tolerance Assessment
DAF	Development Assessment Forum
DAP	Development Assessment Panel
DCA	Development Consent Authority
DCP	Development Contribution Plan
DEC	Department of Environment and Conservation
DEWHA	Department of the Environment, Water, Heritage and the Arts
DIER	Department of Infrastructure, Energy and Resources
DITRDLG	Department of Infrastructure, Transport, Regional Development and Local Government
DNREAS	Department of Natural Resources, Environment, The Arts and Sport
DoP	Department of Planning
DPCD	Department of Planning and Community Development
DSEWPC	Department of Sustainability, Environment, Water, Population and Communities
eDA	Electronic Development Assessment
eDAIS	Electronic Development Assessment Interoperability Specifications
EES	Environmental Effects Statement
EP&A	Environmental Planning and Assessment
EPA	Environment Protection Agency
EPBC	Environmental Protection and Biodiversity Conservation
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
FNQ	Far North Queensland
FNQIP	Far North Queensland Infrastructure Plan

FTE	Full Time Equivalent
GAA	Growth Areas Authority
GAIC	Growth Areas Infrastructure Contribution
GBE	Government Business Enterprise
GFA	Gross Floor Area
GLO	Government Land Organisation
GPCC	Government Planning and Coordination Committee
GST	Goods and Services Tax
HAF	Housing Affordability Fund
HELSP	Housing and Employment Land Supply Program
HIA	Housing Industry Association
ICAC	Independent Commission Against Corruption
ICC	Infrastructure Coordination Committee
ICU	Infrastructure Contribution Unit
IPART	Independent Pricing and Regulatory Tribunal
IT	Information Technology
JRPP	Joint Regional Planning Panel
LC	Local Council
LDA	Land Development Agency
LDC	Land Development Corporation
LEP	Local Environmental Plan
LGA	Local Government Area
LGPMC	Local Government and Planning Ministers Council
LHSCTF	Land and Housing Supply Coordination Task Force
LMC	Land Management Corporation
MCP	Metropolitan Centres Policy
MDP	Metropolitan Development Program
NARGA	National Association of Retail Grocers Australia
NCA	National Capital Authority
NES	National Environmental Significance
NHSC	National Housing Supply Council
NIMBY	not in my backyard
NOTE	not over there either

OECD	Organisation for Economic Co-operation and Development
OHS	Occupational Health and Safety
OSCAR	Organisation Sunshine Coast Association of Residents
PAC	Planning Assessment Commission
PAP	Precinct Acceleration Protocol
PC	Productivity Commission
PCA	Property Council of Australia
PIA	Planning Institute of Australia
PIP	Priority Infrastructure Plan
PIRSA	Department of Primary Industries and Resources of South Australia
PSP	Precinct Structure Plan
QPP	Queensland Planning Provision
RCC	Regional Coordination Committee
REIA	Real Estate Institute of Australia
RFS	Rural Fire Service
RICS	regulated infrastructure charges schedule
RMF	Regional Management Framework
RMPAT	Resource Management and Planning Appeal Tribunal
ROL	Reconfiguration of lots
RPDC	Resource Planning and Development Commission
RSS	Regional Spatial Strategies
SAT	State Administrative Tribunal
SCCA	Shopping Centre Council of Australia
SEPP	State Environmental Planning Policy
SEQ	South East Queensland
SEQIPP	South East Queensland Infrastructure Plan and Program
SIC	State Infrastructure Contribution
SLA	Statistical Local Area
SMDA	Sydney Metropolitan Development Authority
SMH	Sydney Morning Herald
SRT	Swan River Trust
TAMS	Territory and Municipal Services

TTF	Tourism and Transport Forum
UDIA	Urban Development Institute of Australia
UK	United Kingdom
ULDA	Urban Land Development Authority
USA	United States of America
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victorian Planning Provisions
WAEPA	Western Australian Environmental Protection Authority
WALGA	Western Australian Local Government Association
WAPC	Western Australian Planning Commission

Explanations

Requests for further information	***Information requests in the body of the report are highlighted using bold italics.***
Requests for comment on issues	***Issues to which the Commission draws attention in order for interested parties to comment are highlighted using bold italics.***

OVERVIEW

Key points

- All three levels of government are involved in planning, zoning and development assessment systems. Planning varies greatly between the states and territories — but all suffer from 'objectives overload' and those objectives have been growing.
- Local council success in delivering timely and consistent decisions depends on the resources available for planning functions as well as the efficiency of processes (such as implementation of risk-based and electronic development assessments).
- Effectiveness of local councils is also significantly influenced by the regulatory environment established by state governments, in particular the clarity of both strategic plans and the coherence of the suite of planning laws and regulations.
- De facto and ad hoc policy-making tends to occur at the council level when city strategic plans have not resolved conflicting policy objectives.
- Significant differences in state and territory planning systems include: how protected lands, urban boundaries, and activity centres are defined and planned; the degree of detail of infrastructure plans and how well these are linked with other land use plans.
- Significant differences in planning approaches in the states and territories also impact on:
  - land supply, such as the time it takes to complete rezoning and structure planning (from one to six years)
  - business costs, such as the time taken to determine development applications (average of 34 to 124 days) and the charges to developers for infrastructure (between $3700–$37 000 per greenfield lot)
  - competition, including the degree to which zones, overlays and codes are prescriptive and exclusionary, the degree to which impacts on other businesses and the viability of centres are considered when assessing applications from new businesses, and the ease with which competitors can 'game' the planning system through use of objections and appeals
  - both the perceptions and outcomes for accountability, transparency and governance (such as the extent of third party appeals and community involvement in decision making).
- Leading practices to improve planning, zoning and assessment include:
  - early resolution of land use and coordination issues using strategic plans
  - engaging the community fully and early
  - broader and simplified zones
  - rational and transparent allocation rules for infrastructure costs
  - improving development assessment criteria and processes
  - tighter disciplines on timeframes
  - better transparency and accountability.

Overview

In February 2006, the Council of Australian Governments (COAG) agreed to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden across all levels of government. In particular, governments have indicated that they want to identify unnecessary compliance costs, enhance regulatory consistency across jurisdictions and reduce regulatory duplication and overlap. COAG's concern is with written regulation and also with the role and operation of regulatory bodies.

Purpose and scope of the study

The purpose of this study is to benchmark the states' and territories' planning and zoning systems and their land development assessment (DA) processes.

The Commission was asked to go beyond benchmarking business compliance costs and to include an examination of the impact of the planning and zoning systems on competition and on the efficiency and effectiveness of the functioning of cities. Unlike previous benchmarking studies, the Commission was particularly asked to report on laws and practices which unjustifiably restrict competition and to identify best practice approaches that support competition, including but not limited to:

- measures to prevent 'gaming' of appeals
- processes to maintain adequate supplies of land for a range of activities
- ways to eliminate any unnecessary or unjustifiable protections for existing businesses from new and innovative competitors.

The Commonwealth, the states and territories and local governments all influence planning, zoning and development assessment and so are all examined in this report.

The coverage of the study consists of the major and regional cities over 100 000 in population as well as at least two cities in each of the smaller jurisdictions — 24 cities of varying sizes.[1] These cities cover 175 local council areas (see list of

1 Note that various definitions of cities are used by different reporting agencies in Australia. The Commission used the city strategic plan as the definitional base of the city – so, for example, Blue Mountains City is included by Sydney, Mandurah is included in the Perth plan, and so on.

Councils and cities in Appendix A). However, for much of the analysis, the focus is on comparing the states and territories and, in some cases, comparing only the capital cities because of the very limited information available for other cities.

Indeed, due to a lack of comparable data generally across jurisdictions, the Commission conducted four separate major surveys of:

- each state and territory planning agency
- the local councils in the cities being examined
- businesses involved in developments or with regular interactions with the planning system
- communities across Australia within the local council areas covered in this review.

Responses to these surveys continue to be received and will be fully incorporated into the final report. In addition, a survey of 16 greenfield developers (who provided information on 29 individual development projects) was carried out. Details of the surveys are contained in Appendix B.

This study is intended to: identify among all governments in Australia those planning policies and practices that have proven particularly successful; indicate areas where further reform could be most beneficial; and provide a 2009-10 baseline for any future assessment of the performance of planning systems.

Big challenges for governments

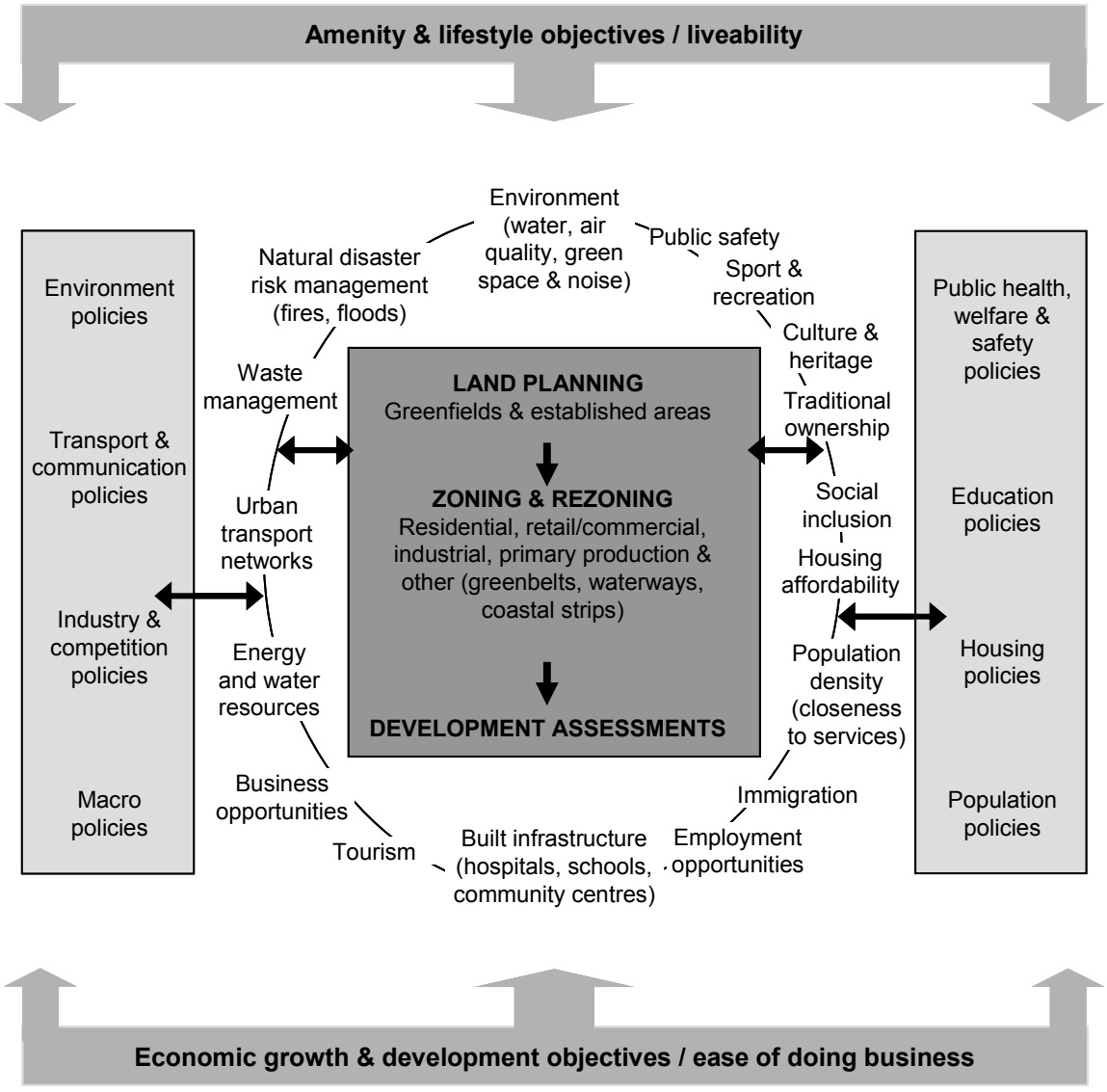
By its very nature, the task of planning and zoning land to enable those uses which will optimise the welfare of communities and the nation is complicated and is becoming more so. There are a large number of possible land uses and a large number of policy agendas which impact on planning and zoning considerations (figure 1).

Whether governments or the private sector or a mix of both determine the uses to which land is allocated, the inherently challenging features of this task include: positive and negative impacts on others (such as on neighbourhood character, traffic congestion, or air and sound pollution); insufficient or 'asymmetric' information; future generations not being part of decisions that ultimately will impact on them; and conflicting preferred outcomes for different stakeholders — with often incompatible views on community objectives and high costs of attempting to reach community consensus.

Over time, the complexity of the task has grown because of the need to address more pressing or new problems or changes in community preferences or demands.

Broadly, these include: significant population growth; an ageing population and other demographic change; increasing congestion and delays in getting to work and moving goods and services around cities; ensuring adequate energy and water supplies; adapting to climate change; higher aspirations for liveable cities including green spaces and preserving natural and historical heritage; and the growing expectation of residents that they should be consulted on changes to their neighbourhood. Most recently the wide spread flooding of Queensland, and parts of Victoria to unprecedented levels, are focusing attention on the adequacy (and enforcement) of zones in designating areas at risk of floods. Prior to this, the Victorian bush fires drew similar attention to the role of land use planning in bushfire prone areas.

Figure 1 **Some objectives and policy drivers of urban efficiency**



While population growth rates are generally high, the rates vary considerably across cities and councils. This indicates the pressures on some governments to accommodate population growth have also been higher. Between 2001 and 2009, Sydney's population grew by 9 per cent and Melbourne's by 15 per cent. Perth and Brisbane grew the fastest both at about 20 per cent.

Planning systems are characterised by 'objectives overload' including unresolved conflicting objectives, long time lags and difficult-to-correct planning mistakes. The planning systems have also been subject to rolling reforms and changing plans which are often not fully implemented before being replaced with further reforms. As these systems become progressively burdened by more and diverse objectives, the real risk is of heightened compliance costs, and a deteriorating ability to achieve any of the systems' objectives despite reform efforts directed at improvements.

How well are our cities functioning?

In looking at how well our cities are functioning, it is important not to attribute all outcomes to planning. Good planning can create the environment for efficient and effective cities but the outcome is also dependent on the market, governments' investment in infrastructure, and other government policies and actions (such as immigration policy and delivery of services). Some factors, such as the weather and geology, are very important aspects of city liveability but clearly are well beyond the capacity of planning systems to influence. Some other factors, such as safety, are very important to people and at best moderately influenced by planning, while other factors, such as housing availability and provision of transport, can be significantly influenced by planning and zoning. Among state and territory governments there is wide agreement that the factors most able to be influenced by planning are:

- managing greenfield development
- accommodating population growth
- transition to higher population densities
- protecting biodiversity
- providing diverse/appropriate housing.

There are not many aspects of city functioning for which any government thinks planning has no impact. For example, most jurisdictions consider planning has a moderate (or in one case major) impact on reducing traffic congestion and on the provision of new infrastructure; and all consider planning impacts on providing affordable housing though views differ over the extent of the influence (table 1).

Table 1 **The effect of the planning system on city functioning**

No effect ☐, minor effect ⬚, moderate effect ▨ and major effect ■

Challenge	*NSW*	*Vic.*	*Qld.*	*WA*	*SA.*	*Tas.*	*NT*	*ACT*
Maintaining a vibrant city centre	▨	■	▨	▨	■		▨	▨
Securing adequate urban water		▨		▨			▨	
Improving mobility within the city	▨	■	▨	▨			▨	▨
Attracting skilled labour	▨							
Promoting healthy lifestyles	▨	■		▨		b	▨	▨
Reduce socio-economic disparities	▨	■		▨		b		▨
Managing 'greenfield' development	■	■	■	■	■	▨	■	■
Accommodating population growth	■	■	■	■	■		■	■
Reducing traffic congestion	▨	▨	▨	▨	▨			■
Addressing crime and violence		▨	▨	▨				
Providing new infrastructure		■	▨	▨	▨	▨	▨	▨
Efficient waste management		▨					▨	
Adapting to climate change	■	▨	▨	▨		▨	▨	■
Connectedness with regional centres	▨	■	■	▨			▨	▨
Improving services for an ageing pop.	▨	▨	■	▨	▨			▨
Maintaining existing infrastructure		▨	▨					▨
Providing affordable housing	■	▨	▨		■			▨
Transition to higher pop. densities	■	■	■	■	■	▨	■	■
Protecting biodiversity	■	■	■	▨	▨		■	■
Providing diverse/appropriate housing	■	■	■	■	■	▨		■
Improving air quality	▨	▨	▨	▨	▨			▨
Maintaining social cohesion	▨	▨		▨				▨
Attracting new industries	▨	▨	▨	▨				▨

a Jurisdictions were asked: "To what extent can government use the planning, zoning and DA system to positively influence the following challenges?" **b** The question was not answered.

Source: State/territory agency survey 2010 conducted by the Productivity Commission (unpublished).

There are many different liveability surveys, for various purposes with varying results, conducted in Australia and internationally. The most recent survey (Auspoll 2011) of about 4000 people in Australia, found relatively low liveability scores for all capital cities — no capital city achieved much more than 60/100 which is low in comparison with other indicators (table 2).

In assessing the impact of planning, zoning and development assessment on city outcomes, it is also important to allow that some outcomes are the result of planning decisions made many years ago and to this extent do not reflect fully on current

planning systems. For example, transport corridors would have had to have been set aside long ago to be making a contribution now to ameliorating city congestion. This indicates how important it is to plan well since some decisions influence the outcomes of city liveability for a very long time. While there are no agreed international or national indicators for city liveability, two elements feature prominently in almost all of these measures: housing affordability and traffic congestion.

Table 2 **Some indicators of capital city liveability**

Benchmark	*Sydney*	*Melbourne*	*Brisbane*	*Perth*	*Adelaide*	*Hobart*	*Canberra*	*Darwin*
Liveability score for each city[a]	55.1	60.9	60.2	60.6	63.4	60.5	62.3	55.8
Housing affordability of cities – **house price to earnings ratio** in 2009[b]	7.7	6.5	6.0	6.3	6.2	4.8	6.2	6.2
Increase in median house price from 2001 to 2010 – **per cent**	88	126	195	220	155	209	162	227
Residents who agree their city has good road transport and minimal traffic congestion – **per cent**	13	22	21	30	44	44	64	72
Residents who believe their city has good public transport – **per cent**	32	37	45	42	42	29	24	36

a This score was constructed by Auspoll (2011) using 17 liveability measures such as safety, climate, public transport, cultural entertainment, quality of schooling, attractiveness of the natural environment and affordability of housing. **b** These figures come from Bank West's *Key Worker Housing Affordability Report* (2009). The Bank measures affordability as the ratio of house prices to earnings. Earnings are average earnings by state of nurses, teachers, police officers, fire fighters and ambulance officers from the 2008 ABS Employee Earnings and Hours survey. House prices are annual median house price sourced from Residex.

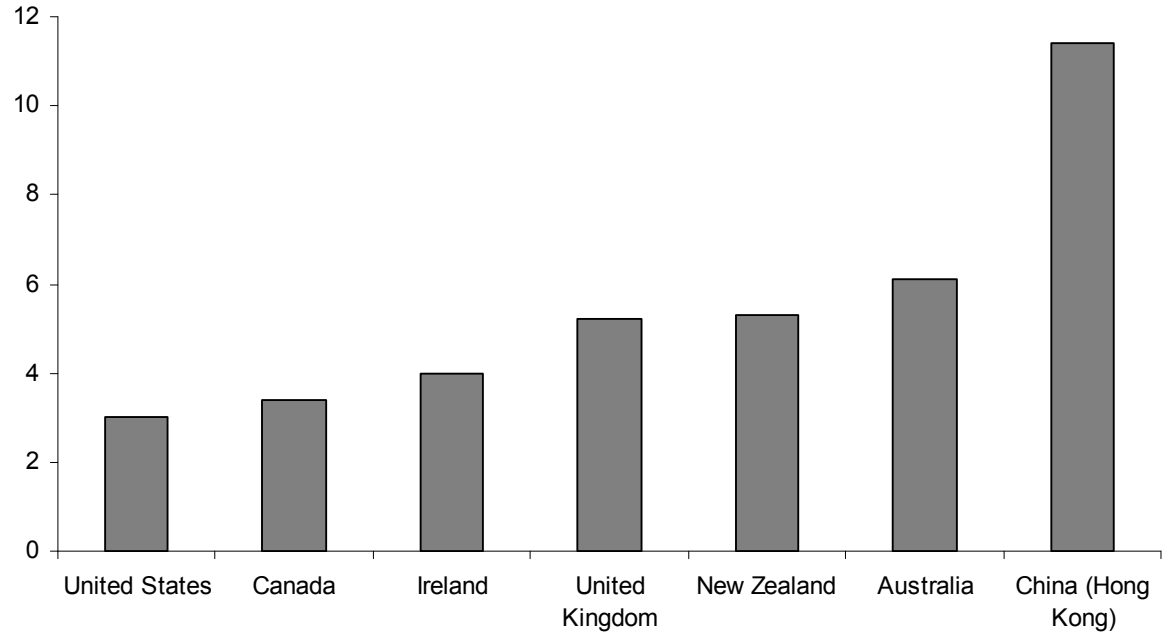
Source: In addition to those referenced in footnotes **a** and **b:** Rpdata provided unpublished data to the Commission.

Internationally, Australia performs poorly on housing affordability (figure 2). Within Australia, among the capital cities, Sydney is the least affordable and Hobart is the most affordable (table 2) although outcomes for affordability are affected by a number of factors, not just planning. However, between 2001 and 2010, Sydney's median house price grew the least of all 24 cities benchmarked, while median house prices in Hobart and Darwin were among those that rose the most, being over three times higher in 2010 than 2001. Within cities, there is great variability in prices.

Congestion in our major cities has also been increasing. It has been predicted by the Bureau of Transport and Regional Economics (2007) that the avoidable costs of

congestion in capital cities, unless addressed, will increase to a projected median of $20 billion in 2020, including increasingly longer times in getting to work, accessing services and moving goods around cities. It is the two territories which do best in terms of residents' perceptions of traffic congestion and road networks, though both do poorly with regard to the perceived quality of public transport. Sydney performs poorly on both public transport and traffic congestion while Brisbane rates as the best on public transport but second worst on road networks and congestion (table 2) (Auspoll, 2011, pp. 25-26).

Figure 2 **Housing affordability, national median, 2010[a,b]**
Demographia nations surveyed



a The median multiple is calculated as the median house price divided by gross annual median household income. **b** The data does not take into account international differences which may explain differences in affordability such as construction costs, financial systems, community preferences, land area and also the impact of other factors such as the varied impact on the global financial crisis on different housing markets and the availability of finance.

Data source: Demographia (2011).

The regulatory framework

The regulations and agencies involved in planning, zoning and development assessments are among the most complex regulatory regimes operating in Australia.

This regulatory system is not like most other regimes which have a clearer delineation between policy making, regulation writing and then enforcement. Because some important policy issues are not fully resolved at the strategic planning stage, de facto policy-making is occurring at the development assessment

end. In addition to new regulations to address past mistakes and evolving issues, the planning and zoning regime also has a number of 'special' agencies and processes set up to by-pass the normal path to development approval — often in an attempt to get speedier or more consistent decisions from the system.

Given that the state and territory planning and zoning systems have evolved separately, there are many significant differences in their regulatory frameworks. Examples include:

- while four jurisdictions have passed new planning Acts in the past five years, the New South Wales planning Act (1979) has been subject to substantial amendment without being comprehensively updated — there are currently 139 amending Acts (not including amending regulations)
- every jurisdiction except Tasmania has a metropolitan strategic plan for its capital city — thus users of the system in Hobart encounter the diverse planning approaches of different councils, none of which operate in line with any overall city guidance
- the number and structure of planning instruments vary greatly across the jurisdictions — Western Australia seems the most complex with eight levels in the hierarchy of planning instruments.[2]

While each state and territory has evolved different arrangements for planning and zoning decision-making, most have complex systems of regulatory bodies and processes which are difficult for businesses and citizens to navigate. They create uncertainty and transparency problems for users and regulators and significant compliance burdens, especially for businesses which operate across state and territory boundaries. This complexity suggests the regulatory systems are in need of further reform.

Selected performance comparisons

Given the extent of differences, it has proven a challenge to compare the planning systems of the states and territories and thus quantitative comparisons must be heavily qualified. As well, the individual benchmarking results, which are useful in themselves, need sophisticated interpretation. It is often the interrelationship

[2] Western Australia has nine plans — State planning strategy; Local planning strategies; Regional, district and local structure plans; Regional planning schemes; Local planning schemes; State planning policies; Development control policies; Planning bulletins; and Local planning policies — which are required to be consistent across eight levels. In addition, it has numerous other plans, and limited explanation is provided of how they fit together.

between a number of benchmarks which reflects system performance. For example, while a lengthier DA approval time may at face value seem to be less efficient, where this reflects a more effective community engagement process or comprehensive referral process, the end result may be greater community support and preferred overall outcome (notwithstanding the higher consultation costs).

The Commission has not attempted to construct an overall 'league table' of state and territory performance but rather intends that the diverse benchmarks serve as useful pointers to where reform efforts may require concentrated attention.

The supply of land

Each jurisdiction takes a very different approach to planning the supply of land for its capital city, most notably in how each defines and plans urban boundaries, activity centres and protected lands (such as conservation areas).

The supply of land for residential uses is monitored and analysed the most by all jurisdictions, with industrial land receiving less attention and commercial land the least.

The capital cities have set different targets for infill and greenfield development. For example, Sydney is aiming for 60 to 70 per cent of its residential developments to be infill by 2031, while South-East Queensland is targeting 50 per cent by the same year. Higher infill targets generally foreshadow a more intense use of existing zoned land.

Adelaide and Perth have set the highest targets for the amount of greenfield land to be available for development (both require 25 years supply of land for future development and 15 years supply of land zoned for urban uses).

A sample of 20 subdivision developments in greenfield areas across Australia's five largest cities reveals that up to 10 years may pass from the time a developable parcel of land is assembled and the subdivision of that land is completed (timeframes in table 3 include the assembly of land)[3] — all this must occur before the construction of houses or commercial/industrial buildings can begin.

The most common causes of delays and extended timeframes in land supply processes are: rezoning/planning scheme amendment processes; structure planning processes; and dealing with community concerns and objections. The long time taken to complete the rezoning and structure planning processes (one to six years) is

3 The process of assembling a developable parcel of land can take developers a number of years.

not surprising given the complexity of each process and that, if these processes are done well, this should reduce delays in the future and have a positive impact on planning.[4] No jurisdictions have statutory time limits for processes.

Table 3 **Some performance benchmarks on the supply of land**

Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Elapsed time for land subdivision projects[a] — **months**	up to 119	30–60 plus	14–172	36–120	24–133	na	na	na
Housing shortages — gap between 'underlying demand' and supply[b] in number of dwellings[c] per thousand people as at June 2009	8.1	4.2	12.7	13.5	0.1	2.0	1.4	44.7

a This measures the time between the initial assembly of land parcels and a subdivision being approved and completed. **b** This was estimated by the National Housing Supply Council by determining the dwelling needs of the population, given assumptions about the number of persons in each dwelling, compared to the supply of dwellings. **c** A dwelling is a self-contained suite of rooms, including cooking and bathing facilities, intended for long-term residential use. Units within buildings offering institutional care, such as hospitals, or temporary accommodation such as motels, hostels and holiday apartments, are not considered to be dwellings.

Source: Commission analysis of subdivision projects; National Housing Supply Council (2010).

While South East Queensland and Perth in 2009-10 were among the better performing cities in terms of supplies of land (relative to population) zoned for residential use and land with subdivision approval, Queensland and Western Australia appear to have significant housing shortfalls (see table 3) associated with the more rapid population growth they have been experiencing.

State and territory government land organisations (GLOs) hold significant 'development inventories'. On the limited data available to the Commission, it appears GLOs complete fewer lots/dwellings each year compared to those private sector developers with comparable inventories (even after allowing for differences in the operations and objectives of government developers), although they often tend to take on the more difficult and time-consuming projects.

Infrastructure

Sound planning for major infrastructure — such as roads and rail, water and energy delivery systems — are fundamental to the outcomes for cities. The regimes in Victoria, Queensland and South Australia have a number of characteristics that

4 The processes are not without benefits. For example, structure plans are an important tool for facilitating the coordinated delivery of infrastructure into new development areas.

facilitate delivery of infrastructure, including: detailed infrastructure plans with a level of committed funding from the state budget and committed delivery timeframes (see table 4); and scope to apply alternative planning processes to infrastructure projects.

There is little consistency across jurisdictions in the type or the size of contribution that developers may be called on to fund. Further, it is difficult to discern the basis on which decisions are made as to how much infrastructure developers should contribute to their developments, what level of charges should be borne by the private sector and what infrastructure government should provide.

Developer contributions are applied and collected in different ways across Australia and may include levies (calculated either per lot, hectare or dwelling or as a proportion of development value depending on the location and type of development) or impact fees (which recognise the actual impact of the proposal on particular local infrastructure or amenities).

Table 4 **Some performance benchmarks on infrastructure**

Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Major infrastructure, extent addressed in budget forward estimates	Low	Med	High	Med	Med+	Very Low	Med	Very Low
Infrastructure charges $ per dwelling, 2009-10								
Infill	15 000	1 609	25 000	5 000	5 577	na	na	na
Greenfield	37 300	11 000	27 000	20 000	3 693	na	na	na

Source: KPMG (2010); Urbis (2010).

In 2009-10, New South Wales had the highest residential infrastructure charges imposed on developers at an average of $37 300 per lot for greenfield developments, which also covered the broadest range of infrastructure items. Queensland's charges have risen significantly to be the second highest in 2009-2010 (at about $27 000 per greenfield lot). South Australia and Tasmania charged for the narrowest range of infrastructure items and South Australia had the lowest charges though unusually the average infill charge ($5577) was higher than the average greenfield charge ($3693) (see table 4).

In 2009-10, New South Wales ($550 000 per hectare) and Queensland ($340 000 per hectare) had the highest infrastructure charges applying to commercial and industrial land. Victoria had the lowest charges ($175 000 per hectare).

Business compliance costs

The main compliance costs imposed by planning systems involve: requirements to prepare, submit and provide supporting material for planning scheme amendments or development applications; meeting specified development controls; paying fees and charges; and holding costs associated with the time taken to obtain planning approval.

Single residential developments that comply with prescribed standards and do not trigger special conditions in planning schemes are treated fairly uniformly across most jurisdictions. Such developments did not require planning approval or attract a planning fee in Victoria, Queensland, Western Australia, the ACT or the Northern Territory in 2009-10. But in New South Wales, normal development assessment processes, and an associated planning fee, were still in place in a majority of councils during 2009-10.

Approval for retail/commercial or industrial facilities cost considerably more than residential developments. Victoria was the least expensive jurisdiction to apply for planning approval for a mid-size retail or industrial development in 2009-10. Charges were considerably higher in the ACT, New South Wales and Queensland.

Costs of development include the preparation of an application for planning approval, a process which (depending on the nature and complexity of the proposal) can involve considerable in-house staff costs, and an extensive range of impact and consulting studies, all of which must comply with specific submission standards.

Approval timeframes (and the associated impact on holding costs) are a major concern for developer interests. They can reflect a multiplicity of factors such as the scope and nature of approval requirements, the quality of the information developers provide, referrals, public consultation, appeals and the efficiency of development assessment staff.

The figures produced in table 5, are indicative only and based on estimates provided by councils and planning agencies without taking account of differences in proportions of residential, industrial and commercial DAs or the scale of the proposed developments. For those jurisdictions where comprehensive approvals data was available, Victoria's average approval time (124 days) and Queensland's (96 days) were the highest. The Victorian figure may in part be explained by the much higher proportion of DAs being referred to external agencies (27 per cent); and Queensland's figures do not include the easier, lower risk assessments which are conducted by private certifiers or are self-assessed. New South Wales' times were about half that of Victoria in 2009-10 (see table 5). The ACT had the fastest approval times at around 34 days on average.

Table 5 **Selected performance benchmarks for compliance costs**

Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Average elapsed time for DA approval, **days**, 2009-10 [a]	69	124	96	31	23	35	34	56
Minimum approval fee -								
Single residential dwelling	1277	0	0	0	50	300	0	0
Commercial development	4365	815	2900	2700	2390	1170	5933	870
Industrial development	4037	815	4107	2220	2140	1020	5130	870

[a] Figures for WA, SA and Tas based on a small number of council responses. Figures for other jurisdictions relate to all development assessments by the reference group.

Source: NSW Planning, Victorian Department of Planning and Community Development, Queensland Department of Infrastructure and Planning, PC local council survey 2010 (unpublished), PC estimates; state and territory planning fee regulations and Brisbane City Council website.

Competition

A number of restrictions on competition have been identified. Many of these are imposed to serve other important objectives, such as maintaining or increasing the viability and vibrancy of existing centres, improving the amenity of developments for the community, releasing land at a rate to achieve 'orderly' or 'desirable' development, and maintaining the existing character and structure of communities (table 6). There is little to indicate that impacts on competition, or an analysis of the benefits of the desired outcome versus the costs of restricted competition, were considered in establishing these regulations.

Rather than working with markets to allocate land uses, zone classifications are extremely complicated, often prescriptive and exclusionary. Other things being equal, the more zones in any council area are indicative of competition being more limited (table 6). However, the situation is further complicated by overlays, area 'codes', restrictions on floor areas, plot ratios, building heights, street frontage and setbacks, car parking requirements, etc. While all these measures make it clear what is expected of prospective developers, the prescriptive restrictions also make it hard for some innovative businesses to find suitable land and thus enter the market.

Businesses have responded to highly prescriptive and limiting zoning by pushing for special consideration of their business type and/or attempting to locate in out-of centre locations and industrial zones which present fewer operational restrictions for them. The lack of large sites zoned for business in many centres further compounds the problem. In those planning and zoning systems which are not flexible to a range of business operating models, business-specific modifications have emerged. These

'fixes' to the planning and zoning systems produce uncertainty, are inefficient and create an anti-competitive unlevel playing field. New South Wales appears more susceptible to this approach than the other jurisdictions.

Table 6 **Some performance benchmarks for competition**

Competition Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Average **number** zones within a council area, 2009-10	20	17	40	12	25	17	23	32
Impacts on existing businesses (**per cent** of councils for which this is a consideration)	54	44	60	54	85	33	0	0
Viability of nearby centre (**per cent** of councils for which this is a consideration)	91	89	100	92	100	83	100	0

Source: Analysis of local council and territory plans; PC local council survey 2010 (unpublished).

While most governments recognise that limits on competition are not desirable for economic development, the vast majority (but to a lesser extent in Victoria, Tasmania and the Northern Territory) nevertheless take into account impacts of proposed developments on the viability of existing businesses and/or activity centres. While it is difficult to make an assessment of the impacts on existing centres without also measuring the likely impacts on the key existing businesses within those centres, this distinction is a necessary one if planning objectives for viable centres are to be progressed with minimal adverse impacts on competition.

In most jurisdictions, there is considerable scope for competitors of a proposed development to use planning principles as a basis for objecting to developments and/or appealing development decisions. Prescriptive zoning; alternative development assessment paths (including ministerial call-ins); and inconsistency in decision making and in the application of planning principles all provide incentives for business to game the system.

Governance

The planning resources and outcomes of local councils, key aspects of governance, also differed across jurisdictions:

- on a per capita basis, Queensland councils appeared to be the best resourced, having the largest number of staff and spending twice as much as councils in Victoria, Western Australia and Tasmania (table 7)

- councils in South Australia and Queensland respectively incurred the lowest and highest expenditures per development assessment and approved the largest and smallest number of development assessments per FTE staff. These results probably reflect differences between the two states. South Australia requires every application to be assessed by councils, while Queensland councils have adopted a sophisticated risk-based approach to development assessment whereby fewer development applications require assessment against a planning scheme. Councils in other states fall in between these approaches, allocating more straightforward applications to fast tracks.

Jurisdictions also differed with respect to their accountability mechanisms, such as:

- the availability of appeals including third party appeals — Victoria has the greatest access to appeals (table 7)
- whether comparable data on council outcomes is published — New South Wales, Victoria and Queensland publish detailed outcomes data and the ACT publishes aggregate outcomes data
- the degree of access to rules and regulations such as information on zones — all state councils and territory agencies publish this but Queensland's and New South Wales' rules are the most difficult to find and use, while the councils in Victoria and South Australia format this information consistently and clearly so that it is easier to locate.

Jurisdictions differed in the ways they interact with the community (figure 3). While active community participation, as self-reported in surveys of jurisdictional planning agencies, is a motivation of some state agencies in New South Wales, Victoria and Tasmania, other state agencies are more motivated to disseminate information and consult and thus assume a more reactive role for the community.[5]

Surveys of local governments, on the other hand, generally indicate that councils place more emphasis on empowering their communities and less emphasis on simply minimising the potential for community opposition. In general, city councils in South Australia appear to be most likely to have community interaction which is motivated by a desire for active participation of the community.

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5 Those government agencies which interact with the community on planning, zoning and DA, were asked which of the following motivations were important:
- discover community preferences
- help the community understand the implications for their local area of proposed developments at a regional or metropolitan level
- empower the community in the decision-making process
- ensure community concerns are considered
- minimise the potential for community opposition and avoid delays.

Table 7 **Some benchmarks on governance**

Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Average planning expenditure by local councils, $ per DA, 2009-10[a]	3 022	2 650	10 477	1 613	900	1 775	**b**	**b**
Local council DAs per 1000 population [a]	10	8	4	10	32	11	**b**	**b**
Average local council planning expenditure per 1000 population, $'000, 2009-10	29	22	39	16	29	21	**b**	**b**
Average local council FTE planning staff per 10000 population	2.5	2.1	3.0	1.7	2.5	2.0	**b**	**b**
Local council DAs per FTE planning staff [a]	40	40	12	59	130	69	**b**	**b**
Third party appeals	limited	allowed	limited	none	limited	allowed	limited	limited
Respondents who believe their state/territory government performs well in factors affecting housing[c] – per cent	40	52	50	51	54	52	51	36
Respondents who believe their state/territory government plans and manages urban growth poorly – per cent	59	40	46	40	40	44	37	57

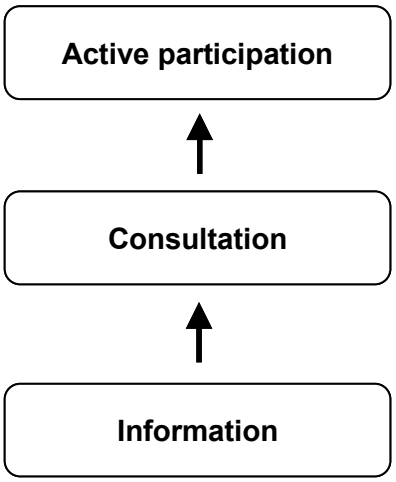
[a] These comparisons do not take into account the mix of different types of DAs. [b] Not applicable. [c] This performance measure is derived by averaging residents' assessment of performance on four factors: planning and managing urban growth; releasing land for new homes; making houses more affordable; and taxing fairly the buying and selling of property.

Source: PC local council survey 2010 (unpublished); state and territory planning legislation; Auspoll 2011.

Consultation during the development of state level planning instruments is a legislative requirement in Queensland (consistent with the Local Government and Planning Ministerial Council agreed best practices) and occurs at the discretion of the Minister and/or planning department in other jurisdictions.

While community engagement at the strategic planning stage is crucial, not only for improved outcomes but also to improve the perceived openness and fairness of the decision processes, this does not mean that this will resolve most of the specific concerns of individuals or community groups who oppose a particular development 'on their doorstep'. Many community members will not engage with the planning process at higher levels and will only focus on plans that directly affect them or when a proposal is sufficiently concrete to enable its potential impact to be recognised — often at the specific development application stage. This does not reduce the case for early community engagement but indicates that good practice requires significant engagement through all stages.

Figure 3 **Levels of community interaction**[a]



A relation based on *partnership* with government in which the community actively engages in planning processes. It acknowledges a role for the community in proposing options and shaping dialogue. Responsibility for final decisions and policy rests with government.
eg: community working groups/panels; community referendums

A *two-way relation* in which the community provides feedback on planning issues defined by the government. Provision of information to the community on these issues is required.
eg: comments on draft planning instruments; public opinion surveys

A *one-way relation* in which government produces and delivers information for use by the community. It covers both passive access to information upon demand by the community and active measures by government to disseminate information to the community.
eg: public access to applications & plans; websites.

[a] Arnstein (1969) describes a similar structure of citizen participation with a ladder of eight steps that cover the spectrum from non-participation of citizens to token consultation to citizen power.

Data sources: Based on OECD (2001) and Queensland Department of Communities (2005).

While many other factors are material in influencing the nature of co-operative arrangements between states and councils — such as the size of councils, the ways in which state priorities are communicated and implemented, measures and processes used to evaluate council performance and political orientation — better relationships are more likely to deliver the overarching state goals in a more timely and effective way. While these relationships appear to be quite difficult in all the states (the ACT and the Northern Territory are not relevant in this context), New South Wales particularly appears to have difficulty in establishing cooperative state-council relations, while Western Australia particularly appears to have established the most cooperative relationships between state and councils.

State and territory referrals

The jurisdictions have different bases for how referrals to specialist government agencies, such as environmental or heritage protection authorities, are triggered. The nature and number of the legal instruments containing the referral provisions also differ. In New South Wales over 220 local and state statutory instruments provide the bases for referrals. In contrast, all of South Australia's referral requirements are contained in one location (its planning legislation).

The number of departments/agencies to which referrals are made varies greatly across the jurisdictions. South Australia has the most referral departments/agencies

(19), whereas Tasmania (2 departments/agencies) and the Northern Territory (1 department) have the fewest.

Jurisdictions, such as New South Wales and Queensland, which take an 'integrated approach' to their planning systems, typically require referral of a broader range of matters compared to other jurisdictions.

Common to most jurisdictions is the requirement to refer a development application under two broad categories:

- *prescribed matters* — where the development has an effect on, or is near to nominated 'prescribed matters', such as heritage areas and occupational health and safety
- *prescribed actions and activities* — where the development site will ultimately be used for a prescribed action or activity, or one the actions or activities will occur in completing the development, such as abrasive blasting, alcohol production and dredging.

Requirements vary across the jurisdictions. For example, reconfiguring a lot within 100 metres of an electrical substation is a prescribed matter and requires a referral in Queensland, but not in South Australia. In contrast, the construction of a substation is a prescribed activity and requires referral in South Australia, but not in Queensland.

Jurisdictions, such as New South Wales and Queensland, which take an 'integrated approach' to their planning systems, typically have a broader range of prescribed matters (table 8) requiring referral with 20 matters in New South Wales and 14 in Queensland, compared to: 10 matters in South Australia; 7 in Victoria; 2 in both Tasmania and the Northern Territory; and 1 in Western Australia.

Of those jurisdictions requiring the referral of prescribed actions and activities, Queensland prescribes 55 such actions and activities, New South Wales 44, Victoria 37, South Australia 36 and Tasmania 25 (table 8). The jurisdictions differ in the thresholds for these activities, type of threshold, and actions for which referral is required.

New South Wales, Victoria, Queensland, South Australia and the ACT all have established but different timeframes in which referral departments/agencies must respond to referrals. The ACT is the only jurisdiction not to allow referral departments/agencies to 'stop the clock' and deems that the referral department/agency supports an application if no response is received within the statutory timeframe. In Queensland, if a referral agency does not provide a response to a referral within the statutory timeframe, the person assessing the development

application may proceed with the assessment as if that referral agency had supported the application and had no requirements.

Table 8 **Some performance benchmarks for state and territory coordination**

Benchmark	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Number of **matters** that require a referral if a development will affect them	20	7	14[a]	1	10	2	na	2
Number of **actions and activities** that require the referral of a development application	44	37	55[a]	na	36	25	na	na

[a] The matters listed here are based on legislation listed in the sources for this table. The Queensland Government (14 February 2011) advise that these sources alone do not capture the full scope of referrals required in Queensland.

Source: *Queensland Development Code;* Department of Planning (NSW) 2010; *Development Regulations 2008* (SA); *Environmental Management and Pollution Control Act 1994* (Tas); *Environmental Planning and Assessment Act 1979* (NSW); *Environmental Protection Act 1986* (WA); *Environmental Protection Regulation 2008* (Qld); *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007* (Vic); New South Wales Government, pers. comm., 17 January 2011; *Northern Territory Planning Scheme*; *Planning and Development Regulations 2008* (ACT); RPDC (2003); *Victorian Planning Provisions*.

Impact of the Commonwealth on planning

Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act), business can undertake a substantial amount of compliance work only to learn they are not required to take any specific actions (such as obtaining the Minister's approval or completing their actions in a certain way). In 2009-10, 36 per cent of referrals (137 referrals) required no further action.

Based on data supplied to the Commission by developers, the cost of the environment studies and flora and fauna assessments necessary for an EPBC Act referral can range from $30 000 to $100 000 per study.

For the period 2005-06 to 2009-10, the average amount of time taken from the lodgement of the EPBC Act referral to the Minister's final decision for 'controlled actions' was 1 year and 7 months for residential, commercial and industrial developments in urban areas. This was also the average for 2009-10.

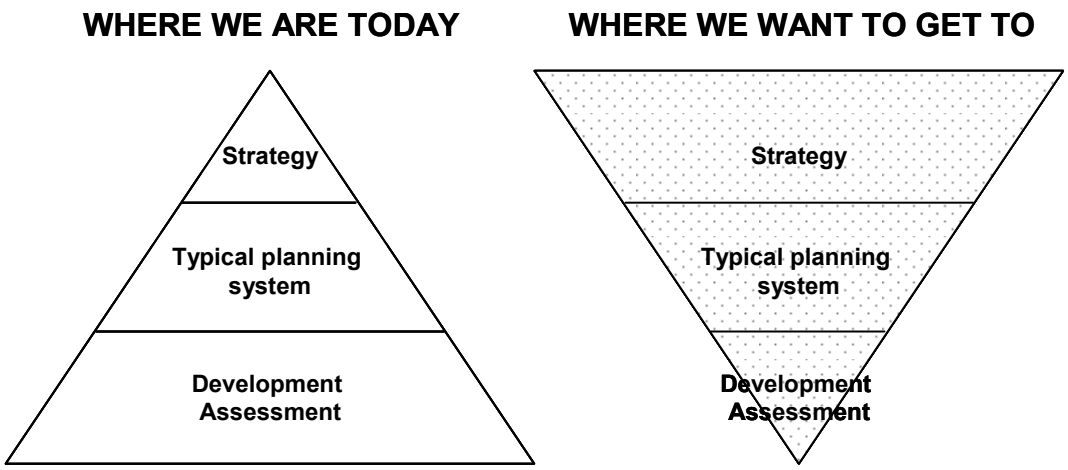
The need for all developers to consult two lists of threatened species (one Commonwealth list and one state/territory list) for each jurisdiction in which they operate creates unnecessary duplication and confusion.

Leading practices

Benchmarking the states and territories has highlighted a wide range of differences in the way plans and zones are determined and then how DAs are processed with the goal of ensuring consistency with those plans and zones. From this diversity, the Commission draws attention to what appear to be leading practices. They are dispersed across the jurisdictions, with each jurisdiction home to at least one leading practice.

The leading practices fall into seven broad groups. The Commission considers each is important — and many are interdependent — in achieving more effective planning and zoning outcomes. The underlying approach is to focus efforts more on the earlier stages of planning when strategic land use policy and its associated plans are decided. This is likely to improve the timeliness of development assessments because the important and difficult decisions have already been resolved (figure 4).

Figure 4 Changing the focus of planning efforts



Source: http://www.planning.org.au/documents/item/1867 accessed 14 February 2011.

1 Early resolution of land use and coordination issues using strategic plans

Determining planning policy as early as possible in the planning to approval chain and obtaining commitments to undertakings is highly desirable. Key elements include:

- strategic land use plans that are not just aspirational but also make specific decisions about alternative land uses, timing, infrastructure and the provision of services (to contribute to social, economic and environmental objectives)

- strategic land use plans that are integrated across different levels of government and across different government departments and agencies to make consistent decisions about relevant matters, ranging over infrastructure, environment, housing and human services
- strategic land use plans that are statutory to promote compliance and certainty
- a consistent hierarchy of future oriented and publicly available plans — strategic, city, regional, local — ensuring that when strategic plans are updated, the other plans are also quickly updated
- provisions for conflict resolution should a disagreement arise between planning agencies
- effective implementation arrangements and supporting mechanisms for all plans, including:
  - clear accountabilities, timelines and performance measures
  - better coordination between all levels of government and linked, streamlined and efficient approval processes
  - one clear authority which monitors progress against the strategic plan
  - a designated body responsible for the coordination of infrastructure in new development areas with:
    - sufficient power to direct or otherwise bind infrastructure providers to their commitments to deliver the immediate and near-term infrastructure needs of settlements (as determined and agreed through a structure planning process)
    - the ability to elevate significant strategic issues and/or decision making to the level of Cabinet where it is relevant to do so (as South Australia's Government Planning and Coordination Committee is required to do)
  - committed budget support (primarily for new infrastructure) to promote certainty and investment.

2 Engaging the community fully and early

Engaging the community more fully in developing strategic land use plans can achieve community buy-in for plans and reduce ad hoc policy decisions being made at the development assessment stage. Responses to surveys indicated that a number of councils and state and territory agencies regard consultation as a way to minimise community opposition and identify possible community concerns or objections. If the emphasis was changed so that the focus was on empowering the community to express preferences and engaging residents in formulating strategic plans, then

strategic land use plans could be built around community opinions and preferences rather than have these partially catered for as an afterthought (figure 3). This would be more likely to happen if legislation guarantees community engagement in the planning processes including in strategic planning.

This proposal is consistent with the Local Government and Planning Ministerial Council's best practice principles for community involvement (2009). Decision makers would then have a clearer idea of community preferences as strategy plans are developed and be able to explicitly outline the trade-offs among the competing viewpoints and the extent to which different preferences have been catered for. While not eliminating opposition, providing an explanation of the final strategy plan in terms of optimising the outcome for the community, city and nation to maximise community welfare — indicating the gains made for costs imposed — is likely both to gain greater acceptance and provide more certainty to residents and businesses. In some cases, it will be particularly important to provide the scientific and other evidence relevant to decisions made, such as determining those areas at risk of being damaged by one in a 100 year floods.

Given the apparently large opposition to infill, it is particularly important: to engage the community in determining an appropriate balance between greenfield and infill development and about the pattern or nature of infill.

3 Broad and simplified zones

In the extreme, planning systems can suffer, on the one hand, from planners who try to prescriptively determine how every square metre of land will be used, and on the other hand, from developers who play a strategic game of buying relatively low-value land and having it rezoned to make a windfall gain. The scope for both would be reduced if zoning definitions were broadened and zones defined in terms of broad uses rather than prescriptive definitions of permitted types of buildings and land uses.

If the prescriptiveness of zones and allowable uses were significantly reduced — particularly those relating to business definitions and/or processes — it would facilitate new retail and business formats to locate in existing business zones without necessitating changes to council plans to accommodate each variation in business model. Land areas set aside for industrial uses should be used for those industrial activities which, because of their adverse impacts on other land users, need to be located in separate areas. For most businesses (commercial, service providers and some light industrial), there are few adverse impacts associated with their location decisions and therefore few planning reasons why they should not be co-located in a business zone. This is also the case for retail except where it may

result in significantly increased congestion and the infrastructure is insufficient to allow adequate access. The New South Wales proposal of a single business zone applied across an entire centre with the determination of the mix of uses within a centre to be left to the market has the potential to be a leading practice in this area.

In principle, the application of a betterment tax (as is adopted by the ACT in its 'uplift charge') for any party which successfully negotiates a rezoning could decrease the incentive to rezone simply to make a windfall gain. Greater use of 'as of right' development processes for activities compatible with the existing zoning would decrease the need for rezoning and mean that any issues of activity centre viability are considered, as is appropriate, at the strategic planning rather than at the DA stage.

These changes would increase competition by allowing a wider range of businesses and developers to bid for the same land, better harness the market in allocating land to its most valued use, and cater much more easily for innovations in business and service delivery without requiring rezoning. Reducing the need for rezoning would also deliver significant time savings in the land supply process. As well, it may reduce the use of alternative approval mechanisms, such as ministerial call-ins and state significant tracks, which would improve competitiveness by ensuring all businesses face the same assessment criteria.

Such reforms would also require planners and administrators to be able to assess whether proposals meet broad functional descriptions of zones rather than judge them against detailed prescriptive requirements.

4 Rational and transparent allocation rules for infrastructure costs

Broadly, the appropriate allocation of capital costs hinges on the extent to which infrastructure provides services to those in a particular location relative to the community more widely. The Commission has previously enumerated the following principles:

- use upfront charging to finance **major shared infrastructure,** such as trunk infrastructure, for new developments where the incremental costs associated with each development can be well established and where such increments are likely to vary across developments. This would also accommodate 'out of sequence' development
- for **infill development** where system-wide components need upgrading or augmentation that provide comparable benefits to incumbents this should be funded out of borrowings and recovered through rates or taxes (or the fixed element in periodic utility charges)

- for **local roads, paving and drainage** it is efficient for developers to construct them, dedicate them to local government and pass the full costs on to residents (through higher land purchase prices) on the principle of beneficiary pays
- for **social infrastructure** which satisfies an identifiable demand **related to a particular development** (such as a neighbourhood park) the costs should be allocated to that development with upfront developer charges an appropriate financing mechanism
- for **social infrastructure where the services are dispersed** more broadly, accurate cost allocation is difficult if not impossible and should be funded with general revenue unless direct user charges (such as for an excludable service like a community swimming pool) are possible.[6]

5 Improving development assessment criteria and processes

Of recommendations made by the Development Assessment Forum (DAF),[7] the Commission particularly supports:

- writing DA requirements and criteria as objective rules/tests and clearly linking them to stated policy intentions. Clarifying what objectives are being served by DA requirements should also be done when all levels of government work together to produce an agreed set of matters which need approval. While useful in itself, it is also likely to reduce the number of matters requiring approval. Having clear and concise pro-forma development approval conditions ('model conditions') to be used by referral departments/agencies which have been mutually agreed with planning authorities would also assist
- streaming development applications into assessment 'tracks' (exempt, prohibited, self assess, code assess, merit assess and impact assess) that correspond with the level of assessment required to make an appropriately informed decision. This would both speed up most DAs and release assessment resources to focus on those proposals which are particularly technically complex or may significantly impact on neighbouring residents or the local environment
- adopting electronic DA systems to reduce costs for businesses and residents but also to improve consistency, accountability, public reporting and information collection/benchmarking

6 Productivity Commission (2004).

7 http://www.daf.gov.au/reports_documents/doc/DAF_LPM_AUGUST_2005.doc, (accessed 22/10/2010); DAF Leading Practice Model 2005.

- the DAF recommendation, that any prohibited land uses for different zones be clear and publicly available, could be extended to include allowable uses and restricted uses — all available in a readily understandable form.

6 Disciplines on timeframes

Except where processing times might necessarily vary greatly, statutory timeframes should be used as maxima for planning processes.

The approval of subdivisions, rezoning and structure planning for greenfield developments are currently not generally subject to timeframes. Timeframes for planning processes provide a useful discipline on regulatory processes and provide developers with more certainty in their planning. Statutory timeframes, with limited 'stop the clock' provisions, and deemed to comply provisions (as used by the ACT) would be beneficial. In setting timeframes, the objective should not be to place undue pressure on the system but rather to encourage planners to meet reasonable deadlines.

7 Transparency and accountability

Transparency and accountability in planning decisions can be enhanced through:

- the appropriate availability of appeals, including third party appeals
- publishing comparable data on council outcomes and from other decision makers, such as ministers and planning departments
- access to rules and regulations such as the location and restrictiveness of certain zones in a consistent and clear format
- measures to promote probity in planning decisions including whistle blowing protection, conflict of interest provisions, and anti-corruption commissions.

While appeal rights may extend approval times, they have an important role to play in a complex area subject to considerable discretion, competing policy objectives and vulnerable to special dealing. Rather than prohibit appeals, every effort should be made to reduce people's desire to do so by establishing good processes and clearly explaining choices made during strategic planning.

Practices which appear to reduce vexatious third-party appeals include clear identification of appellants and their grounds for appeal, the capacity for courts to award costs against parties seen to be appealing for purposes other than planning concerns, and prohibition of appeals if the party did not put in an objection to the DA. These would also assist in ensuring that there are more limited incentives to

game the appeals systems which currently are used intentionally to slow down developments. Requirements for parties to meet and discuss issues (mediation) can also reduce the third party appeals which proceed to court.

Fortunately, all jurisdictions are moving towards collecting a range of data from local councils each year. This is a useful exercise. In addition, consideration should be given to publishing a core set of consistently defined indicators for all states and territories to enable the continuation of benchmarking those factors most relevant to the performance of planning, zoning and development assessments to continue. States and territories should also be collecting data on a city level to compare progress on their strategic plans such as whether they are achieving infill and housing targets.

Leadership and governance

The planning and zoning systems of the states and territories involve a complex interweaving of citizen, business, and government regulatory relationships. They are the prime field on which conflicting community preferences for their cities and local neighbourhoods are played out. Preferences can vary among citizens, between citizens and businesses, businesses with each other, councils and their constituents, and councils with their state.

Adoption of leading practices outlined above would significantly improve governance. But strong leadership from state and territory governments remains the key to resolving the often conflicting objectives imposed on planning systems. While much can be accomplished by effective engagement of citizens and businesses in the strategic planning processes, it is inevitable that differences and disagreements will remain. This makes leadership an even more important task.

A core challenge is that posed from the many cases where the costs of some land uses are borne primarily by the people in one or a few local councils while the benefits may be shared across the whole city or region. Examples can include the location of ports, airports, railway lines, waste disposal sites, as well as increasing population density. For these types of decisions, no single local council or group of citizens can be expected to adopt the overarching perspective needed by state and territory governments (and in some cases by the Commonwealth Government) in order to enhance overall community wellbeing. It is in these areas that the clear spelling out of costs and benefits, to demonstrate an overall net benefit, would be crucial in order to explain the reasons for decisions made. However, these decisions will remain difficult and require leadership at the elected political level. Given the nature of ‘trade-offs’ in many crucial planning decisions, such decision-making is not, in the end, technical or administrative, but essentially ‘political’ in nature.

Nevertheless, if most trade-offs are made during the formulation of the strategic plan rather than in an ad hoc fashion when approval for rezoning or a development is sought, it would provide greater clarity and certainty so that the development approval stage implements rather than decides policy.

An increasing number of decisions on development applications are being escalated from the local council level (ACT and NT are not relevant in this context) to be handled by new local decision panels, regional level panels and other state-level bodies. Also, there has been a significant increase in the number of matters subject to Ministerial call-in or designation as state significant. Where such escalation of development approvals occurs, greater transparency, as well as clear and impartial criteria are required. While some progress has been made in bringing objective rules to this area, it is timely for firmer evidence-based criteria to be developed and applied. This should enhance the transparency of decision making and improve competition in the markets for land usage.

1 About the study

1.1 Objectives of planning and zoning systems

Planning and zoning systems are used to manage the growth of cities and towns, preserve the environment, provide and coordinate community services and facilities, and promote and coordinate the orderly and economic use and development of land. These systems are designed to balance the needs of communities by taking into account the often competing social, environmental and economic goals as well as the impact of land use and development.

Planning and zoning policies in Australia are generally designed to:

- preserve and enhance the conservation, use, amenity and management of land, buildings and streetscapes
- provide for the health, safety and general wellbeing of those who use these areas
- provide and coordinate the provision of community services, infrastructure and facilities
- ensure the uniform application of technical requirements and an orderly and efficient use and development of land (Thompson 2007).

Over the last 20 years, the number of objectives within the planning system, and thus its complexity, has been continually expanding. For example, in December 2009, the Council of Australian Governments (COAG) added to existing local and state/territory objectives an additional wide-ranging set of national objectives, including providing for:

- nationally-significant economic infrastructure such as transport corridors, international gateways, intermodal connections, networks between capital cities and major regional centres and major communications and utilities infrastructure
- population growth
- productivity and global competitiveness
- climate change mitigation and adaptation
- access of people to jobs and businesses to markets

- development of major urban corridors
- social inclusion
- health, liveability and community wellbeing
- housing affordability.

This area has been considered by the Commission in the past with inquiries on First Home Ownership (PC 2004) and The Market for Retail Tenancy Leases in Australia (PC 2008). Those reviews focused on particular aspects of land use that will also be touched on in this study which looks more broadly at the system.

1.2 Defining planning, zoning and development assessment

At its broadest level, planning is the process of making decisions to guide future allocation and development of land. Strategic planning at the state and territory government level gives structure to this process by identifying long-term goals and objectives and then determining the best approach for achieving those goals and objectives. The number and structure of plans varies greatly across the jurisdictions with some being part of a hierarchy of plans where consistency is required. Others may deal with a specific issue such as heritage.

All states have council and (except Tasmania) regional level statutory plans that include zones and rules for development which should be consistent with the overarching goals and objectives of the state.

Within a development plan, each council area is divided into smaller areas called 'zones'. Zones are used as a way of grouping areas with similar characteristics together, integrating mutually beneficial uses, separating incompatible uses and setting outcomes for the area through policy (PIA (South Australian Division) 2010 and Chung 2007).

Zones are typically based on land uses such as residential, industrial and commercial. Each zone is defined by criteria that set out the detail of the acceptable and unacceptable uses for the zone. In Australia, zoning can be very prescriptive and exclusionary and, in some instances, very flexible.

To ensure that a proposed development is consistent with the local policy envisaged for the area, as set out in the relevant plans and zoning ordinances, all development and plans undergo assessment unless they are exempt, for example, as minor development. The assessment process performs the function of ensuring that development complies with the plan for the council area, region or city. It affords

protection to the property owner, neighbours, community and environment against dangerous, illegal and undesirable developments. However, it can also result in property owners or developers forgoing potentially higher returns and/or incurring higher costs by having to conform with the regulatory requirements rather than undertaking developments they consider would maximise their returns. The process in itself can also add considerably to costs the longer it takes to get approval.

1.3 What has the Commission been asked to do?

The Commission has been asked to continue the program of performance benchmarking of Australian business regulation by examining land development assessments and the states and territories planning and zoning systems in the third year of Stage 2 of the benchmarking program (box 1.1).

At its meeting on 7 December 2009, COAG agreed that the Commission should benchmark the state and territory planning and zoning systems. In addition, the 9 October 2009 meeting of the COAG Business Regulation and Competition Working Group (BRCWG) had agreed to a review of land development assessments.

Both reviews were intended to identify and compare their impacts on business compliance costs and competition. In addition, COAG identified the importance of the overall efficiency and effectiveness of the functioning of cities as a key element of the benchmarking task.

Given the synergies between the states' and territories' planning and zoning systems and land development assessments, it was decided that there was value in conducting these two reviews concurrently. The Terms of Reference for these reviews were received in a letter from the Assistant Treasurer on 12 April 2010 (appendix A).

Scope of the terms of reference

In the terms of reference, the Commission is requested to examine and report on the operations of the states and territories planning and zoning systems, particularly as they impact on:

- business compliance costs
- competition
- overall efficiency and effectiveness of the functioning of cities.

Box 1.1 **The Commission's performance benchmarking program**

In February 2006, COAG agreed that all governments would aim to adopt a common framework for benchmarking, measuring and reporting the regulatory burden on business (COAG 2006). Since then, the Commission has produced five reports to help implement that decision.

The 'feasibility' study

To help implement COAG's 2006 agreement on benchmarking and measuring regulatory burdens, the Commission was asked to examine the feasibility of developing quantitative and qualitative performance indicators and reporting framework options (attachment A). This feasibility study concluded that benchmarking was technically feasible and could yield significant benefits (PC 2007).

The 'quantity and quality of regulation' & 'cost of business registrations' reports

In April 2007, COAG agreed to proceed to the second stage of the program of regulation benchmarking and in December 2008, the Commission released two companion reports examining the quantity and quality of regulation and benchmarking the administrative compliance costs of business registrations. The 'quantity and 'quality' report (PC 2008a) provides indicators of the stock and flow of regulation and regulatory activities and quality indicators for a range of regulatory processes, across all levels of government. The 'cost of business registrations' report (PC 2008b) provides estimates of compliance costs for business in obtaining a range of registrations required by the Australian, state, territory and selected local governments.

The 'food safety regulation' & 'occupational health and safety' reports

In December 2008, the Commission received the terms of reference to benchmark the regulation of food safety and occupational health and safety. The 'food safety' report, released in December 2009 (PC 2009), compared the food regulatory systems across Australia and New Zealand. The Commission found considerable differences in regulatory approaches, interpretation and enforcement between jurisdictions, particularly in those areas (such as standards implementation and primary production requirements) not covered by the model food legislation.

The 'occupational health and safety' report, released in March 2010 (PC 2010), compared the occupational health and safety regulatory systems of the Commonwealth and state and territory governments. The report found a number of differences in regulation (such as record keeping and risk management, worker consultation, participation and representation and for workplace hazards such as psychosocial hazards and asbestos) and in the enforcement approach adopted by regulators.

These reports served to test the usefulness of standards as well as performance benchmarking and test a range different benchmarking indicators and approaches to collecting benchmarking data. They also provided lessons for future studies. In particular, they highlighted the potential challenges in obtaining data from individual businesses and surveying local councils. It is also apparent that there are significant differences across jurisdictions reflecting different regulatory approaches as well as the characteristics of the jurisdictions themselves.

In doing so, the Commission is to recommend best practice approaches that support competition, including:

- measures to prevent 'gaming' of appeals processes
- processes in place to maintain adequate supplies of land suitable for a range of activities
- ways to eliminate any unnecessary or unjustifiable protections for existing businesses from new and innovative competitors.

Business compliance costs from regulation are those which businesses must undertake in order to meet regulatory requirements and which they otherwise would not have undertaken. The Commission interprets these costs broadly to include not only the direct administrative costs of complying with regulatory requirements but also the indirect costs such as holding costs or reduced profit from downsizing a development or broadly, any cost a business must pay or forgo that it would not have otherwise. Some regulations require businesses to contribute in-kind or financially to the development of infrastructure etc. This benchmarking study thus also provides a means by which to compare the different ways that governments charge developers and the amounts charged.

Competition concerns the way market participants seek to gain customers and increase returns. The competitiveness of the markets is generally measured by the ease with which potential participants can enter the market and compete on an equal footing. Competition is generally beneficial to society as it leads to more choice and lower prices for consumers. However, unfettered competition may not result in land-use allocations which deliver a wide range of accessible services to communities (for example, play grounds, bicycle paths or disabled access); it may deaden town centres when nearby competing shopping precincts are established; or it may create unwanted side-effects (negative externalities) such as noise and pollution. To address these issues, planning, zoning and development assessment can restrict competition by limiting the entry of businesses into markets; restricting the location of where goods and services are produced or sold; and imposing higher costs of compliance on some businesses or activities through restrictive zoning requirements. At issue for society is whether these restrictions produce a net benefit; and whether the social goals can be achieved without restricting competition as much.

The efficiency and effectiveness of the functioning of cities is a broad concept that seeks to capture the wellbeing of residents and the liveability of cities. Efficient and effective cities serve many objectives including sustainability and economic growth. They also accommodate national goals such as for population and the environment, the ease of doing business and social, visual and environmental amenity.

Some adverse impacts on competition and business compliance costs are almost inevitable to ensure that the public benefits such as the amenity of urban areas, are considered in land use decisions.

Regulations and instruments in scope

For this study, 'states and territories planning and zoning systems' are broadly defined to include the regulatory requirements imposed by governments as well as the actions of regulators in administering planning regulations. Planning and zoning systems incorporate legislation, policies, planning schemes, guidelines, decision making processes and appeal mechanisms on the use of land and how the use is able to be changed. Details of the specific planning instruments can be found in chapter 3.

Key players in scope

There are a large number of stakeholders in land planning and development, from communities and businesses to industries and governments. The regulators of the planning system span all levels of government, from local councils to states and territories and, to a lesser extent, the Commonwealth and even COAG. State planning ministers and departments are responsible for most state and city planning, and local councils are usually responsible for local land use planning and development assessment.

Cities being benchmarked

As suggested by the terms of reference, this study focuses on cities. With 75 per cent of the Australian population living in cities of more than 100,000 people, Australia is one of the most urbanised countries in the world.

Cities are generally defined in Australia to be predominantly urban areas with a permanent population of at least 25 000 people (Infrastructure Australia 2010a), of which there are around 120 in Australia. For the purposes of this study, the Commission has focused on a subset of 24 cities. These include each state and territory capital city (both the central business district and surrounding metropolitan area) and all cities with a population over 50 000. To that list was added two cross-border cities for inter-jurisdictional comparison (Queanbeyan and Wodonga). To ensure at least two cities from each jurisdiction (except ACT) were covered, Mt Gambier, Alice Springs and Geraldton-Greenough made up the final cities on the list. The full list of cities can be found in appendix A.

1.4 Conduct of the study

In April 2010, on receipt of the terms of reference (appendix A), the Commission issued a circular announcing the study to interested parties and advertised the study on its website and in *The Australian Financial Review* and *The Australian.*

In conducting its study, the Commission has been assisted by an Advisory Panel comprised of representatives from the Australian Government, state and territory governments and the Australian Local Government Association. The study's Advisory Panel met in early April 2010 to discuss the scope, coverage and methodology.

In May 2010, the Commission released an issues paper and invited interested parties to make a submission to the study. Informal discussions were held in all Australian capital cities and several non-capital cities with various interested parties, including representatives from business, industry associations, government departments and regulatory agencies, as well as some community groups. By mid February 2011, the Commission had received 69 formal submissions.

The Commission gathered information from a variety of published sources including previous reviews of aspects of planning and zoning systems in some jurisdictions, studies examining the implementation of strategic plans, work by the Development Assessment Forum (DAF) and annual reports published by regulators. To fill some of the gaps in information, the Commission surveyed Australian state and territory regulators and local governments in Australia (appendix B). The Commission also used information provided from a range of businesses and business organisations including developers, planners, and retailers on their experiences with planning and zoning in each jurisdiction and with the planning and zoning regulators. This information was further supplemented with a community survey and discussions with a number of community groups.

The Advisory Panel met again on 14 December 2010 in Canberra to discuss a working draft of the report. The Panel members also provided comments from their jurisdictions to be included in the report.

The final report to government is due at the end of April 2011.

The terms of reference, study particulars, survey questionnaires and submissions are also listed on the Commission's website at www.pc.gov.au/projects/study/regulation benchmarking/planning. Further details of the conduct of the study are provided in appendix A.

1.5 Outline of the report

The report is structured as follows:

- chapter 2 — The efficient and effective functioning of cities
- chapter 3 — Regulatory framework
- chapter 4 — Supply of land
- chapter 5 — Infrastructure
- chapter 6 — Compliance costs
- chapter 7 — Competition
- chapter 8 — Governance
- chapter 9 — Transparency, accountability and community involvement
- chapter 10 — Referrals to state and territory government agencies
- chapter 11 — Impact of the Commonwealth on planning
- chapter 12 — Comments from jurisdictions.

The titles of some of the chapters directly indicate which aspects of the terms of reference are being addressed therein: the functioning of cities; land supply; compliance costs; and competition. Chapter 5, on infrastructure, addresses an important challenge in planning for cities having significant impact on: city liveability; the viability of developments; and the time it takes to complete developments. Chapters 8 and 9 cover aspects of governance which affect both the functioning of cities and business compliance costs. Chapter 10 benchmarks the number of referrals, how they are triggered and their timeframes. Chapter 11 looks at how some Commonwealth requirements impact on business costs.

Appendix A provides details of the conduct of the study by providing the Terms of Reference, submission and visit lists as well as the details of those parties who responded to the surveys. Appendix B outlines the broad sources of information for the report and how surveys were conducted. Appendices C and D respectively provide additional information for the chapters on the functioning of cities and on land supply processes and outcomes. Appendix E sets out jurisdictional infrastructure contribution arrangements, appendix F provides information on competitive aspects of retail markets and appendix G describes the involvement of the states and territories in environment, heritage, transport and fire fighting services.

2 The efficient and effective functioning of cities

Key Points

- To ensure the effective and efficient functioning of cities, governments need to balance environmental and liveability needs with economic and business objectives and manage the dynamics of cities that accompany factors such as population growth and climate change. This is challenging. State and territory governments consider that planning can most influence greenfield development, the accommodation of population growth, the transition to higher densities, the provision of diverse/appropriate housing and the protection of biodiversity.
- High growth puts heavy demands on land planning systems. The areas with the fastest growth rates in population, between 2001 and 2009, were the Gold Coast, the Sunshine Coast, Cairns and Townsville. Of the capital cities, Brisbane and Perth populations grew at the highest rates of about 20 per cent.
- Population density is an important way of achieving efficiencies such as lower infrastructure costs, smaller urban footprints and a stronger base for businesses. However, increased density can also worsen congestion, crowding and may reduce the availability of the large blocks of land valued by many Australians. In 2009, the highest median population densities (by Local Government Area) were in Sydney, Melbourne, Perth and Adelaide. In contrast, the lowest densities were recorded in Toowoomba, Geraldton-Greenough and Launceston.
- Recent estimates of international housing affordability have reported that Australian homes are amongst the least affordable in the world. The median multiple (median house price divided by median household income) for Australia was measured as 6.1 (severely unaffordable) compared with 3.0 (affordable) in the United States and 3.4 (moderately unaffordable) in Canada.
- Housing affordability in Australia has deteriorated markedly in recent years to historically low levels. Bankwest key worker housing affordability data found that Hobart is the only capital city that is affordable for all key worker groups. Sydney and Melbourne are the least affordable capital cities. And over the last five years, affordability has deteriorated most significantly in Darwin and Perth. Sydney is the only capital city where affordability has improved even though it had the lowest value of additions to accommodation per head of population.
- Between 2007-08 and 2009-10, over 106 000 dwellings or 36 per cent of all dwellings approved in Australian capital cities were approved in Melbourne. In comparison, over the same period Sydney approved 52 000 dwellings or 18 per cent of all dwellings in capital cities.
- Another liveability indicator is the ease of doing business. In a World Bank international comparison, Australia rates tenth overall of 183 countries, but relatively lowly on dealing with construction permits (ranked 63) which is pertinent to land planning systems.
- Both Infrastructure Australia and the World Economic Forum find Australia could improve the quality of its infrastructure when compared internationally. The costs of city congestion are forecast to rise substantially, emphasising the importance of well planned transport infrastructure.

The terms of reference ask the Commission to report on the operations of the states and territories' planning and zoning systems, particularly as they 'impact on the overall efficiency and effectiveness of the functioning of cities'.

While efficiency and effectiveness is an issue when planning new communities and developments such as those on the edge of cities, it is equally important when rezoning existing developments. Zoning and planning impact on the efficiency and effectiveness of cities by determining how land is allocated across diverse needs and demands. Land use planning is about understanding and then integrating a range of land preferences and potentially competing social, cultural, economic and environmental objectives. It is about accounting for preferences as well as costs. Planning involves trading-off these preferences and costs to reach a balance which ideally reflects a collective social optimum but rarely is any one individual's ideal outcome.

While good planning and zoning can create the environment for efficient and effective cities, outcomes are also dependent on a myriad of other influences and policies including taxation settings, housing, environment and population policies.

In responding to the terms of reference, this chapter looks at the functioning of cities, the challenges faced by governments in achieving urban efficiency and effectiveness and presents some snapshot indicators of city functioning. The indicators chosen are based on the availability of data and the extent to which they may be influenced by planning and zoning.

2.1 The functioning of cities

Cities serve a range of economic, social and cultural functions — they are centres of population, government, industry, trade, finance, education, tourism, storage, innovation, global transport and communications. The needs and wants of city residents are vast. Housing occupies the majority of land in cities and the remainder is taken up with a wide range of uses including road and rail networks, airports, schools and universities, hospitals, parks, factories, offices, shops and religious buildings. How city land is allocated and used is fundamental to creating and maintaining an efficient and effectively functioning city and is discussed further in chapter 4.

Efficiency and effectiveness

Efficiency in urban planning broadly includes not only business interests but the wellbeing of all city residents. An efficiently functioning city would achieve an

optimum allocation of urban land between alternative possible uses, achieving a balance between household and business preferences for different ways of using land (including infrastructure) taking account of the costs and benefits involved (including social and environmental impacts). Achieving this ideal would involve complex tradeoffs. It would require knowledge of the value of every site in alternative possible uses which, in turn, necessitates a consideration of the complete range of land sites within the city, alternative land uses and availability of supporting infrastructure and other services, both now and into the future, as well as accurate knowledge of the real preferences of all stakeholders, some of which may engage in strategic rather than preference-revealing behaviour. Obviously, complete knowledge to achieve such an ideal is not available to any society.

There is a wide range of transaction costs associated with land allocation whether by the market or with government involvement. These include the significant information and financial advantage of property developers over individual stakeholders. Other factors which inhibit efficient market allocation of land include the disadvantage of future generations in not being part of decisions that impact on them and insufficient and asymmetric information making the balancing of competing demands for land allocation extremely challenging.

Another challenge is the 'third-party' effects that owners of a property can have on their neighbours or wider community. Markets often do not cater for these well, as there is no direct price incentive to discourage negative external effects, such as pollution, or encourage positive effects, such as neighbours feeling better about their street character. In these cases, consumer preferences may not be well served due to the difficulty of organising like-minded consumers to ensure community preferences are met. If residents want to preserve the character of their area, even if they are willing to pay undesirable uses, such as factories or noisy nightclubs, to locate elsewhere, they face high transaction costs in getting everyone to contribute to a solution and preventing free riders. Furthermore, it may be difficult to reach community consensus on what the socially optimal outcome would be.

Complementing the notion of an efficiently functioning city, an 'effectively' functioning city may be considered to be a city for which the core functions, goals or objectives of all residents (including business) are facilitated. In practice, a planning, zoning and development assessment system may be considered to be supporting the effective functioning of a city if it engenders a significant improvement in the functioning beyond what would have happened anyway. Planning, zoning and development assessment systems should aim to improve the effectiveness of a city by, for example, reducing the costs of production, facilitating the supply of goods and services provided to the community, and removing barriers to innovation and flexibility.

It is impossible to be prescriptive about what an efficient and effective city should look like. Different governments and communities have different objectives. Cities also differ significantly in terms of demography, climate and geography.

However, what can be identified are cities where good planning is evident. For example, well planned cities would have:

- sufficient quantity of a range of housing types to meet the needs of city residents
- schools in the locations where they are needed the most
- hospitals in readily-accessible locations
- efficient transportation networks
- industrial clusters with shared infrastructure
- community facilities, ample green space and clean air
- a planning system that allows for growth, for example, by anticipating how future growth will impact on traffic flow and the need for expansion in activity centres.

Equally, poor land planning may be evident in cities with a lack of suitable housing, inadequate infrastructure, congestion, overcrowding, inadequate transport networks, a limited range of consumer services, inadequate community facilities, a lack of green space and few business and employment opportunities. The Western Australian Local Government Association (sub. 41, p. 27) commented:

> Poor planning can adversely impact on the functioning of cities by creating car dependency, urban sprawl and a lack of necessary infrastructure for newly developed areas. The provision of social and economic infrastructure, such as public transport, arterial road improvements, schools, health services and shops are important for residents' amenity. Delays in provision of such infrastructure can delay the release of land, increase car dependence and congestion.
>
> Inappropriate zoning of land for business and resistance to infill development, higher densities and innovative dwelling designs can reduce the provision of a variety of housing types and affect housing affordability. Within the Perth context, this can place more pressure on urban fringe locations to provide the bulk of new housing in the form of single detached housing.

The efficient and effective use of city land through land planning is essential to maintaining or improving the liveability of cities.

Liveability and ease of doing business

A well functioning city caters for the needs of residents and businesses. These social and business needs are often referred to as liveability and ease of doing business and are aspects of a city's functioning.

Liveability and ease of doing business are important not only from the point of view of the quality of life of a city's residents, but because they may also impact on the competitiveness and future prosperity of a city. For example, liveability considerations may be pivotal to attracting new investment and skilled labour into a city. In assessing the links between quality of life and the economic success of cities, McNulty et al (1985) concluded that cities that are not liveable places are not likely to perform important economic functions in the future.

The liveability context

The liveability of a city is generally defined by its environmental quality, neighbourhood amenity and by the wellbeing of its individuals (Yuen and Ling Ooi 2008). The Victorian Competition and Efficiency Commission (2008, p. XXI) stated:

> Liveability reflects the wellbeing of a community and represents the many characteristics that make a location a place where people want to live now and in the future.

Liveability, however, cannot be defined precisely. There will be diverse drivers for liveability within a community including resident characteristics such as income levels, education levels, cultural interests, religious beliefs and age profile, as well as business characteristics such as retail businesses serving the requirements of the residents and the structure of industry in the area.

For some, liveability is related to the provision of physical amenities such as public transport, libraries and community centres, footpaths, fresh air, parks and other green spaces. For others, liveability relates to career, business and economic opportunities, to cultural offerings or sporting facilities, or to the safety of raising a family.

Many of the participants in this benchmarking study provided observations on what makes a city liveable.

The Planning Institute of Australia, ACT branch (sub. 13, p. 4) commented that liveability is linked with the promotion of a healthy lifestyle.

> Healthy and sustainable communities are those that are well-designed and safe, with local facilities (including school, corner store, childcare facilities, medical practice, recreation facilities, community services); streets designed for active transport, walking and cycling; with cycle facilities and public transport. These are all attributes of a built environment that promotes increased liveability and healthier lifestyle…

The Prospect Residents (sub. 34, p. 6) commented that children are central to liveability concerns:

> When thinking about liveability we need to think about how we raise our children. Forcing children to be raised in high rise apartments where there is nowhere for them to go outside and play is a significant problem for the future of our cities and our children.

Brisbane City Council (sub. 18, p. 4) stated:

> A key aspect of liveability in a city is conditioned by accessibility by residents to a range of needs. At the top of the hierarchy of needs, but often overlooked, is the need to access a job. Council's commissioned research indicates that in a successful city economy, working residents are able to get to their place of work within 45 minutes.

Infrastructure Australia (2010a, p. 93) in a report on *the State of Australian Cities* listed a number of physical features and social factors (including political stability, social cohesion, safety, social inclusiveness, aesthetics, diversity, and heritage) that contribute to liveability and concluded:

> While opinions vary about the precise characteristics of liveability, liveable cities are widely perceived to be healthy, attractive and enjoyable places for people of all ages, physical abilities and backgrounds.

In an urban efficiency and effectiveness context, liveability — the wants and preferences of individuals and communities — need to be considered in addition to the wider economic and development objectives of businesses and governments.

Ease of doing business

Ease of doing business is an indicator of whether the business environment is conducive to the ongoing viability of business as well as encouraging new business, job creation, innovation and economic growth. Factors directly related to planning and development include any constraints on the use of property imposed by the planning system; transport and communications networks; and the time and costs involved in processing development proposals.

For example, the City of Marion (sub. 3, p.5) stated that Southern Adelaide has identified some 'urgent initiatives for the region' related to ease of doing business. These include:

- Workforce development

- Employment land supply
- Transport linkages
- Broadband
- Regional marketing/investment attraction

These initiatives driven by the Southern Adelaide Economic Development Board seek to create an environment within the south that focuses on making it a highly desirable place in which to live, work and run a successful business. One that is serviced by fast, efficient transport links allowing easy access to other part of metropolitan Adelaide. Planning, zoning and DA systems need to support these economic development goals which endeavour to ensure accessibility to employment opportunities (sub. 3, p.5).

Some participants noted overlaps in factors which contribute to liveability and ease of doing business. For example, the Planning Institute of Australia (New South Wales division) (sub.1, p.11) commented:

The key characteristics of a city that enhance liveability and ease of business are:

- Quality of the public domain;
- Good infrastructure (open space; utilities; community services);
- A stable political/decision making framework that is transparent, consistent, collaborative and firmly based on strategic planning to inform decisions and anticipate future directions in land use demand;
- Adequate funding mechanisms for infrastructure and maintenance;
- Good access to public transport;
- An approvals process that is appropriate to the level of complexity for the proposal for which consent is being sought;
- A regulatory framework that minimises red tape and bureaucracy.

The Adelaide City Council (sub. 23, p.18) also listed a number of characteristics that make a city liveable and easy for businesses to operate. Some of these are:

- A well resourced public and private transport system to reduce car dependency, maintain efficient traffic flows and improve long term household sustainability
- Accessibility and ease of parking
- Adequate industrial land supply (The State Government has an Industrial Land Strategy)
- Increased housing diversity (including affordable housing for low to moderate income key city workers)
- Existing networks (suppliers/customers etc)
- Business assistance and services programs
- A good quality public realm, that is clean, safe, well maintained and signed

- Well integrated design of the public and private realm

While the ease of doing business will be affected by a range of factors, one focus of this review is on the aspects of a city which both impact on the ease of doing business and can be affected by planning, zoning and development assessments.

2.2 Challenges to urban efficiency and effectiveness

Participants to the study drew attention to a range of challenges associated with maintaining and increasing the efficiency and effectiveness of cities. For example, the Council of Capital City Lord Mayors (sub. 31, pp. 22-23) listed the following as challenges faced by governments and communities in pursuit of liveability goals in Perth:

- Provision of affordable housing for people of all ages, incomes and needs. Part of the affordability challenge relates to the lack of diversity in the Perth housing market, which is dominated by single detached housing.
- Management of significant population and economic growth as experienced in Western Australia during the last decade and the resultant pressure on existing utility and social infrastructure, transport systems and land supply.
- Addressing changes in the natural environment and the impacts of climate change on infrastructure and community. The mitigation of greenhouse gas emissions, the reservation of significant areas of landscape value and the protection of surface and groundwater supplies are just some of the issues that need to be addressed.
- Tackling increasing urban congestion and the need to better integrate planning and transport.
- The coordinated planning, management and delivery of projects between all levels of Government.

Balance in catering for different needs

To achieve the efficient and effective functioning of cities, governments need to balance a broad range of environmental and liveability needs with economic and business objectives. Some considerations are listed below.

- *Housing* considerations include total supply, density, diversity, affordability and the close proximity of housing to services and amenities (such as shops, schools, offices, parks, libraries and restaurants).
- *Infrastructure* includes the urban transport system (roads, rail, ferry and bus networks as well as bicycle paths, footpaths and walking tracks),

telecommunications, energy and water, human services (including educational and health services, age care and community centres) and waste disposal.

- *Environment* includes green space, parks and waterways and the sustainable use of resources.
- *Ease of doing business* includes transport and communications networks, any constraints on the use of property imposed by the planning system (including how these constraints may affect the marketability of properties) and the time and costs involved in processing development proposals.
- *Economic strength* includes efficient markets and regulation, diversity, innovation, employment and career and business opportunities.
- *Governance* relates to how elected officials represent and lead within the community and make land planning decisions which account for both costs and community preferences; and the ways in which these decisions are implemented.
- *Social and community connectivity* includes places of interaction, opportunity and creativity as well as strong leadership within the community, the participation of citizens in planning and delivery of services and equity in decision making across all ages and interest groups.
- *Sustainability* relates to addressing the economy, environment and society to ensure the long term viability of cities and communities. The primary goal of sustainability is to maintain a reasonable level of economic wellbeing for many generations.

A range of different policies impact on these objectives and more broadly on the efficiency and effectiveness of cities. Figure 2.1 illustrates the link between the objectives of a city, the land planning system and other policy drivers. It provides an illustrative (rather than definitive) list of objectives and policies.

The ring of objectives in figure 2.1 represents some typical liveability, economic and development goals of a city. At the centre, the land planning system seeks to establish the conditions needed to maintain and increase the efficiency and effectiveness of the urban environment.

While markets will go a long way towards delivering an allocation of land to ensure community access to a balanced range of goods and services, including a range of housing and shopping choices, almost all cities in developed economies provide for a significant role by governments in controlling how land is allocated, used and developed. In making their planning decisions, governments attempt to balance a diverse (and changing) range of community needs and preferences on factors such as transport, shopping facilities, housing options, education, recreation, waste

disposal, heritage and the natural environment. In Australia, town planning has been part of the political landscape since before Federation. At its best, planning is

> … respectful of the built and natural environments, encompassing people and the interactions they have with these surroundings. Good planning respects current and evolving Australian ways of life, meeting the needs of diverse communities by acknowledging their histories and the challenges facing them as they grow and change. It facilitates appropriate and good development, ensuring that economic, social and cultural prosperity is in balance with environmental and species protection. (Thompson 2007, p.1)

Figure 2.1 **Some objectives and policy drivers of urban efficiency**

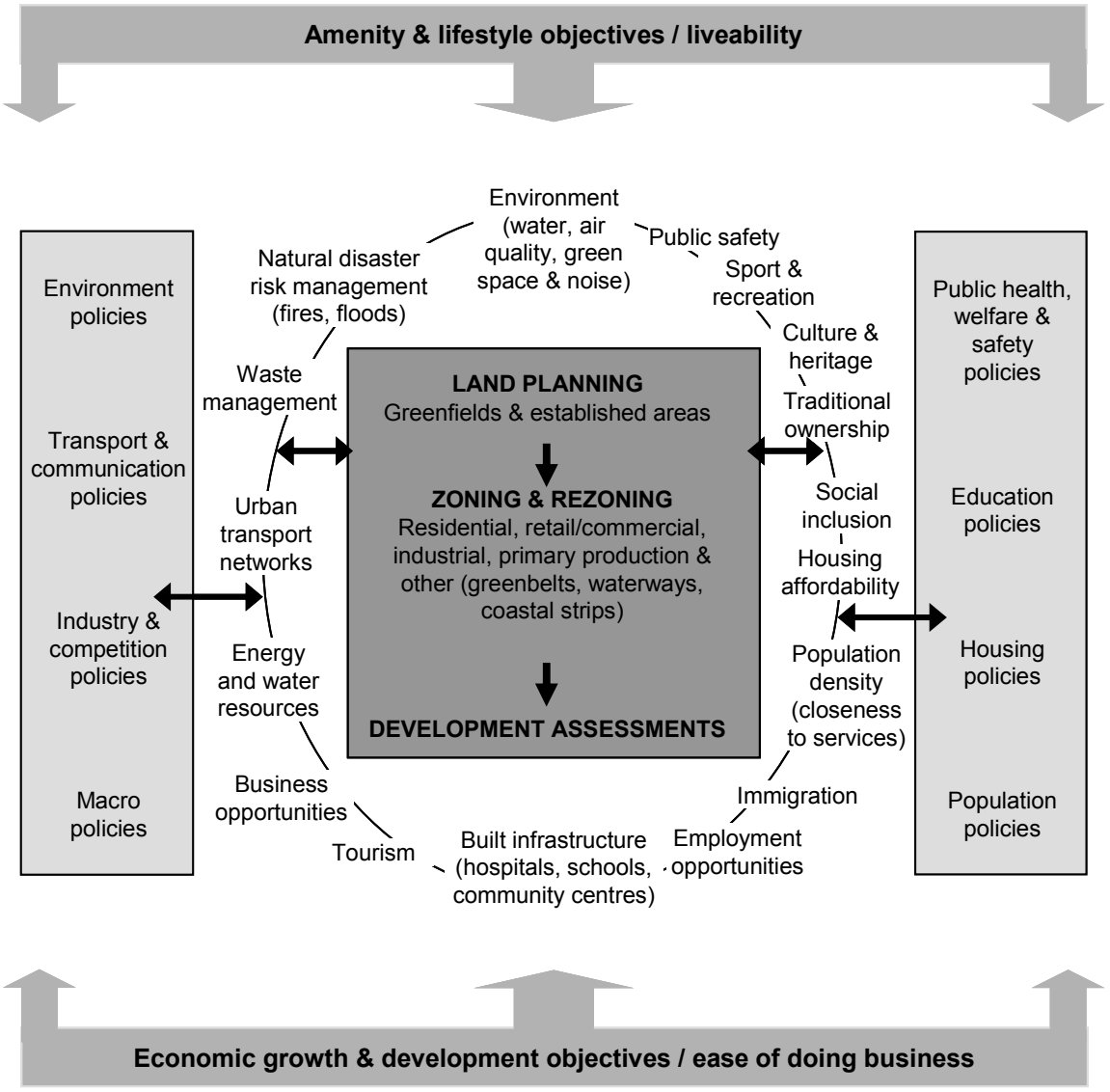


Figure 2.1 also illustrates that there is a raft of other policies (including housing, environment and population policies) which can also impact on the efficiency and

effectiveness of cities. With this in mind, the Commission asked each state and territory government to what extent can the planning, zoning and DA system be used to positively influence the functioning of cities. Overall, most state and territory governments considered that the land planning system could have a major impact on managing greenfield development, accommodating population growth, managing the transition to higher population densities and providing of diverse/appropriate housing and protecting biodiversity (table 2.1).

Table 2.1 **The effect of the planning system on city functioning**

No effect ☐, minor effect ⬚, moderate effect ▨ and major effect ■

Challenge	*NSW*	*Vic.*	*Qld.*	*WA*	*SA.*	*Tas.*	*NT*	*ACT*
Maintaining a vibrant city centre	▨	■	▨	▨	■	▒	▨	▨
Securing adequate urban water	▒	▨	☐	▨	▒	▒	▨	▒
Improving mobility within the city	▨	■	▨	▨	▒	▒	▨	▨
Attracting skilled labour	▨	▒	▒	▒	▒	☐	☐	☐
Promoting healthy lifestyles	▨	■	▒	▨	▒	**b**	▨	▨
Reduce socio-economic disparities	▨	■	▒	▨	▒	**b**	▒	▨
Managing 'greenfield' development	■	■	■	■	■	▨	■	■
Accommodating population growth	■	■	■	■	■	▒	■	■
Reducing traffic congestion	▨	▨	▨	▨	▨	▒	▒	■
Addressing crime and violence	▒	▨	▨	▨	▒	▒	▒	▒
Providing new infrastructure	▒	■	▨	▨	▨	▨	▨	▨
Efficient waste management	▒	▨	▒	▒	▒	▒	▨	▒
Adapting to climate change	■	▨	▨	▨	▒	▨	▨	■
Connectedness with regional centres	▨	■	■	▨	☐	▒	▨	▨
Improving services for an ageing pop.	▨	▨	■	▨	▨	▒	▒	▨
Maintaining existing infrastructure	▒	▨	▨	▒	▒	☐	▒	▨
Providing affordable housing	■	▨	▨	▒	■	▒	▒	▨
Transition to higher pop. densities	■	■	■	■	■	▨	■	■
Protecting biodiversity	■	■	■	▨	▨	▒	■	■
Providing diverse/appropriate housing	■	■	■	■	■	▨	▒	■
Improving air quality	▨	▨	▨	▨	▨	▒	▒	▨
Maintaining social cohesion	▨	▨	▒	▨	▒	☐	▒	▨
Attracting new industries	▨	▨	▨	▨	▒	▒	▒	▨

a Jurisdictions were asked: "To what extent can government use the planning, zoning and DA system to positively influence the following challenges?" **b** The question was not answered.

Source: State/territory agency survey 2010 conducted by the Productivity Commission (unpublished).

However, there are not many aspects of city functioning for which any government thinks planning has no impact. For example, most jurisdictions consider planning has a moderate (or in one case major) impact on reducing traffic congestion and on the provision of new infrastructure; and all consider that planning has an impact on housing affordability though views differ over the extent of the influence (table 2.1).

Essentially, figure 2.1 looks at the demands or the needs of a city as well as the policy drivers. On the other side of any analysis of efficiency and effectiveness are the costs and trade offs that must be taken into account. For example, there may be competition between land needs, conflicts between collective needs and individual needs and conflicts between the three levels of governments.

The Planning Institute of Australia, New South Wales Branch (sub. 1, p.10) commented:

> There will always be some tension between different levels of planning policy and implementation; planning is a complex political process. Similarly there is often tension between different government departments (ie transport and planning) and between government and the development industry — the important thing is that there is an agreed, consistent, transparent process and negotiating process.

The need for coordination is particularly important as the implications of land use decisions are potentially long-lasting, with current decisions impacting on the nature of a city and surrounding region for many years into the future. Some decisions (such as the use of agricultural land for development) may be, for all practical purposes, irreversible. Chapters 8 to 11 look at governance and the coordination of the land planning system.

Managing growth and change

In addition to achieving a balance between liveability, environmental and economic objectives, to achieve the efficient and effective functioning of cities governments are required to manage the dynamics of cities that accompany factors such as population growth and climate change.

Population growth

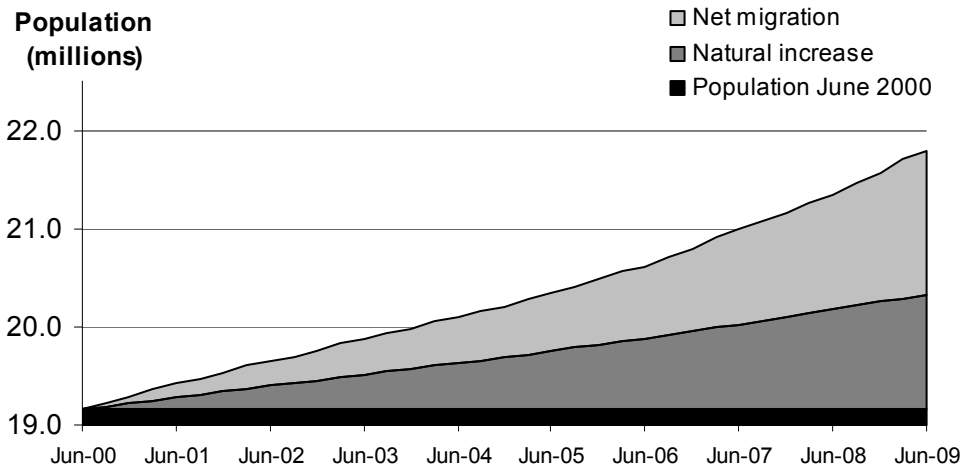
Planning for population growth is a challenge for governments (box 2.1). Australia's population is projected by the ABS to grow from over 22 million today to between 30.9 million and 42.5 million in 2056 (ABS 2008). Similarly, the Intergenerational Report forecasts a population of 35.9 million by 2050 (The Treasury 2010).

Box 2.1 **Population planning**

The increase in Australia's resident population from year to year, as shown in the figure below, is made up of two components:

- net overseas migration (the number of people arriving in Australia who intend to stay for 12 months or more, less the number of people departing from Australia)
- natural increase (the number of births less the number of deaths).

Population growth: June 2000 – June 2009



The number of people within Australia at any time affects the demand for different land uses (chapter 4). Recognising this, population projections have been an important consideration in the strategic land use plans drawn up for Australia's capital cities.

The Commonwealth has the primary influence over Australian population policy stemming from its responsibility for matters of immigration and emigration and from policies that affect the birth rate of Australians — for example, Family Tax Benefit, Baby Bonus/Maternity Payment and workplace legislation (such as paid parental leave). State/territory and local governments make their land use plans by factoring in estimates of population growth based on Commonwealth policy settings. However, where those policy settings change with little notice, the states and territories are confronted with scenarios that are possibly significantly different to those anticipated in their plans. This risk is acknowledged in Melbourne's strategic land use plan:

> … it is important to plan ahead so that we can cope with an increase in population should the Commonwealth Government change current population policy settings.

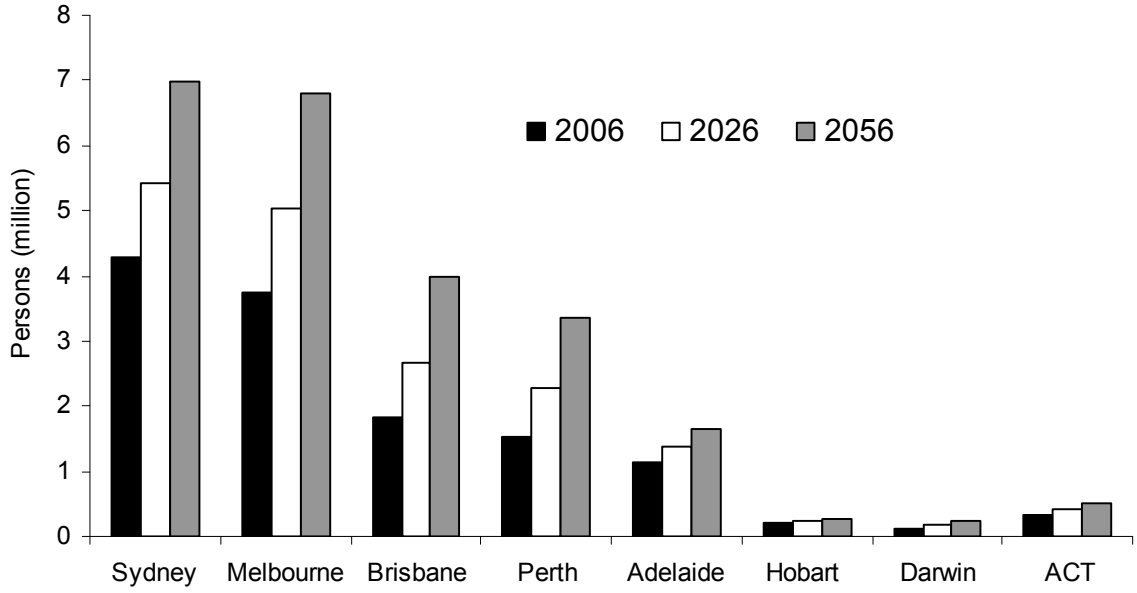
Aligning planning to population forecasts is further complicated by the need to factor in intrastate and interstate population movements. For example, between 2001 and 2006, 40–60 per cent of people (depending on the jurisdiction) changed address (ABS 2010c).

Source: ABS (Australian Demographic Statistics, Jun 2009, Cat. No. 3101.0); ABS (Australian Historical Population Statistics, 2008 , Cat. No. 3105.0.65.001); Productivity Commission estimates.

The ABS estimates that over 70 per cent of this growth will be in Australia's capital cities. However, disparate trends will be observed across cities. In Perth and

Brisbane, population is projected (under the ABS medium growth scenario) to more than double between 2006 and 2056. In Melbourne and Sydney, growth is expected to be slower, however, by 2056, population is projected to grow to nearly seven million people in each of these cities (under the ABS medium growth scenario). In Adelaide and Hobart population growth is likely to be less significant (figure 2.2).

Figure 2.2 **ABS population projections, medium growth scenario**
Capital cities, 2006 (actual), 2026 and 2056



Data source: ABS, 2008.

Within Australia, there are some rapidly growing cities. Brisbane and South East Queensland is one of the fastest growing regions in Australia. Brisbane City Council (sub. 18, p. 1) commented:

> The greatest challenge for Council has been managing the unprecedented growth of the city and the South East Queensland (SEQ) Region more generally. In the decade to 2006, the Brisbane Statistical Division population increased by 21%, from 1.47 million to 1.78 million. Employment increased by 31%, over the same period from 656,000 to 859,000 jobs. In percentage terms, this has been the fastest growth recorded among Australia's capital cities.

Table 2.2 reports the change in population between 2001 and 2009 for the 24 cities selected for this review (chapter 1). Tables in appendix C list the population data by local government area in each city. City boundaries are consistent with city areas defined in state and territory strategic plans.

Population growth between 2001 and 2009 was highest in the Gold Coast and Sunshine Coast (exceeding 30 per cent). In contrast, in Alice Springs, Launceston, Wollongong, Hobart, Adelaide, Sydney and Newcastle. population grew less than 10 per cent over the same period. By Local Government Area (LGA), the highest growth areas were Perth City and Melton Shire. Further, in Sydney, Adelaide and Perth the highest growing LGAs are in the city centre.

Table 2.2 **Population growth, selected cities, 2001 and 2009**[a]

Highest growth				*Lowest growth*			
City	*Population 2001*	*Population 2009*	*Change %*	*City*	*Population 2001*	*Population 2009*	*Change %*
Gold Coast	387 102	515 157	33	Geelong	194 478	216 330	11
Sunshine Coast	247 167	323 423	31	Albury	45 621	50 522	11
Cairns	128 095	164 356	28	Canberra	318 939	351 868	10
Townsville	144 789	181 743	26	Wodonga	32 456	35 733	10
Brisbane	1 740 337	2 098 922	21	Newcastle	492 549	540 796	10
Queanbeyan	33 765	40 661	20	Sydney	4 128 272	4 504 469	9
Perth	1 438 731	1 727 516	20	Adelaide	1 217 721	1 319 474	8
Tweed	74 577	88 993	19	Hobart	203 714	219 089	8
Darwin	106 403	124 101	17	Mount Gambier	23 503	25 216	7
Geraldton-Greenough	32 764	37 895	16	Wollongong	271 598	288 984	6
Toowoomba	137 593	159 098	16	Launceston	101 042	107 203	6
Melbourne	3 472 207	3 996 160	15	Alice Springs	26 520	27 877	5

[a] The LGAs included in each city are consistent with the areas defined by the capital city's strategic plan. However, because of differences in the way the city boundaries have been defined the aggregate city data in this table data do not generally equal the ABS city totals based on *Statistical Local Areas*.

Source: ABS 2010c.

Population growth presents challenges as well as opportunities for the Australian economy. The Western Australian Local Government Association (sub. 41, p. 9) commented:

> All spheres of government have a role in ensuring that this profound population expansion and structure change is achieved without compromising the environmental, social and economic aspirations of the community. Where will these people live and how will existing cities cope with expansion? Where and how will the public infrastructure be provided? Will the footprints of our cities expand accordingly?

Some challenges associated with population growth, raised by participants, include housing choice and affordability, the cost of infrastructure, congestion, encroachment and environmental sustainability. For example, the Organisation of Sunshine Coast Association of Residents (sub. 21, pp. 7-8) stated:

> Population growth brings direct economic benefit to the development and housing construction industries. However these benefits are outweighed by the enormous public costs of infrastructure that must be provided for this growth. Small changes in population growth require large changes in infrastructure needs…

Similarly, the Business Council of Australia (sub. 38, p. 2) commented:

> Gaining support for economic and population growth from citizens concerned about clogged roads, strained services, pollution and social cohesion means governments across the country have to do a better job of explaining the importance of growth and planning for it. Governments need to better integrate planning of urban centres and infrastructure, including roads, public transport, water and electricity supply, as well as schools and hospitals.

Population growth may also be associated with urban encroachment. Fremantle Ports (sub. 14, p. 3) stated that urban encroachment is a 'lose – lose situation':

> With increasing urbanisation, transport corridors and intermodal activities such as ports face growing pressure from sensitive uses such as dwellings locating in close proximity. This is a national and international trend which has competitive and operational impacts on transport corridors and ports…

Similarly, the Australian Logistics Council (sub. 46, p. 4) said:

> The transport and logistics industry requires access to freight corridors. Moreover, either too much residential intrusion near logistics infrastructure or congestion around the infrastructure causes inefficiency.

Environmental concerns

Population growth in cities also has implications for environmental sustainability. Environmental sustainability is a prominent issue in land planning. It is about maintaining the qualities that are valued in the physical environment over the long term such as clean air and water, green space and bio-diversity.

In March 2010, the Australian Conservation Foundation (2010) nominated population to be included as a 'key threatening process' to biodiversity under the Environment Protection and Biodiversity Conservation Act stating that:

> The bigger our population gets, the harder it is for us to reduce greenhouse pollution, protect natural habitats near urban and coastal areas and ensure a good quality of life for all Australians.
>
> More people means more roads, more urban sprawl, more dams, more transmission lines, more energy and water use, more pollutants in our air and natural environment and more pressure on Australia's animals, plants, rivers, reefs and bushland.
>
> We need to improve urban and coastal planning and management of environmental issues, but we can't rely on better planning alone to protect our environment. Rapid

> population growth makes sustainable planning nearly impossible, so stabilising Australia's population by mid-century should be a national policy goal. (ACF 2010)

Related to environmental sustainability is the need for cities to adapt to climate change. The 2010 Intergenerational Report stated:

> Climate change is the largest threat to Australia's environment and represents one of the most significant challenges to our economic sustainability. Failure to address this threat would have severe consequences for weather patterns, water availability in cities, towns and rural communities, agricultural production, tourism, infrastructure, health and Australia's unique biodiversity. The social and economic consequences of failing to act would be severe. (The Treasury 2010, p. 71)

2.3 Broad indicators of the functioning of cities

Governments and researchers look toward outcome indicators to provide measures of how well a city is meeting the challenges faced in maintaining and improving the functioning of cities.

Many studies have attempted to compare the functioning and liveability aspects of cities by using broad aggregate indicators of various aspects of a city's performance. Aggregate indicators suffer from data measurement, consistency issues and a range of other problems (box 2.2). Selective or partial indicators that are related to government objectives are often more useful than broader aggregate liveability, wellbeing and performance indices to identify particular aspects in the functioning of cities which can be specifically addressed by government policies.

For example, as part of the Review of Capital City Planning Systems, KPMG used some 'external indicators' to quantitatively assess the ability of each capital city to deliver on strategic planning objectives (table 2.3). However, data limitations restricted the analysis to four indicators (key worker housing affordability, congestion, budget alignment and population planning). KPMG noted that there is a lack of publicly available data for greenhouse gas emissions, water availability, biodiversity, housing supply and liveability (KPMG 2010, p. 2).

Table 2.3 presents a summary of KPMG indicators. Adelaide was ranked the highest overall, achieving high levels of performance in population management and key worker housing affordability. Sydney had the lowest overall relative performance with particularly poor performance indicators for key worker housing affordability and congestion.

Box 2.2 **Limitations of outcome indicators**

Outcome indicators are tools for measuring progress toward objectives and can include single measures as well as composite indexes. In a planning context, outcome indicators measure the liveability and functionality of the urban area. Measuring outcomes can show not only where policy is being successful but also where objectives are not being met. However, outcomes do not reliably indicate (on their own) how well planning and zoning systems are working, as many other factors that impact on outcomes lie beyond the planning system.

There are a host of problems that must be considered when using liveability/wellbeing and performance indicators generally and as outcome indicators of planning and zoning. Selecting appropriate indicators for comparing cities against each other is challenging. Different communities and people consider different factors important and much will vary according to an individual's age and circumstance.

In addition, measurement issues may be associated with the indicators. While it is difficult to accurately measure intangible wellbeing factors, even for material measures such as income and cost of living there may still be problems in accurately comparing data across cities. Of greater significance to this study, it is problematic to use global and Australian liveability/wellbeing indices as outcome indicators for planning and zoning. In particular, many of the indicators included in indexes — such as climate — cannot be influenced by planning and zoning systems and are therefore not useful as policy indicators. That said, some individual indicators such as housing affordability and congestion which are included, for example in the Sustainable Cities Index may be useful from a planning perspective. However, they compare particular aspects rather than measure the overall efficiency and effectiveness of land planning systems.

Moreover, global and Australian city performance measures are generally not intended to be used as outcome measures of planning and zoning. The ACF states that the Sustainable Cities Index is produced 'with the aim of encouraging healthy competition, stimulating discussion and suggesting new ways of thinking about our cities' (ACF 2010b). Composite, global measures of city performance are also typically used for tourism or attracting migrants and investment to a city, or for use by transnational companies in locating their expatriate staff.

Aside from data issues, when considering appropriate indicators to assess outcomes, it is important to recognize the multiplicity of influences on any individual indicator. For example, housing affordability is influenced by a broad range of influences including planning and zoning systems, interest rates, average incomes, demography and community preferences.

Overall, the relationship between outcome indicators and planning and zoning is not straightforward. Even if the impacts of current planning and zoning decisions could be isolated from other influences, it may reflect planning practices of previous decades and provide limited insight into the efficiency and effectiveness of the contemporary planning system. However, as with other benchmark indicators, differences between cities leads planners and others to ask "Why is it so?" and finding the answer can lead to important insights.

Table 2.2 **KPMG performance indicators, 2010**[a,b]

Score out of ten and overall ranking

	Budget alignment	*Population management*	*Key worker housing affordability*	*Congestion*	*Total score (%)*	*Overall ranking*
Adelaide	6	9	8	6	73	1
Canberra	7	8	5	7	68	2
Hobart	3	3	9	8	58	3
Brisbane	8	4	6	4	55	4
Darwin	2	na[a]	5	9	53	5
Melbourne	7	6	3	3	48	6
Perth	4	5	4	5	45	7
Sydney	5	7	2	2	40	8
Average	**5**	**6**	**5**	**6**	**55**	

[a] KPMG note that there is no population growth planning target for Darwin. [b] The KPMG report did not include any qualitative assessment of performances. As a result, a city setting a low goal and achieving it received a high mark while one that set an ambitious goal and fell short received a low mark.

Source: KPMG 2010.

Aggregate indicators of liveability and sustainability

A number of global city indices have been published to assess and rank the liveability of cities throughout the world. Two widely known international measures are the Economist Intelligence Unit's quality-of-life index and Mercer's Quality of Living Reports.

Most global measures are a weighted index of locational characteristics which are thought to contribute towards the liveability of a city. They compare the characteristics of cities through a combination of economic data and life-satisfaction surveys. The Economist Intelligence Unit's quality-of-life index, for example, is based on nine quality of life factors (health, family life, community life, income per person, political stability, climate and geography, job security, political freedom and gender equality). Mercer's 2010 Quality of Living Report included 39 indicators in a broad range of areas including political and social, health, public services, consumer goods, economy, education, recreation, housing, culture and environment.

Infrastructure Australia (2010a, p. 12), comparing a number of global city indicators found:

> Australian cities rank highly on an international comparison, particularly on indices that measure quality of life and global connectivity, and measures related to the social condition of people. There is evidence to suggest that Australian cities suffer with respect to infrastructure. Of concern is the evidence that suggests a decline in international relative performance and perception in the past five years.

In Australia, a number of indices are also compiled to compare liveability and sustainability including the Australian Unity Wellbeing Index, the Sustainable

Cities Index, The Property Council of Australia's liveability index and Community Indicators Victoria.

Australian Unity, in partnership with the Australian Centre on Quality of Life at Deakin University, regularly publishes personal and national wellbeing indices which measure how satisfied Australians are with their own lives and life in general in Australia. For example, between 2005 and 2009, the Australian Unity personal wellbeing index reported an increase in standard of living, community connectiveness and safety (Australian Unity 2010). The data, however, are not available on a LGA or city basis.

The Australian Conservation Foundation compiles the Sustainable Cities Index which also provides snapshot indicators of city performance. The index combines quality of life indicators with indicators of environmental performance and resilience to produce a comparative performance snapshot of Australia's largest 20 cities. The index is based on the following 15 indicators.

- Environmental performance — Air quality, ecological footprint, green building, water and biodiversity.
- Quality of life — Health, density, subjective wellbeing, transport and employment.
- Resilience — Climate change, public participation, education, household repayments and food production.

Table 2.4 summarises the 2010 Sustainability Index.

Table 2.4 **ACF Sustainability Index, 2010**

Top five performing cities			
Overall	*Environment*	*Quality of life*	*Resilience*
Darwin	Brisbane	Townsville	Canberra-Queanbeyan
Sunshine Coast	Sunshine Coast	Darwin	Ballarat
Brisbane	Wollongong	Gold Coast-Tweed	Darwin
Townsville	Cairns	Sunshine Coast	Townsville
Canberra-Queanbeyan	Bendigo	Canberra-Queanbeyan	Adelaide and Brisbane
Bottom five performing cities			
Overall	*Environment*	*Quality of life*	*Resilience*
Perth	Perth	Ballarat	Wollongong
Geelong	Adelaide	Bendigo	Newcastle
Newcastle	Geelong	Adelaide	Geelong
Wollongong	Townsville	Wollongong	Gold Coast-Tweed
Albury-Wodonga	Canberra-Queanbeyan	Albury-Wodonga	Sydney

Source: ACF 2010b.

The Australian Conservation Foundation (2010b, p.3) stated:

> No city has done well across all 15 indicators, with each having its own unique strengths and weaknesses often reflective of their individual character, context and history. In 2010 Darwin has emerged as Australia's most sustainable city, followed closely by Sunshine Coast and Brisbane. In contrast, under this comparative analysis, Newcastle, Geelong and finally Perth are Australia's least sustainable cities…

In January 2011, the Property Council of Australia released *My City: The People's Verdict* which presents a liveability index for each of Australia's capital cities. The indexes are based on 17 liveability measures which were compiled using data from a survey of over 4000 Australian residents, conducted by Auspoll. Adelaide and Canberra were rated the most liveable cities while Sydney and Darwin were considered significantly less liveable (table 2.5).

Table 2.5 **Liveability index**

Percentage of respondents who agree with each attribute in their city

	Adel	*Can*	*Mel*	*Per*	*Hob*	*Bris*	*Dar*	*Syd*	***Average***
Wide range of recreational environments	80	81	83	82	76	80	77	76	**79**
Attractive natural environment	75	85	71	79	85	70	78	63	**76**
Wide range of cultural/entertainment activities	75	74	88	63	58	78	76	80	**74**
Good schools and educational facilities	70	78	72	72	65	69	57	68	**69**
Good climate	73	46	53	83	58	83	70	74	**68**
Good housing diversity	68	64	67	64	62	64	57	52	**62**
Good employment/economic opportunities	50	73	67	65	28	58	78	60	**60**
Clean, unpolluted and well maintained city	63	72	50	62	64	52	60	34	**57**
A diverse range of people who get along well	53	63	55	48	56	54	68	46	**55**
The city design is attractive	57	58	64	50	50	49	39	47	**52**
Good healthcare	55	57	58	51	41	52	36	48	**50**
Safe for people and property	52	62	44	38	63	51	32	33	**47**
Affordable/good living standard	73	37	50	39	62	44	15	20	**42**
Good road infrastructure/minimal congestion	44	64	22	30	44	21	72	13	**39**
Good public transport	42	24	37	42	29	45	36	32	**36**
Good approach to environmental sustainability/climate change	42	41	35	28	32	37	28	24	**33**
Quality/affordable housing	57	21	31	32	48	32	9	17	**31**
Overall liveability index	**63**	**62**	**61**	**61**	**61**	**60**	**56**	**55**	**60**

Source: Auspoll (2011)

Over 70 per cent of respondents agreed that their city of residence had a wide range of recreational environments, an attractive natural environment and a wide range of

cultural and entertainment activities. In contrast, only 31 per cent of respondents considered their city to have good quality affordable housing. In Darwin (9 per cent), Sydney (17 per cent) and Canberra (21 per cent), the percentage of respondents which viewed housing quality and affordability favourably was considerably lower than the average for all capital cities.

Also of significance to planning and zoning, respondents rated road infrastructure and public transport in cities relatively poorly. For example, only 13 per cent of respondents in Sydney, 21 per cent in Brisbane and 22 per cent in Melbourne, agreed the city has good road infrastructure with minimal congestion compared with an average of 39 per cent for all capital cities (table 2.5).

At the local level, one of the most comprehensive data collections relating to wellbeing and liveability is Community Indicators Victoria (CIV). CIV is intended as a starting point for local governments and local communities in Victoria to identify the issues and indicators which are most important to them (box 2.3).

Box 2.3 **Community Indicators Victoria (CIV) wellbeing data**

CIV is a collaborative project, funded by VicHealth, and hosted by the McCaughey Centre (University of Melbourne). CIV provides a wide range of local community data for Victorians in the form of wellbeing reports for each Local Government Area (LGA). The indicators cover a broad range of topics including social, economic, environmental, democratic and cultural indicators.

The CIV framework is based on a set of approximately 80 community wellbeing indicators. The data comes from a range of sources including the Australian Bureau of Statistics, Victorian Government departments and a state wide CIV Survey (conducted in 2007). Below are some selected wellbeing indicators for the Melbourne and Ballarat LGAs generated using the CIV web based system.

Selected community indicators for Melbourne and Ballarat LGAs

Indicator	*Ballarat*	*Melbourne*	*Victoria*
Personal wellbeing (Index)	76.7	74.8	76.4
Feel part of the community (Index)	71.7	65.1	70.7
Volunteers (% of adult population)	38.5	25.7	40.8
Safe walking alone at night (% of adult pop.)	61.1	66.8	66.5
Recorded crimes against people (per 100 000 pop.)	1221	3342	773
Unemployment (% of labour force)	8.5	5.4	4.8
Households with housing costs 30 per cent or more of gross income (% of all households)	17.2	36.3	17.7
Opportunity to participate in cultural activities (% of pop.)	75.2	73.4	73.0
Acceptance of diverse cultures (% of adult pop.)	89.3	93.2	89.4
People have a say in important issues (% of adult pop.)	49.6	41.0	45.8

Source: Community Indicators Victoria, live report created on August 17 at: http://www.communityindicators.net.au/node/add/report.

2.4 Partial indicators of city functioning

In order to provide a statistical picture of the functioning of cities, in this section the Commission presents some indicators related to various aspects of the functioning of Australian cities. Indicators include both liveability for residents and ease of doing business, noting that some indicators apply to both, such as the ease with which people can move around a city. Broadly, the following indicators have been included:

- population growth and population densities of local government areas (LGAs) (derived from ABS data) — indicate high growth LGAs and where population density is increasing

- housing affordability in cities using Bankwest affordability estimates and median house prices by LGA — indicative of how well land release and rezoning is delivering a core objective of most governments
- new residential building by LGA — indicative of how well population growth is being addressed by cities and local councils
- international comparisons of ease of doing business (such as dealing with construction permits, registering property, enforcing contracts, getting credit and employing workers) to indicate whether Australia's regulatory environment is conducive to the operation of business.

In addition, in the final report the Commission intends to present the following indicators from the Commission's community survey:

- differences in the time it takes to get to work — reflective of infrastructure and transport planning
- subjective sense of security and connectiveness to community — indicative of how well planning might be contributing to the creation of a sense of community.

It is important to note that this is not a comprehensive list of city functioning indicators but selected indicators that provide some useful comparisons at either the international, Australian city or LGA level. The choice of the outcome has been guided by the extent to which planning can affect it; that it is an outcome being addressed through national reform agendas; as well as the availability of robust data (in particular, by LGA). Further, because of the multiplicity of influences (in addition to planning and zoning) on any individual indicator, the Commission does not attempt to attribute causation for any differences in indicators between cities.

Population density

In cities throughout the world (including Australian cities), one of the solutions to the challenges created by an increasing population is urban containment or increasing population density. Population density is measured as the number of people in an urban area per square kilometre.

Urban containment is an important principle in the efficiency of city land planning. In this context, urban efficiency may be measured in terms of the affordability of infrastructure and services, travel times, energy and water use and social and environmental benefits. For example, it is less costly to establish road networks and utilities in developments which are contained rather than dispersed. And communities which consume less land for purposes such as housing and industry

are likely to need fewer roads, use infrastructure (such as public transport) more efficiently and be located closer to services.

However, as with almost every issue in planning, urban containment is a balancing act. For example, if land releases are constrained too much, restrictions on the availability of land are likely to make land less affordable and urban containment opposes the high value that Australian culture generally places on relatively large blocks of land. Moreover, although efficiency gains may be associated with urban containment, increased density is linked with social and environmental costs, such as congestion and over crowding.

Internationally, Australia's major capital cities are some of the least dense in the world. Only cities in the United States and North American regions are recorded as having lower population densities (Demographia 2010).

Density within Australian cities

Table 2.6 provides a summary of population density for the 24 selected Australian cities based on areas defined in the state/territory strategic plans (data by LGA are in appendix C). In 2009, the highest population densities were recorded in Mount Gambier, Melbourne, Canberra, the Gold Coast and Sydney, in that order. However, as suggested by somewhat surprising results for Mount Gambier and Canberra, density measures are highly sensitive to how urban area is defined. See appendix C for further information on measurement difficulties for this indicator.

There is extreme diversity in density between LGAs particularly in Sydney and Melbourne. In Sydney, density ranges from over 7000 people per square kilometre in Waverley to 2600 people per square kilometre in Strathfield to less than 200 people per square kilometre in Gosford, the Blue Mountains, Hawkesbury and Wollondilly. In Melbourne, density ranges from 4600 people per square kilometre in Port Phillip City to 2000 people per square kilometre in Banyule City to 50 people per square kilometre in Cardinia Shire. Because the outer areas in capital cities are lightly populated yet relatively large in area, they lower the average density of capital cities quite substantially and so the measures of median density (table 2.6) provide a better indicator of density in capital cities.

Population densities in some LGAs increased substantially between 2001 and 2009, particularly in inner city areas — by 122 per cent in Perth City, 67 per cent in Melbourne city, 45 per cent in Adelaide city and 37 per cent in Sydney city (appendix C).

Table 2.6 **Population density, selected cities, 2009**[a]

Highest density				*Lowest density*			
City	*Area (km2)*	*Density*	*Density median*	*City*	*Area (km2)*	*Density*	*Density median*
Mount Gambier	27	942	942	Brisbane	17 859	118	166
Melbourne	8 824	453	1 612	Sunshine Coast	3 126	103	103
Canberra	808	436	436	Alice Springs	328	85	85
Gold Coast	1 334	386	386	Wodonga	433	83	83
Sydney	12 138	371	2 535	Tweed	1 309	68	68
Wollongong	1 089	265	294	Townsville	3 739	49	49
Perth	7 261	238	1 348	Darwin	3 079	40	555
Queanbeyan	172	236	236	Cairns	4 129	40	40
Geelong	1 247	173	173	Hobart	6 149	36	93
Albury	306	165	165	Geraldton-Greenough	1 781	21	21
Adelaide	9 050	146	958	Launceston	7 883	14	21
Newcastle	4 052	133	177	Toowoomba	12 973	12	12

a The LGAs included in each city are consistent with the areas defined the capital city's strategic plan. However, because of differences in the way the city boundaries have been defined, the aggregate city data in this table data does not generally equal the ABS city totals based on Statistical Local Areas.

Source: Population from ABS, 2010c; and area, unpublished data provided by the ABS.

Housing affordability and availability

Housing affordability is a key component of city liveability.[1] Housing affordability is a prominent issue amongst participants to this study. For example, the Housing Industry Association (sub. 42, p.1) said:

> During the 2000s the price of established houses in real terms increased by nearly 6 per cent a year, much faster than increases in the stock of dwellings, indicating that new housing supply was unresponsive to increases in existing house prices. Revised population projections suggest that the scale of the housing supply challenge is set to accelerate over coming decades.

Master Builders Australia (sub. 32, p.2) added:

> A lack of affordable housing adds to social dislocation and threatens Australia's economic growth and productivity. The family home has increasingly become unattainable as a confluence of circumstances have mitigated against an average Australian household realising the goal of affordable home ownership. Home ownership is one of the cornerstones of Australia's social fabric and wellbeing and it is imperative that affordable housing remains within reach of all Australians.

1 Housing affordability is generally defined as the ability of low income households to access an acceptable standard of housing without compromising other core spending needs. However, recent concern over housing affordability extends this definition to whether people across a range of incomes can purchase housing without facing financial hardship.

> The National Housing Supply Council has estimated the cumulative shortfall in new housing at around 180,000 dwellings. The shortfall in new housing is not due to industry incapacity but rather supply constraints that prevent the industry from supplying not only the required quantum but also affordable new housing.

Further, the Urban Taskforce Australia (sub. 56, p. 10), observing the relationship between housing supply and housing affordability, said:

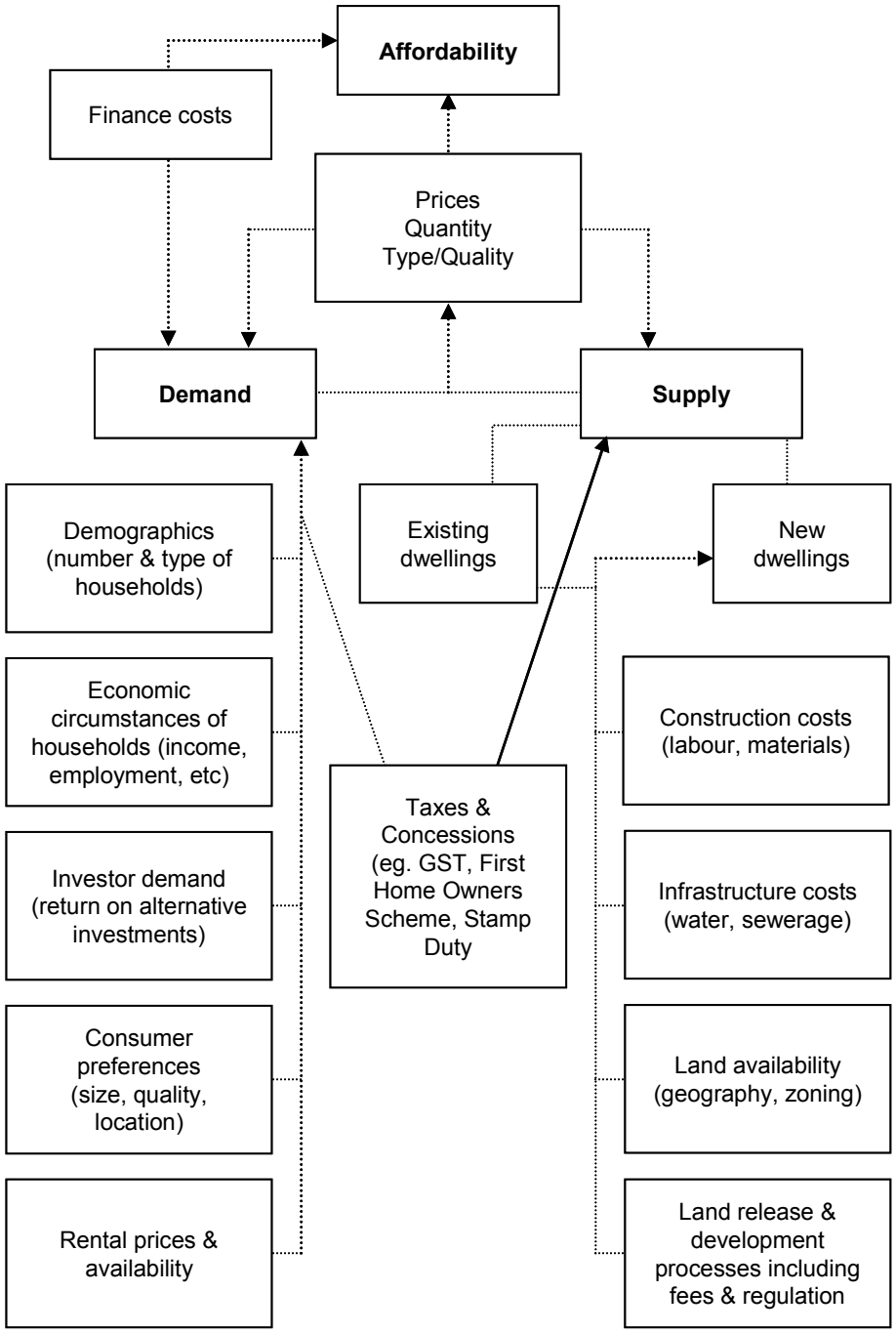
> The lack of building activity carries high social costs. In the last financial year, work started on 52,000 new Victorian private sector homes, while in NSW work only started on 26,000 homes. The housing undersupply is the main reason why rents in the inner suburbs of Sydney have been increasing at nine times the rate of inflation. Rents for three bedroom homes in outer suburban Sydney have increased by 30 per cent in the last three years. In fact, rents for three bedroom homes across NSW have been increasing by an average of 9 per cent a year over the last three years.

Housing affordability is a significant challenge for governments. The 2009 *Review of Australia's Tax System* (Henry review) stated:

> Housing supply can be restricted through a range of policies, such as planning and zoning regulations, as well as the approvals processes that govern them. However, such policies are designed to achieve a range of policy objectives, against which their impact on the price of housing should be assessed. The use of infrastructure charges has the potential to improve the allocation of infrastructure. However, where they are not set appropriately, infrastructure charges can reduce the supply of new housing, which can increase overall house prices.
>
> This is not a straightforward area of policy because while reforms to increase supply may promote housing affordability, they can also reduce existing home values and change the shape of Australian cities in ways that many existing residents do not desire… (Henry, K., Harmer, J., Piggott, J., Ridout, H., and Smith, G., 2009, volume 2, section E4)

While zoning and planning contributes to the affordability of housing, it is difficult to isolate the effect that planning and zoning has from a broad range of other factors which impact on the supply and demand for housing such as interest rates, average incomes, demography, and community preferences (figure 2.3).

Figure 2.3 **Factors influencing housing affordability**



Source: National Housing Supply Council State of Supply Report 2008, p. 6 (based on PC 2004).

There is no single indicator of housing affordability. Housing affordability can be measured in a number of ways. Some typical measures include *ratio* comparisons of the cost of housing to income, *residual* estimates or remaining income of households after deducting the cost of appropriate housing and the cost of servicing a mortgage based on average income. Presented below are a range of snapshot

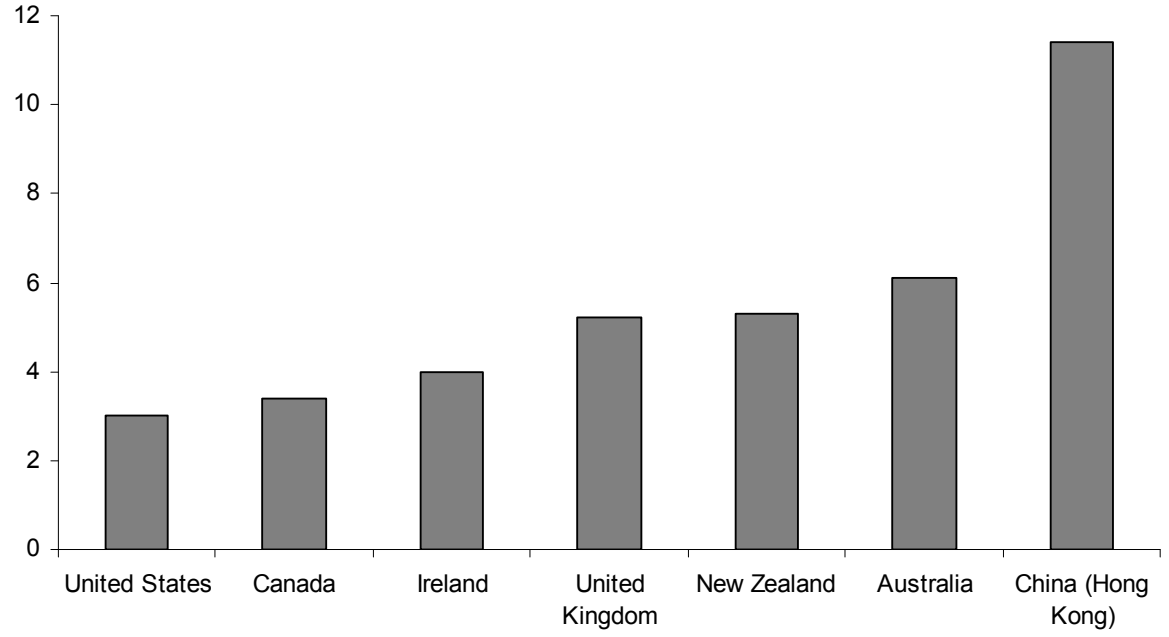
indicators of housing affordability including Demographia international housing affordability estimates, BankWest housing affordability reports and median house prices by LGA sourced from RPdata. ABS estimates of residential building activity by LGA are also presented as an indicator of new dwelling supply.

International estimates of housing affordability

Compared with other countries, housing in Australia has been estimated to be some of the least affordable. Of the seven nations surveyed by Demographia (2011) only homes in China (Hong Kong) were estimated as more unaffordable. The national median multiple (median house price divided by gross annual median household income) for Australia was 6.1 (severely unaffordable) compared with 11.4 (severely unaffordable) in China (Hong Kong), 3.0 (affordable) in the United States and 3.4 (moderately unaffordable) in Canada (figure 2.4).

Figure 2.4 **Housing affordability, national median[a] [b], 2010**

Demographia nations surveyed



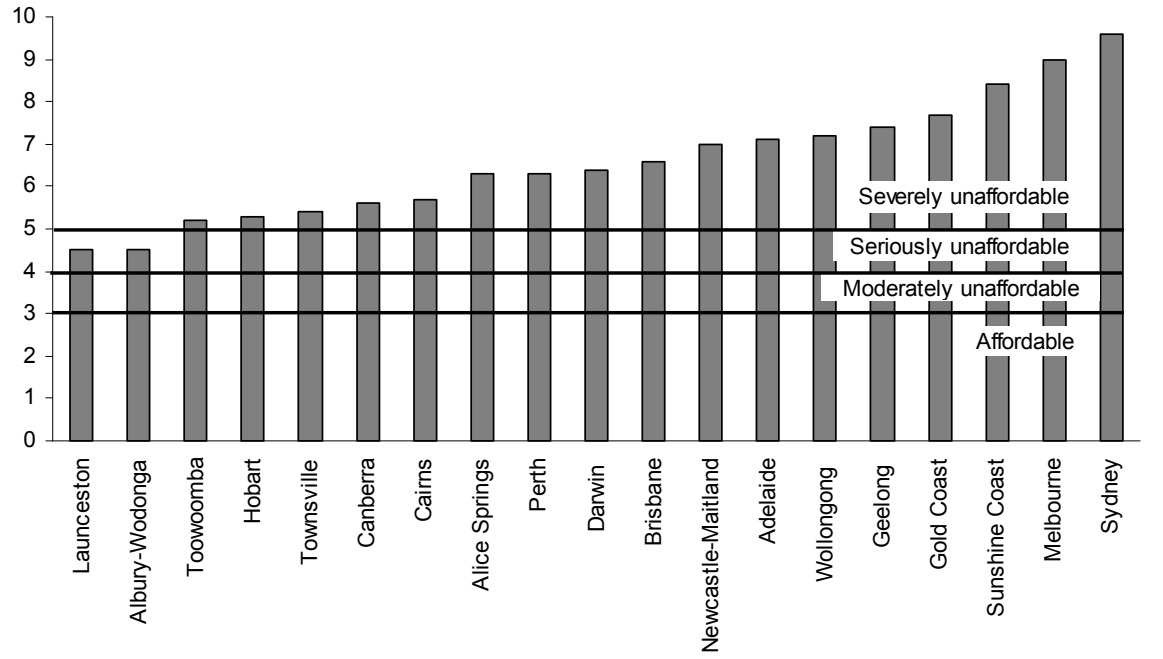
a The median multiple is calculated as the median house price divided by gross annual median household income. **b** The data does not take into account international differences which may explain differences in affordability such as construction costs, financial systems, community preferences and land area.

Data source: Demographia (2011)

By selected Australian city, Sydney was ranked as the most unaffordable with a median multiple of 9.6. In contrast, of the selected Australian cities housing was most affordable in Launceston and Albury-Wodonga, both with a median multiple

of 4.5. However, even in these cities homes are classified as seriously unaffordable based on Demographia benchmarks (figure 2.5).

Figure 2.5 **Housing affordability, median multiple, 2010**[ab]
Selected Australian cities



a The median multiple is calculated as the median house price divided by gross annual median household income. **b** The data does not take into account international factors which may explain differences in affordability such as construction costs, financial systems, community preferences and land area.

Data source: Demographia (2011)

Demographia also presented a mortgage stress indicator case study between Sydney, Melbourne, Dallas-Fort Worth and Atlanta. Demographia reported that although the populations of Atlanta and Dallas-Fort Worth have grown at significantly faster rates than Sydney and Melbourne in recent years, the Australian cities have substantially larger levels of mortgage stress. The share of median household income required to pay a mortgage on a median price house was estimated at over 50 per cent in Sydney and Melbourne compared with under 20 per cent in Atlanta and Dallas-Fort Worth (Demographia 2011).

Bankwest housing affordability estimates

In Australia, a number of housing affordability estimates are reported including the Real Estate Institute of Australia (REIA) Deposit Power Housing Affordability Report, the Commonwealth Bank of Australia–Housing Industry Association (CBA–HIA) Housing Affordability Index, the BIS Shrapnel Home Loan

Affordability Index and Bankwest housing affordability reports. Bankwest data is one particularly relevant to this study as it is reported by LGA.

Bankwest publishes two reports related to housing affordability by LGA:

- The *Key Worker Housing Affordability Report* (2009 being the most recent) measures affordability as the ratio of house prices to earnings. Earnings are average earnings by state of nurses, teachers, police officers, fire fighters and ambulance officers from the 2008 ABS Employee Earnings and Hours survey. House prices are annual median house price sourced from Residex.
- The *Annual First Time Buyer Deposit Report* (2010 being the most recent) measures the time it takes for a first time buyer (represented by 25-34 year olds) to save a deposit for a house or unit. In calculating the time taken to save a conservative (20 per cent) home deposit, potential first time buyers are estimated to save 20 per cent of their gross income annually. Income is the average income of 25 to 34 year olds from the 2006 ABS census, indexed to 2010 using the ABS wage cost index in each state. Median house and unit prices have been sourced from Residex.

Bankwest in its 2009 key worker housing affordability report concluded:

- Hobart is the only capital city that is affordable for all key worker groups.
- Sydney and Melbourne are the least affordable capital cities. The median house price to earnings in 2009 was 7.7 in Sydney and 6.5 in Melbourne, compared with 4.8 in Hobart, the most affordable capital city.
- Over the last five years, with the exception of Sydney, capital cities have deteriorated in housing affordability for key workers. Affordability has deteriorated most significantly in Darwin and Perth (table 2.7).

Table 2.8 summarises the capital city results from the BankWest *Annual First Time Buyer Deposit Report* report. These data indicate continuing deterioration in affordability in the year 2009-10, and a city ranking similar to that based on key worker affordability. Both measures confirm substantial deterioration in all the major cities in the past five years, with the exception of Sydney where affordability improved marginally for first home buyers.

Table 2.7 **Bankwest key worker housing affordability, 2009**

Summary statistics

Capital city	*House price to earnings ratio 2009*	*Change 2008-2009*	*Change 2004-2009*
Sydney	7.7	-0.8	-2.1
Melbourne	6.5	0.5	0.6
Perth	6.3	-1.2	1.6
Canberra	6.2	-0.5	0.3
Darwin	6.2	0.2	2.1
Brisbane	6.0	-0.6	0.6
Adelaide	5.1	-0.1	0.5
Hobart	4.8	-0.3	0.6

Source: Bankwest 2009

Table 2.8 **Bankwest first home buyer affordability, 2010**

Years for a first time home buyer to save for a house deposit.

Capital city	*2010*	*Change 2009-2010*	*Change 2005-2010*
Sydney	6.2	1.0	-0.1
Melbourne	5.7	1.3	1.4
Perth	4.9	0.6	0.8
Darwin	4.8	0.8	1.6
Brisbane	4.7	0.6	0.5
Canberra	4.4	0.7	0.6
Hobart	4.3	0.6	0.4
Adelaide	4.2	0.7	0.6

Source: Bankwest 2010

Median house prices

One measure available at the local government level is the change in median house prices over time. While this is not a measure of housing affordability (as it does not take into account income and interest rates) it does provide a snapshot of recent changes in house prices which are a significant determinant of housing affordability.

Table 2.9 presents a summary of median house prices in 2001, 2006 and 2010 for the 24 selected cities, based on areas defined in the state/territory strategic plans. Data by LGA are in appendix C. In 2010, of the 24 selected cities, median house prices were highest in Sydney, Canberra, Darwin and the Gold Coast. In comparison, the lowest median prices were observed in Mount Gambier,

Launceston and Toowomba. Among the capital cities, median house prices were the lowest in Hobart and Adelaide (table 2.9).

Table 2.9 **Median house prices 2001, 2006 and 2010**[a b]
Selected cities

	Median house prices					*Sales*
	2001 ($'000)	*2006 ($'000)*	*2010 ($'000)*	*Increase (%) 2006 to 2010*	*Increase (%) 2001 to 2010*	*2010 (no.)*
Geraldton-Greenough	113	254	410	61	262	437
Hobart	107	260	348	34	227	3 143
Launceston	85	215	275	28	224	1 668
Perth	155	378	495	31	220	20 264
Darwin	170	309	525	70	209	1 536
Brisbane	156	330	460	39	195	29 570
Townsville	132	280	383	37	190	2 561
Queanbeyan	160	329	459	40	187	281
Sunshine Coast	175	400	489	22	179	4 599
Alice Springs	156	292	424	45	172	444
Tweed	174	381	470	23	170	781
Toowoomba	116	248	309	25	166	2 617
Canberra	208	395	545	38	162	3 881
Cairns	146	309	375	21	157	2 028
Adelaide	149	280	380	36	155	20 114
Gold Coast	208	425	525	24	152	5 563
Geelong	140	260	335	29	139	3 614
Newcastle	150	300	355	18	137	7 418
Albury	118	248	268	8	128	598
Melbourne	215	340	485	43	126	50 943
Mount Gambier	114	190	240	26	111	408
Wodonga	128	255	269	5	110	499
Wollongong	208	370	422	14	103	3 082
Sydney	315	485	590	22	88	45 580

[a] Data is 12 months to September in each year. [b] The LGAs included in each city are consistent with the areas defined by the capital city's strategic plan.

Source: Rpdata, unpublished.

There is considerable diversity in median house prices within cities. For example, across different LGAs in Perth, median house prices ranged from $330 000 to nearly $5 million. Similarly, in Sydney, median house prices by LGA ranged from $330 000 to over $2 million (appendix C).

Between 2001 and 2010, the largest increases, were observed in Geraldton-Greenough, Hobart, Launceston, Perth and Darwin with median house prices over 3 times higher in 2010 than in 2001. In contrast, in Sydney, despite having the highest median house price in 2010, between 2001 and 2010 median house prices grew the

least of the 24 selected cities. Other cities with relatively low house price increases over this period include Wollongong, Wodonga and Mount Gambier.

However, even in these cities, median housing prices grew significantly faster than average income levels. For example, the labour price index for Australia (total hourly rate, including bonuses) increased 40 per cent between 2001 and 2010 (ABS 2010b). This compares with an 88 per cent increase in median house prices in the slowest growing city, Sydney.

Residential building activity

ABS compiles a number of measures related to building activity. Residential building approvals measure the number and value of new houses and other buildings approved in an area and provide an indication of the change in the supply of dwellings.

In 2009-10, ABS data reported that over 110 000 residential dwellings were approved in Australia's capital cities. Of these, 60 per cent were houses and the remaining 40 per cent were other dwellings such as semidetached terrace houses, town houses, flats and apartments. The highest proportion of houses (relative to other dwellings) approved in 2009-10 was in Perth (almost 80 per cent of residential buildings approved were houses) while Sydney approved the highest proportion of other dwellings in 2009-10 (just under 60 per cent).

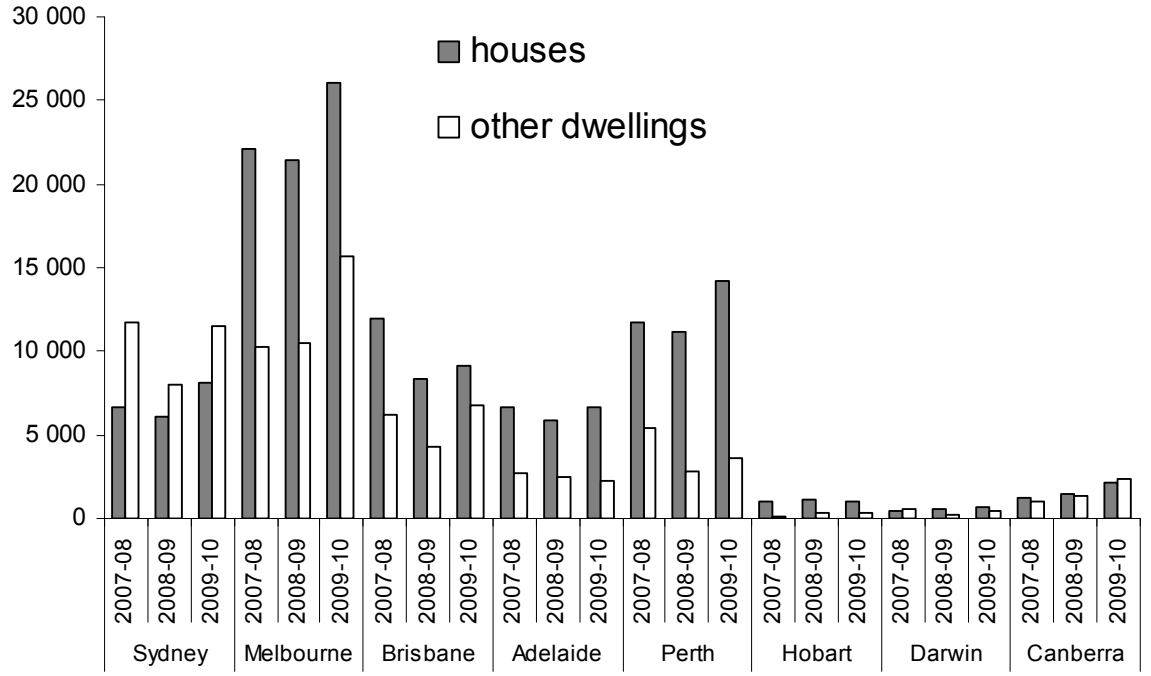
Residential building activity has been increasing in capital cities in recent years. Between 2007-08 and 2009-10, the number of approvals for new residential buildings increased 10 per cent in capital cities, from 100 000 approvals in 2007-08 to over 110 000 approvals in 2009-10. The largest percentage increase was in Canberra where approvals nearly doubled from 2300 in 2007-08 to 4500 in 2009-10.

In the last three years, Melbourne has approved the most residential buildings. Between 2007-08 and 2009-10, over 106 000 dwellings or 36 per cent of all dwellings approved in Australian capital cities were approved in Melbourne. In comparison, over the same period Sydney approved 52 000 dwellings or 18 per cent of dwellings in capital cities (figure 2.6).

Appendix C provides tables on residential building approvals as well as alterations and additions by LGA to provide snapshot indicators at a disaggregated level. Again, the Commission has based city boundaries on local government areas aligned with jurisdictional strategic plans. As a result, the city aggregates are not

generally comparable with ABS defined cities which are based on ABS statistical subdivisions (such as the data in figure 2.6).

Figure 2.6 **Residential building approvals capital cities**[a b]
2007-08, 2008-09 and 2009-10



[a] Cities boundaries are defined by ABS statistical subdivision, not by LGAs and therefore differ to the city estimates in appendix C. [b] Approvals data are indicative rather than conclusive measures of building activity as some approvals do not proceed to the construction stage.

Data source: ABS, 2010a.

Table 2.10 provides a summary of residential building approvals for the 24 selected cities. In 2009-10 residential building approvals were largest in Melbourne where nearly 42 000 dwellings, valued at over $11 billion, were approved. In Perth and Sydney residential building approvals were also significant, valued at over $5 billion in each city. In the smaller populated cities such as Albury, Wodonga, Tweed and Geraldton-Greenough, building approvals were less significant, valued at less than $150 million in each city.

However, when population is taken into account, the value of residential building approvals per person was largest in Geraldton-Greenough, Wodonga, Canberra, Darwin and Perth (over $3 000 per person). In comparison, the value of residential building approvals per person was the lowest in Wollongong, Queanbeyan and Mount Gambier. Of the capital cities, the value of residential building approvals per person was the lowest in Sydney (table 2.10).

Table 2.10 **Residential building approvals, 2009-10, selected cities**[a b]

	Number of dwellings			*Value of dwellings*				
	Houses	*Other dwellings*	*Total*[c]	*Houses ($m)*	*Other dwellings ($m)*	*Alterations/ additions ($m)*	*Total ($m)*	*Total ($ per person)*
Geraldton-Greenough	436	78	516	118	18	9	145	3 827
Wodonga	463	70	533	100	12	5	118	3 309
Canberra	2 187	2 329	4 518	565	458	101	1 124	3 194
Darwin	638	433	1 095	216	115	56	386	3 111
Perth	15 336	3 933	19 299	3 719	947	558	5 224	3 024
Melbourne	26 061	15 497	41 787	6 462	3 347	1 461	11 270	2 820
Townsville	1 361	436	1 797	361	96	51	508	2 795
Sunshine Coast	2 168	648	2 826	607	138	122	867	2 681
Geelong	1 784	360	2 151	405	62	60	527	2 438
Gold Coast	2 318	1 263	3 585	735	283	116	1 134	2 202
Brisbane	9 944	6 788	16 765	2 532	1 339	716	4 587	2 185
Toowoomba	933	266	1 199	225	44	39	308	1 933
Cairns	767	269	1 038	211	59	41	311	1 891
Albury	245	105	350	60	22	12	94	1 866
Adelaide	8 055	2 458	10 525	1 525	416	302	2 243	1 700
Hobart	1 129	314	1 445	246	53	66	366	1 669
Alice Springs	57	65	124	18	16	11	45	1 602
Newcastle	1 947	1 225	3 201	464	230	123	817	1 510
Sydney	8 082	11 215	19 616	2 524	2 616	1 419	6 559	1 456
Launceston	437	159	599	101	26	29	155	1 449
Tweed	326	99	429	87	25	16	129	1 448
Mount Gambier	145	5	150	30	1	4	36	1 419
Queanbeyan	36	197	233	12	36	10	57	1 410
Wollongong	570	508	1 079	158	105	43	307	1 062

a The LGAs included in each city are consistent with the areas defined by the capital city's strategic plan. However, because of differences in the way the city boundaries have been defined the aggregate city data in this table does not generally equal the ABS city totals based on Statistical Local Areas. **b** Approvals data are indicative rather than conclusive measures of building activity as some approvals do not proceed to the construction stage. **c** includes alterations and additions to buildings.

Source: Population from ABS, 2010c and building activity from ABS, 2010a.

There is significant variation in building approvals by LGA. In 2009-10, residential building approvals were the largest in the Brisbane City Council area where approvals were valued over $2.5 billion. However, when population is taken into account, the value of building approvals was largest in the City of Perth ($9 000 per person, appendix C).

Ease of doing business, international indicators

The 2011 *World Bank Doing Business report* measures ease of doing business based on regulations affecting nine stages of the life of a business including starting a business, dealing with construction permits, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts and closing a business. Over 180 economies are ranked. An early ranking on the index means the regulatory environment is conducive to the operation of business.

The 2011 World Bank Doing Business report judged Singapore and Hong Kong as the easiest countries in which to conduct business while Australia was ranked tenth. Table 2.11 presents some selected individual indicators. Australia performed relatively well on getting credit. However, of particular significance to this study, Australia's worst ranking was 63 out of 183 countries on dealing with construction permits (including procedures and the time and cost to obtain construction permits, inspections and utility connections).

More information on ease of doing business such as the time and costs involved in processing development approvals is presented in chapter 6.

Table 2.11 **Selected ease of doing business indicators 2011**[a,b]

Top ten ranked countries out of 183 total countries ranked

	Ease of Doing Business	*Dealing with Construction Permits*	*Registering Property*	*Enforcing Contracts*	*Getting Credit*
Singapore	1	2	15	13	6
Hong Kong	2	1	56	2	2
New Zealand	3	5	3	9	2
United Kingdom	4	16	22	23	2
United States	5	27	12	8	6
Denmark	6	10	30	30	15
Canada	7	29	37	58	32
Norway	8	65	8	4	46
Ireland	9	38	78	37	15
Australia	**10**	**63**	**35**	**16**	**6**

a Dealing with construction permits includes procedures, time and cost to obtain construction permits, inspections and utility connections; employing workers includes difficulty of hiring, rigidity of hours, difficulty of redundancy and redundancy cost; registering property includes procedures and time and cost to transfer commercial real estate; getting credit includes the strength of legal rights index and depth of credit information index; and enforcing contracts includes procedures, time and cost to resolve a commercial dispute. **b** The indicators make the assumption that the business is located in the largest business city in the country. In Australia's case the data relate to Sydney.

Source: The World Bank, 2010

Infrastructure and congestion

The quality of infrastructure is a key aspect of city functioning. The World Economic Forum's *Global Competitiveness Report* publishes a number of infrastructure indicators derived from a survey of executives. In 2010, Switzerland and Hong Kong were the best performing countries in terms of the quality of overall infrastructure, while Australia was ranked 34 (out of 139 countries). Australia's best ranking was in the quality of railroad infrastructure (26), road infrastructure and air transport (both ranked 30), while Australia's worst performance was on quality of port infrastructure receiving a ranking of 46.

Congestion is a key indicator of mobility and delivery of infrastructure. Access to jobs and other activities are important for quality of life and business viability. Congestion is a major challenge in most cities. The Bureau of Transport and Regional Economics (BTRE) commented:

> Congestion imposes significant social costs with interruptions to traffic flow lengthening average journey times, making trip travel times more variable and making vehicle engine operation less efficient (BTRE 2007, p. 77).

Similarly, Infrastructure Australia (2010b, p. 18) in a report on *Getting the fundamentals right for Australia's infrastructure priorities*, stated:

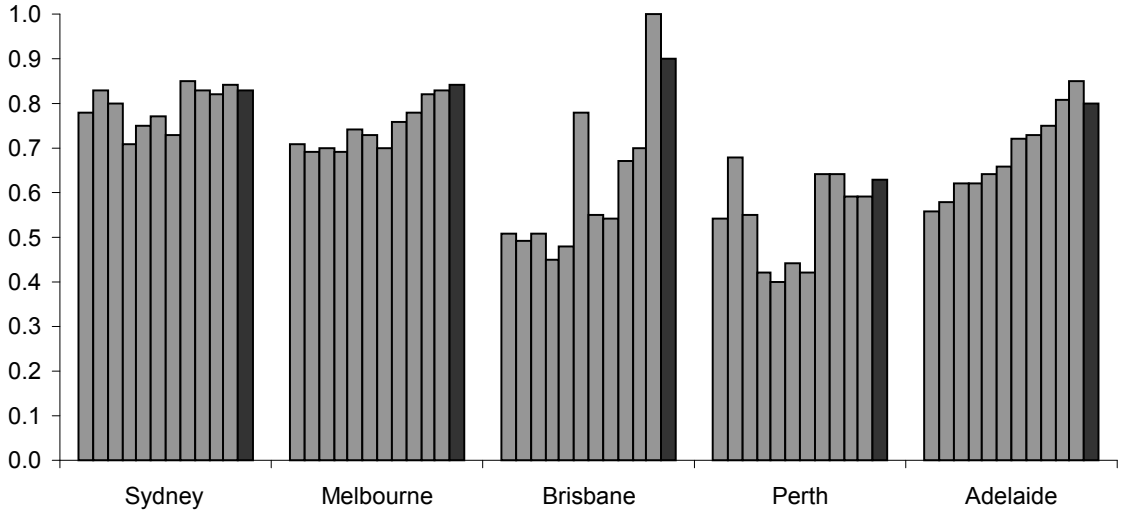
> Improving transport networks in our cities is crucial for economic growth in and the liveability of our cities. Congestion – both on the roads and on the rail and bus networks – is one of the greatest challenges facing Australia's cities. Inadequate transport provision and congestion threaten our quality of life, damage the local and global environment, and, numerous international studies show, act as a significant brake on future economic growth.

Austroads measures congestion as the cost of delay on a representative sample of arterial roads and freeways in the urban metropolitan areas of New South Wales, Victoria, Queensland, Western Australia and South Australia. Figure 2.7 shows that Adelaide's congestion has grown steadily since 1997-98, while Brisbane's congestion levels jumped in abrupt spurts from 2004-05 to 2007-08 to be well above Sydney and Melbourne and then declined a little in 2008-09. The data relate both to the level of investment in public and private transport infrastructure as well as how well the delivery of infrastructure has been planned.

The BTRE study, *Estimating Urban Traffic and Congestion* presents projections to 2020 on the avoidable social costs of congestion for Australia's eight capital cities. The costs of congestion include the costs of delay, trip variability, vehicle operating expenses and motor vehicle emissions. Based on BTRE estimates, KPMG (2010) projects that the per capita costs of congestion will increase over 65 per cent in Sydney and Brisbane between 2006 and 2020. In Perth, Melbourne and Adelaide

Figure 2.7 **Congestion indicator (morning peak) 1997-98 to 2008-09**[a,b]

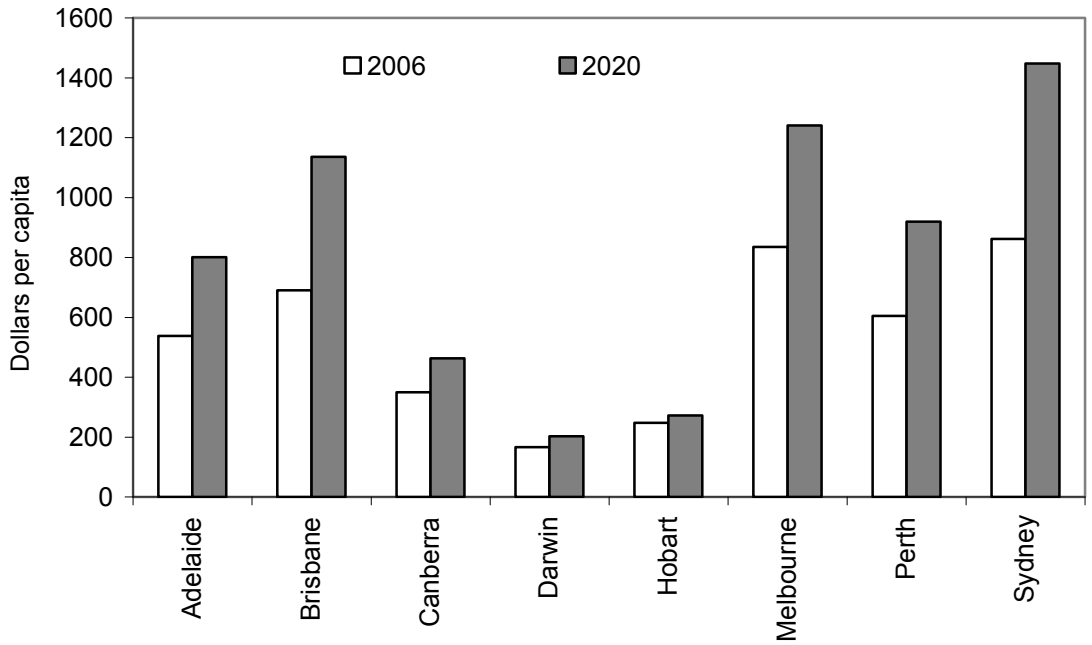
Minutes delayed per kilometre



a The black shaded bar for each city represents 2008-09. **b** Difference between actual and nominal travel time. Delay per kilometre on a representative sample of arterial roads and freeways in the city. The travel time surveys are carried out on 5 week days, in three time periods (AM Peak, PM Peak and Off Peak) in each direction. Three surveys are carried out each year. Austroads states that the indicator is suited to comparisons over time, but not necessarily between regions.

Data source: Austroads 2010.

Figure 2.8 **Cost of congestion 2006 and 2020 (projected)**[a]



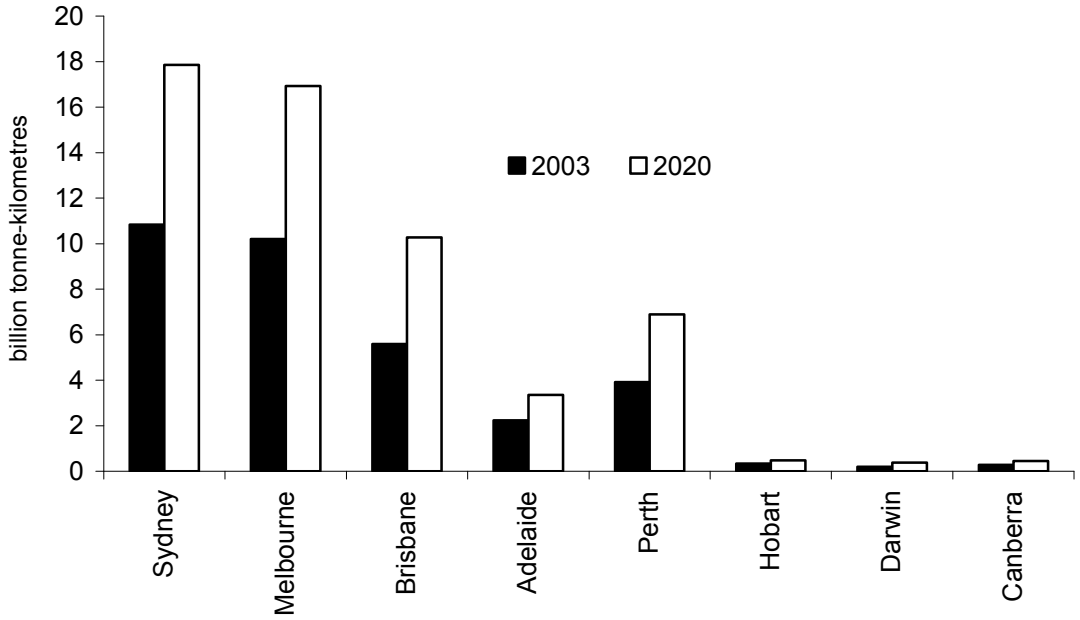
a Costs are based on deadweight losses for current and future congestion. That is, the cost of congestion is estimated as the aggregate costs of delay, trip variability, vehicle operating expenses and motor vehicle emissions - being above the economic optimum.

Data source: KPMG 2010 based on BTRE

congestion costs are also expected to increase significantly — by around 50 per cent (figure 2.8).

Projections of the increasing freight task in cities is adding to concerns of increasing congestion. Modelling by the BTRE suggests that freight in Australia's cities will increase by 70 per cent between 2003 and 2020 (or 3.1 per cent annually). Urban freight growth in Brisbane and Perth is projected to be higher and in Hobart and Adelaide growth is projected to be lower (figure 2.9). How this impacts on congestion will depend on the delivery of new transport infrastructure over the next 10 years.

Figure 2.9 **Freight task 2003 and 2020 (projected)**



Data source: BTRE 2007

2.5 Conclusion

Planning is just one of a number of influences on the efficiency and effectiveness of cities. In this chapter, a number of indicators which are likely to be significantly affected by planning systems have been discussed. These outcome indicators help to identify where cities are functioning well and to focus attention on what might be done to improve poor functioning. Within this context, it is also important to look at the efficiency of the planning process itself, the subject of the remainder of this study.

3 Regulatory framework

Key Points

- COAG has agreed that all jurisdictions will have strategic planning systems for their capital cities that meet key criteria by 2012.
- Four jurisdictions have passed new planning Acts in the last five years. In contrast, the New South Wales planning Act, originally passed in 1979, has since been subject to substantial amendment without being comprehensively updated.
- Every jurisdiction except Tasmania has a metropolitan strategic plan for its capital city.
- The number and structure of planning instruments vary greatly across the jurisdictions. Western Australia seems the most complex.
- The South Australian and Western Australian systems appear to be the more centralised. (The ACT and the Northern Territory are intrinsically centralised systems due to the absence of involved local councils.)
- Queensland has the shortest minimum statutory timeframe for development assessment (DA) (seven days) and the Northern Territory has the longest minimum (84 days).
- Third party appeal processes for DAs are substantially curtailed in some jurisdictions, particularly Western Australia, New South Wales and Queensland. Victoria provides the most scope for third party appeals.
- All jurisdictions have some level of planning reform underway. Queensland and the ACT have recently undertaken reforms, and Victoria is undergoing significant reform.

This chapter presents a guide to the structure and key elements of land use planning and development in the states and territories. Each system has developed in its own unique way and is continually being revised and updated. This chapter is not intended as a fully comprehensive description and will not do justice to the full complexity of these systems — even with the detail provided, there are many more regulations, institutions and processes which could be discussed. However, that level of detail would likely cloud the basic structure and reduce broad comparability, and so has been avoided here.

3.1 Planning and zoning systems

Planning and zoning systems are a framework to guide and facilitate the future growth and development of Australian cities. This framework includes various regulatory bodies, the regulations which define their powers and roles, and the plans and instruments under which decisions are made. The ease with which users navigate the planning systems will depend on the number of bodies involved, how roles and powers are allocated among them, the extent to which all elements are coordinated and the methods used to do so.

This section outlines the planning systems of the eight states and territories as they were at 30 June 2010.

Planning Acts and Regulations

In the context of land use regulation, the body of written law and policy encompasses a very wide range of documents: from legislated instruments to broad statements of policy and optional guidelines.

Table 3.1 sets out the planning Acts and Regulations of each state and territory. While these vary in scope and are supported by numerous other legislative instruments, they all have objectives around providing good outcomes for the community through good processes for the use and development of land, and managing and protecting environmental and heritage values.

All the planning Acts are regularly amended, and half have undergone re-enactment in the last five years. The New South Wales Act is 31 years old and has been modified by 139 amending Acts. Victoria's Act is 23 years old and in the process of being reviewed and updated (after 57 amending Acts).

As well as the instruments listed in table 3.1, there are many other Acts and Regulations in the states and territories which are relevant to particular aspects of planning and development. Also of relevance is Commonwealth legislation, including the *Environment Protection and Biodiversity Conservation Act 1999*, *Airports Act 1996*, *Infrastructure Australia Act 2008* and *Australian Land Transport Development Act 1988*.

Table 3.1 **Primary legislation and supporting regulations**

	Legislation	*Primary Regulations*
NSW	Environmental Planning and Assessment Act 1979	Environmental Planning and Assessment Regulation 2000
Vic	Planning and Environment Act 1987	Planning and Environment Regulations 2005
Qld	Sustainable Planning Act 2009	Sustainable Planning Regulation 2009
WA	Planning and Development Act 2005	Planning and Development Regulations 2009
SA	Development Act 1993	Development Regulations 2008
Tas	Land Use Planning and Approvals Act 1993	Land Use Planning and Approvals Regulations 2004
ACT	Planning and Development Act 2007	Planning and Development Regulation 2008
Cth, for ACT	Australian Capital Territory (Planning and Land Management) Act 1988	Australian Capital Territory (Planning and Land Management) Regulations 1989
NT	Planning Act 2009	Planning Regulations 2009

Strategic plans

In 2009-10, all jurisdictions, except Tasmania, had capital city strategic plans which guide local government planning and development, among other things. These are listed in table 3.2. Tasmania is now developing metropolitan and strategic plans.

COAG agreed in December 2009 that by 2012 all states and territories will have in place best-practice long term capital city strategic planning systems and plans that meet agreed national criteria (COAG 2009).

This agreement is designed to lead to certain planning outcomes including coordinated infrastructure, transport and land-use plans, clearly identified priorities for future government investment and policy effort, and to enhanced collaboration between all three levels of government (Moran 2010).

Table 3.2 **Current metropolitan strategic plans**

City	*Current metropolitan strategic plans*
Sydney	City of Cities: A Plan for Sydney's Future (2005)[a]
Melbourne	Melbourne 2030: planning for sustainable growth (2002)[b]
Brisbane and South East Queensland	The South East Queensland Regional Plan 2009-2031 (2009)
Perth	Directions 2031: Spatial Framework for Perth and Peel (2009)
Adelaide	The 30 Year Plan for Greater Adelaide (2010)
Hobart	No plan
Canberra	The Canberra Spatial Plan (2004); The National Capital Plan (2009)
Darwin	The Territory 2030 Strategic plan (2009)

[a] A revised plan, *Metropolitan Plan for Sydney 2036,* was released in December 2010 outside the benchmarking period. [b] Including the 2008 update, *Melbourne @ 5 million*. Victoria is in the process of developing a new outcomes based metropolitan strategy.

Sources: State and Territory Government planning websites.

Hierarchy of plans

Table 3.3 shows the key planning instruments of the states and territories. The numbers show where plans must be consistent with those above them in the hierarchy; for example, the plan numbered 3 must be consistent with the plan numbered 2.[1] There are many other planning documents that are not part of the hierarchy for various reasons, for example, because they deal with a specific area such as heritage. Some of these are included in the footnotes to table 3.3.

The number and structure of planning instruments varies greatly across the jurisdictions: in the Northern Territory there are two levels of plans in the hierarchy; and in Tasmania only one; while in Western Australia there are eight. It is not the number of levels alone that causes complexity — Tasmania's single level only highlights the absence of state guidance in land planning and is not considered leading practice; nor are New South Wales' 47 State Environmental Planning Policies (SEPPs) easy to follow just because they are all at one level.

However, Western Australia has the most complex hierarchy of plans and it is difficult to discern how everything fits together. Users are left to wonder what documents they have to understand and apply before they can start designing a development, amending a council planning scheme or objecting to a development.

Each jurisdiction has council level statutory plans that include zones and rules for development. In general, higher-level documents are policy or big picture documents but are not binding, while the lower level documents increase in both detail and the likelihood that they include binding rules. Table 3.3 indicates which plans are statutory in nature. Chapter 8 discusses the implementation of strategic plans and how they are aligned to council and regional plans.

1 Western Australia has two plans numbered 6, meaning that neither trumps the other but they are both bound by level 5 and they bind level 7

Table 3.3 **Planning instruments and hierarchies,[a] as at June 2010**

	Plan	*Details*	*Statute*
New South Wales[b]			
1	SEPPs	• plan amendments and DAs must comply with SEPPs	✓
2	Metropolitan strategy[c]	• strategies on centres, housing, transport, employment, sustainability and governance	✓
3	Local environmental plans	• zoning, land uses, heritage items and development standards such as building density, heights and minimum lot sizes Must conform to metropolitan strategy	✓
4	Development control plans	• promote the objectives of local environment plans; includes requirements for specific types or location of development, eg for urban design or heritage properties.	
	Regional strategies	• plan for jobs, investment and population growth (particularly to secure adequate supplies of land for development) while protecting environmental and cultural assets and resources	
Victoria[d]			
1	Metropolitan strategy[e]	• plan for expected population growth	✓
2	Planning policies	• must be included in the local planning schemes	
3	Planning schemes	• sets out guidelines for development including zones; includes the State Planning Policy Framework	✓
	Growth Area Framework Plans	• set the regional framework for urban growth based on strategic directions	
	Precinct Structure Plans	• detailed zoning and infrastructure requirements in growth areas	✓
Queensland[f]			
1	State planning regulatory provision[g]	• regional and master planning and infrastructure funding	✓
2	statutory regional plans	• identify desired regional outcomes and policy for land use, infrastructure and conservation	✓
3	Regional plans	• integrated planning policy for the region	
4	State planning policy	• State policy about a matter of State interest	
5	Standard planning scheme provisions	• consistent structure and standard provisions for local level integrated planning	
6	Local planning schemes	• zones and development requirements in line with the state plans	✓
Western Australia[h]			
	Spatial framework[i]	• planning for population and metropolitan growth	
1	State planning strategy	• the main strategic state planning issues facing up to 2029	
2	Local planning strategies	• set out general planning aims of local governments; interpret state and regional policies; provide rationale for zones and controls in local schemes	
3	Regional, district and local structure plans	• provide a framework for the coordinated provision of services, infrastructure, land use and development. They help planners consider rezoning, subdivision and development applications	
4	Regional planning schemes	• contain zones, reservations and planning controls. The key scheme for Perth is the *Metropolitan Region Scheme*	✓
5	Local planning schemes	• contain zones, reservations (for infrastructure and other public uses) and planning controls	✓

(Continued next page)

Table 3.3 **(Continued)**

	Plan	*Details*	*Statute*
Western Australia cont.			
6	State planning policies	• broad planning controls that guide DA and creation of plans, which may be specific to a region	
6	Development control policies	• less formal State planning policies, covering topics including the subdivision of land, development control, public open space, rural land use planning and residential road planning	
7	Planning bulletins	• added guidance and advice on statutory planning issues such as designing out crime, child care centres and residential leasehold estates	
8	Local planning policies	• guide DA and creation of plans	
South Australia			
1	Planning Strategy[j]	• direction for state land use and development	✓
2	Regional plans	• targets for population, land supply, water, energy efficiency, housing affordability, conservation, transport planning and major infrastructure	
3	Development plans	• zones, maps and policies which regulate land use and potential development	✓
Tasmania[k]			
1	Planning schemes	• must align to state planning policies; contain zones	✓
ACT[l]			
1	National Capital Plan	• provides a broad land use plan for the ACT as a whole and detailed planning framework for areas of significance to Canberra as the national Capital, and is administered by the Commonwealth	✓
2	Territory plan	• zones and precincts, objectives and development requirements applying to each zone, and development and precinct codes	✓
3	Spatial plan[m]	• strategic planning document for urban growth and change over the next 30 years	
4	Planning strategy	• constituted by the spatial plan and the transport plan	
Northern Territory			
1	Planning schemes	• zones, policies and objectives for development	✓
2	Strategic plans[n]	• targets for land and infrastructure developments	

a The planning instruments that are numbered should be consistent with plans above them in the hierarchy. **b** Related plans: The Metropolitan Transport Plan — Connecting the City of Cities (the final draft was not yet published in July 2010). **c** Sydney to 2031: City of Cities: A Plan for Sydney's Future, which has been given statutory effect through a Ministerial Direction under s 117 of the planning Act. **d** Related plans: Transport Plan (aligned with the land use plan), infrastructure plan, centres structured plan. **e** Melbourne 2030: planning for sustainable growth (2002) and Melbourne @ 5 million. **f** Related plans: Infrastructure plan (supports the state planning regulatory provision). **g** The South East Queensland Regional Plan 2009-2031. **h** State, regional and local planning frameworks bring together policies, strategies and guidelines. **i** *Directions 2031: Spatial Framework for Perth and Peel (2009)*. **j** The *30 Year Plan for Greater Adelaide* is part of the planning strategy. **k** Tasmania has State Planning Policies related to coastal, agricultural and water, which are not comparable to other plans in this table and have therefore been omitted. Related instruments include Planning directives and Strategic policy. **l** Related plans: Sustainable transport plan, Neighbourhood plans, Telecommunications plans, Statement of planning intent (yearly statement establishing government planning direction), Planning strategy (long-term planning policy and goals relevant to planning; not used in DA). **m** Canberra Spatial Plan (2004). **n** *Territory 2030 Strategic Plan*.

Source: State and territory planning websites

Although the way plans are structured varies greatly between jurisdictions, there are many common elements (table 3.4), including high level strategic plans, metropolitan land use plans and infrastructure plans which are necessary to facilitate desired land uses. Some jurisdictions have a range of plans that make up each category — for example, Western Australia nominated eight documents for its Perth metropolitan strategic and spatial plan. Tasmania is missing almost all of these plans, and the Northern Territory is yet to develop an infrastructure plan. Plan implementation seems to benefit from having strategic plans, metropolitan plans and infrastructure plans in some form (see chapter 8 for further details).

Table 3.4 **State and territory planning documents**

	NSW	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
State level economic development strategy	✓	✓	✓	✓	✓**a**	×**b**	✓	✓
Regional strategic plans	✓	✓	✓	✓	✓	×**b**	✓	✓**c**
Capital city metropolitan strategic and spatial plan	✓	✓	✓	✓	✓	×**b**	✓**d**	✓
Regional city strategic plans	✓	✓	✓			×**b**		
State level infrastructure plan	✓	×	✓	✓	×	×**e**	×**b**	✓
Regional infrastructure plans	✓	×	✓	✓	✓	×**f**	×**b**	×
Capital city infrastructure plan	✓	✓	✓	✓	✓	×**b**	×**b**	✓
Infrastructure plans for key regional cities	✓	✓	✓			×**b**		

a This role is covered by the Department of State Development and the State Planning Strategy rather than a State level economic development strategy. **b** These plans are currently being developed. **c** This is not a fully active plan. **d** The new plan is being considered for release by cabinet. **e** Tasmania indicated that their state infrastructure plan was available on the infrastructure department website, however while details can be found on various elements of infrastructure, there is no overall downloadable plan. The lack of an easily available plan makes it difficult for businesses and developers to adapt their own plans to a state direction. **f** There are regional plans for transport but they do not relate to the whole of Tasmania.

Source: PC state and territory surveys question 1 (unpublished).

Regulatory bodies

Each jurisdiction has a variety of regulatory bodies which administer and enforce the planning system, from the early strategic planning stages through to more tangible statutory planning and zoning and finally development assessment. These bodies aim to promote the orderly and sustainable use and development of land through the consistent application of the laws and guidelines discussed above and also to construct and amend those instruments through evidence, consultation with stakeholders and expert advice.

Key planning body

Each state and territory has either a planning department or authority to engage in high-level strategic planning and guide the creation of more detailed, local level plans (table 3.5). Additional functions of these key agencies include updating and enforcing plans and guidelines, advising the Minister and coordinating other planning bodies. Tasmania and Western Australia have state-level commissions that perform most of the functions assigned to planning departments in other jurisdictions (Tasmania is the only state without a planning department — planning comes under the Department of Justice). Queensland is the only state to group departmental responsibility for infrastructure with planning. Western Australia split its Department for Planning and Infrastructure into the Department of Planning and the Department of Transport on 1 July 2009. The ACT has two key planning authorities, reflecting the Commonwealth's involvement in planning in Canberra.

Table 3.5 **Lead planning agencies**

NSW	Department of Planning
Vic	Department of Planning and Community Development
Qld	Department of Infrastructure and Planning
WA	Western Australian Planning Commission
SA	Department of Planning and Local Government
Tas	Tasmanian Planning Commission
ACT	ACT Planning and Lands Authority
Cwlth (in ACT)	National Capital Authority
NT	Department of Lands and Planning

The key agencies involved in planning in each state and territory are illustrated in figure 3.1.

Figure 3.1 **State and territory governance structures (simplified)**[a]

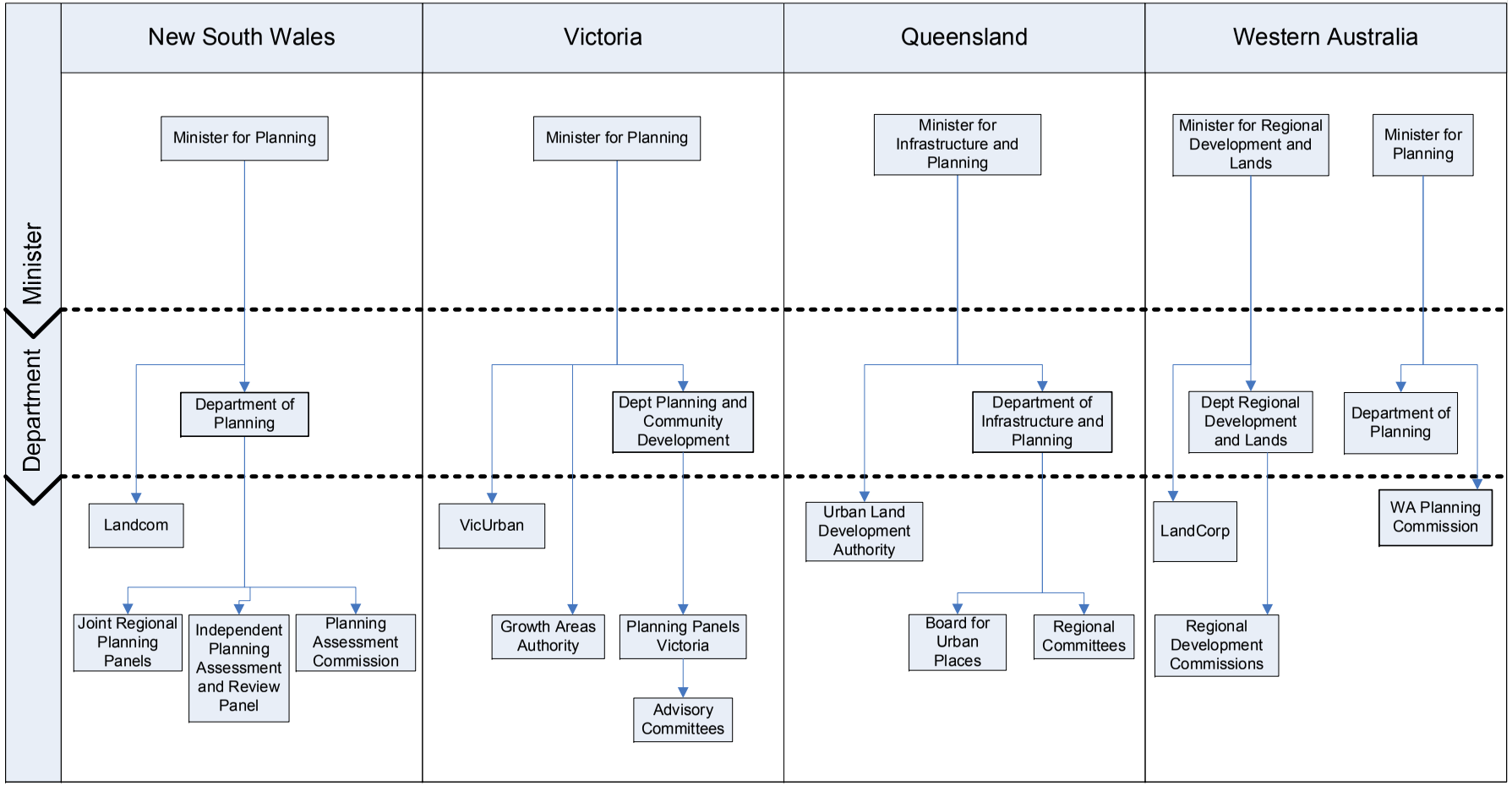


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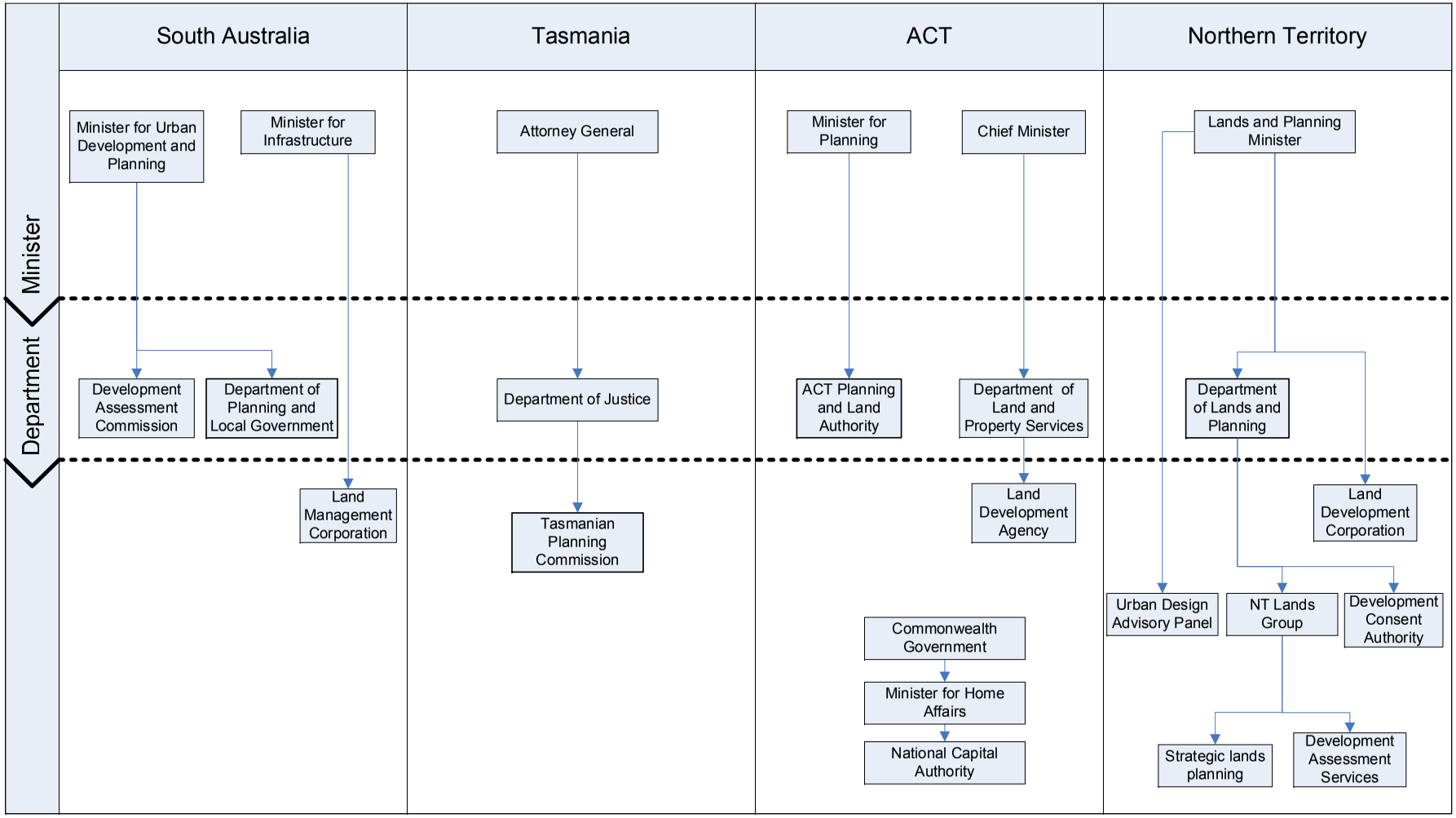
Figure 3.1 **(continued)**



a This figure does not include all planning bodies but only the main ones — for example area-specific redevelopment authorities are not included.

Source: State and territory planning agency websites

Planning Minister

In most jurisdictions, the minister responsible for planning is involved in higher-level planning as well as changes to statutory plans (whether local or strategic) which must be signed off by the minister. Ministers can also be involved directly in DAs — usually those of major significance to the state — on advice from the department or planning commission. The exception to this is Western Australia, where the minister, under the *Planning and Development Act*, does not have call-in powers or the power to decide any development applications. In Western Australia and the ACT, planning and land supply responsibilities are shared by two ministers — the minister for Regional Development and Lands and the Minister for Planning in Western Australia, and the Minister for Land and Property Services and Minister for Planning in the ACT. The Commonwealth Minister for Regional Australia, Regional Development and Local Government is also responsible for airports and some planning in the ACT.

Local councils

In the six states, local councils or council-level planning panels assess most of the proposed developments within their local government area. The ACT does not have local councils and councils in the Northern Territory do not have planning functions.

Democratically elected councillors have the power to assess projects but delegate that responsibility in most cases to their planning staff. Council staff qualified in town planning and related disciplines provide advice to councillors and decide the vast bulk of development applications.

Government Land Organisations (GLO)

Each jurisdiction, except Tasmania, has an independently run government land development organisation (table 3.6). These organisations are used to promote certain aims of government such as affordable housing or urban renewal, and most are charged with generating a commercial return. All are involved in housing development, but other functions can include providing advice to government, coordinating land release and providing infrastructure. They are often called on by government to engage in projects or activities that may be considered too risky or unprofitable by the private sector. For example, they might ‘de-risk’ a site by consolidating land for infill development and obtaining the necessary approvals before passing the site to private developers. Queensland’s Urban Land

Development Authority is also responsible for planning and approvals in declared urban development areas. For more information on government land organisations see chapter 4.

Table 3.6 **Activities and objectives of GLOs**[a]

	Landcom NSW	*VicUrban Vic*	*ULDA Qld*	*LandCorp WA*	*LMC SA*	*Tas*	*LDA ACT*	*LDC NT*
Commercial returns	✓	✓		✓	✓		✓	✓
Build/promote affordable housing		✓	✓					✓
Promote government objectives	✓	✓		✓	✓			
Environmental conservation	✓		✓				✓	
Advise government		✓			✓		✓	
Land release			✓	✓	✓		✓	✓
Development activities:								
Infrastructure		✓	✓	✓			✓	
Urban infill	✓	✓	✓	✓	✓			✓
Greenfield	✓	✓	✓	✓	✓			
Innovative	✓	✓						
Residential	✓	✓	✓	✓	✓			✓
Commercial	✓	✓	✓	✓	✓			
Industrial	✓	✓	✓	✓	✓			

a ULDA: Urban Land Development Authority, LMC: Land Management Corporation, LDA: Land Development Agency, LDC: Land Development Corporation.

Source: The Landcom Corporation Act 2001; Victorian Urban Development Authority Act 2003; Urban Land Development Authority Act 2007; Western Australian Land Authority Act 1992; Public Corporations (Land Management Corporation) Regulations 1997; Planning and Development Act 2007; Land Development Corporation Act 2009

Other significant planning bodies

In each jurisdiction there are a number of additional planning bodies with various specialised functions (table 3.7). In contrast to the broad scope of those bodies discussed above, these additional planning bodies typically operate in limited areas (such as greenfield sites) or handle a limited range of developments (such as those where conflicts of interest may arise).

Development Assessment Panels are operating in South Australia and New South Wales and are being introduced in Western Australia (Day 2010). They are responsible for some DA decisions and are generally composed of a mix of councillors and specialist independent members. Panels in other jurisdictions (including those which exist in Queensland) do not have comparable functions.

Table 3.7 **Other planning bodies**

	Name	*Function*
NSW	Planning Assessment Commission	DAs for Part 3A projects with conflict of interest issues; advises the minister
	Joint regional planning panels	DAs for regionally significant developments
	Sydney Metropolitan Development Authority	drive future transit-oriented development and urban renewal (announced Feb 2010)
	Independent Planning Assessment and Review Panel	strategic inquiry or review of particular planning matters;[a] exercise the functions of a local council where there is unsatisfactory performance in planning and development
Vic	Growth Areas Authority	planning in designated greenfield areas
	Planning Panels Victoria	provide independent assessment of planning proposals; includes responsibility for Advisory Committees
Qld	Development Assessment Panels	advice and some DA in iconic places[b]
	Regional Committees	there are many different types of Regional Committees, with responsibilities ranging from coordination to social infrastructure
	Council of Mayors of South East Queensland	facilitates the flow of information between councils
WA	Infrastructure Coordination Committee	all Director Generals of infrastructure agencies, including Water Corp and the Office of Energy
	Regional Development Authorities	redevelop an allocated site, usually urban infill
SA	Development Assessment Commission	advice, assessment and decision making for certain developments[c]
	Development Assessment Panels	established by councils to do DA[d]
	The Government Planning and Coordination Committee	whole of government coordination on infrastructure provision for new lots
Tas	None	
ACT	National Capital Authority	Commonwealth body which administers the National Capital Plan
	Department of Land and Property Services	established 2009 to increase coordination between all levels of government and industry in the area of land planning
NT	Capital City Committee	plan Darwin's future
	Urban Design Advisory Panel	advise Capital City Committee
	Development Consent Authority	DA in the larger population centres[e]

a This includes providing recommendations. **b** These panels operate only in the specific iconic areas for which they are created. Councils still do most DAs in those areas except where a development might have a substantial effect on the place's iconic value. **c** These are prescribed in the Development Act and Regulations, and include certain developments of significant regional impact, certain types of development in key areas, most Housing SA and Land Management Corporation applications and certain types of development by government or involving government land. **d** These panels have council and independent members. **e** In other areas the Minister is the consent authority. Currently there are 7 division areas where the Development Consent Authority is responsible for DA: Alice Springs, Batchelor, Darwin, Katherine, Litchfield, Palmerston and Tennant Creek.

Source: State and territory planning agency websites.

Implications of structures for planning functions and governance

Given the wide variety in planning structures in place in the states and territories (figure 3.1), there are some significant differences in functions undertaken at the different levels of government (table 3.8). Western Australia and South Australia seem to have the systems which place more functions directly at the state level. For example:

- Western Australia has been described as having the most centralised system (Stein 2008). The Western Australian Planning Commission, for example, is the only body in Western Australia which can approve subdivisions (table 3.8) and it has responsibility for all DAs, which it then delegates to councils.
- South Australia also approves subdivisions at a state level (after an assessment by local councils) and was the first to use planning panels separate to local councils to decide development applications.

In the New South Wales, Victorian, Queensland and Tasmanian[2] systems, decision making is more focused at the local council level. In these states, councils bear sole responsibility for subdivision (apart from a matter which has been deemed, for example, to be state significant). In New South Wales, Victoria and Queensland, the state body and the Minister have no formal role in preparing local plans. In Queensland, the state body does not approve plan changes and in Victoria this approval is only of technical aspects of the plans.

The ACT and the Northern Territory are intrinsically centralised systems due to the absence of involved local councils.

Other notable differences in jurisdictional regulatory arrangements include the absence of Ministerial call-in or DA powers in Western Australia under the *Planning and Development Act*; no development assessment at a state-level body in Victoria; and the involvement of the Commonwealth in ACT planning.

2 Although not shown in table 3.8, all the statutory planning in Tasmania is at a council level (table 3.3), although this will change as the Tasmanian Planning Commission develops metropolitan and strategic plans in line with the COAG Capital Cities project.

Table 3.8 **Planning functions by level of government**

	Body	*DA*	*Local plan preparation*	*Plan approval*	*Subdivision*	*Strategic planning*
NSW	Council	✓	✓	✓	✓	
	State[a]	✓		✓		✓
	Minister	✓		✓[b]		✓
Vic	Council	✓	✓	✓[c]	✓	
	State[a]			✓[d]		✓
	Minister	✓		✓[c]		✓
Qld	Council	✓	✓	✓	✓	_[e]
	State[a]	✓				✓
	Minister	✓		✓		✓
WA	Council	✓	✓	✓		
	State[a]	✓[f]	✓[g]	✓[h]	✓	✓
	Minister			✓[h]		✓
SA	Council	✓	✓	✓	✓[i]	
	State[a]	✓	✓[j]		✓[i]	✓
	Minister	✓	✓[k]	✓		✓
Tas	Council	✓	✓	✓	✓	
	State[a]	✓	✓[l]	✓		✓
	Minister	✓		✓		✓
ACT	Territory[a]	✓	✓[m]	✓	✓	✓
	Minister	✓	✓[m]	✓		✓
Cth (in ACT)	NCA[n]	✓	✓[o]			✓
	Minister			✓		
NT	Territory[a]	✓	✓[p]		✓	✓
	Minister	✓	✓[q]	✓		✓

[a] State/territory department (see table 3.5) or other state/territory-level agency designated for particular purposes or for particular areas. [b] Final approval is by the Minister but interim approval is required from councils, the department and the Minister. [c] The minister must approve the preparation of a planning scheme amendment and must approve the final amendment, unless the final approval has been delegated to the council or approval authority. [d] This is a technical check only, by the Department of Planning and Community Development. [e] At Council level, the strategic planning is represented in the strategic framework component of the local government planning scheme. This component is part of the standard planning scheme provisions in the Queensland Planning Provisions and will be incorporated into the new planning schemes over the next couple of years. [f] The Western Australian Planning Commission has responsibility for all DA but delegates most of its DA function to local councils. [g] If there are submissions to a local planning scheme amendment which cannot be resolved by the planning authority, the Minister for Planning will appoint an independent panel to consider submissions if the proposed amendment is to proceed. The Environmental Protection Authority does an assessment for any scheme amendment. [h] Minister must approve the scheme being advertised as well as final approval; the Western Australian Planning Commissions provides advice. [i] The Development Assessment Commission issues the final approval, but the assessment is undertaken by Local Councils. [j] Amendments must undergo consultation with key government agencies. [k] Must agree on nature and scope of plan amendment. [l] The Tasmanian Planning Commission can start the plan amendment process with the approval of the Minister. [m] The Minister or ACTPLA can initiate a Territory Plan variation. [n] National Capital Authority. [o] The National Capital Authority is involved in the consultation within government that occurs for a Territory Plan variation; it is also responsible for amendments to the National Capital Plan. [p] The Department of Lands and Planning conducts a technical assessment of plan amendment proposals. [q] Plan amendment proposals are made by the applicant to the Minister, and are assessed by the Minister.

Source: State and territory planning agency websites

Referral processes and agencies

Referral processes (known as concurrence in Queensland) compel the primary assessment body to obtain specialised advice on issues such as roads, bushfire or environmental protection that may be affected by a development or planning scheme amendment.

Jurisdictions differ on the number of referral agencies they have; the criteria that determine when referrals are necessary; the way responses are coordinated; and the time allowed for responses. Some referral authorities have power to refuse an application or impose conditions on approval, whereas others can only suggest that the approval authority refuse the application or impose conditions.

See chapter 10 for a discussion of referral processes by jurisdiction.

3.2 Development assessment processes

Development assessment (DA) is the process of ensuring that proposed development on land is consistent with the plans, zones and other instruments specifying how the land is to be used. Members of the community will most often encounter the land planning system at this stage.

There are many paths through the DA process depending on the nature and scale of the proposed development. Some developments do not require formal assessment while others go through a very lengthy and complex process; certain developments are fast-tracked as 'state significant' projects whereby a decision is made by the Minister rather than the council or the usual assessment authority.

The basic process for development approval is essentially the same across all jurisdictions:

1. the applicant lodges an application with necessary documents and fees
2. the assessment authority checks the application and requests information if the application is incomplete
3. the application may be passed to referral agencies and placed on exhibition for comments from owners of neighbouring properties and from the community (these may not happen concurrently)
4. relevant assessment authorities consider the application, taking into account comments, submissions, and what is allowed under the planning regulation
5. the assessment authority decides to reject, approve or conditionally approve the application

6. the applicant (or a third party, in some cases) may apply for independent review of the decision.

After approval, responsibility for the enforcement of any approval conditions depends on the nature of those conditions and may be split between the DA body (usually the council), the building regulator and referral agencies. A fuller description of the DA process is in chapter 6.

DA process reforms

One of the key drivers of reform in the area of DA is the Development Assessment Forum (DAF). The states and territories are in various stages of attempting to implement the Leading Practice Model created by DAF (box 3.1) with the aim of decreasing the length and complexity of the DA process (COAG Regulatory Reform Plan April 2007).

Box 3.1 **DAF leading practice model**

DAF was created in 1998 to reduce the length and complexity of DA processes. It is made up of representatives from all levels of government as well as members of the development industry and related professional associations. In 2005, DAF produced a 'Leading Practice Model' to reduce unnecessary application or information requirements and regulatory burdens on simpler developments.

Stage 1: Policy

1. Effective policy development: Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.
2. Objective rules and tests: DA requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.
3. Built-in improvement mechanisms: Each jurisdiction should systematically and actively review its policies and objective rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.

Stage 2: Assessment

4. Track-based assessment: Development applications should be streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track is standard.
5. A single point of assessment: Only one body should assess an application, using consistent policy and objective rules and tests. Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give direction where this avoids the need for a separate approval process. Referral agencies should specify their requirements in advance and comply with clear response times.
6. Notification: Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.
7. Private sector involvement: Private sector experts should have a role in undertaking pre-lodgement certification of applications to improve the quality of applications; providing expert advice to applicants and decision makers; certifying compliance where the objective rules and tests are clear and essentially technical; and making decisions under delegation.

Stage 3: Determination

8. Professional determination for most applications: Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either (Option A) local government may delegate DA determination power while retaining the ability to call-in any application for determination by council; or (Option B) an expert panel determines the application. Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.

Stage 4: Appeals

9. Applicant appeals: An applicant should be able to seek a review of a discretionary decision. A review of a decision should only be against the same policies and objective rules and tests as the first assessment.
10. Third-party appeals: Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests. Opportunities for third-party appeals may be provided in limited other cases. Where provided a review of a decision should only be against the same policies and objective rules and tests as the first assessment.

Box 3.1 cont.

Track-based assessment (leading practice 4)

The characteristics of the following development types are used to assign classes of use or assessment track that appropriately reflect the minimum level of assessment necessary.

Track 1: Exempt

Development that has a low impact beyond the site and does not affect the achievement of any policy objective should not require development assessment.

Track 2: Prohibited

Development that is not appropriate in specific locations should be clearly identified as prohibited in the ordinance or regulatory instrument so that both proponents and consent authorities do not waste time or effort on proposals that will not be approved. It should not be necessary to submit an application to determine that a proposal is prohibited.

Track 3: Self assess

Where a proposed development can be assessed against clearly articulated quantitative criteria and it is always true that consent will be given if the criteria are met, self assessment by the applicant can provide an efficient assessment method.

Track 4: Code assess

Development assessed in this track would be considered against objective criteria and performance standards. Such applications would be of a more complex nature than for the self assess track, but still essentially quantitative.

Track 5: Merit assess

This track provides for the assessment of applications against complex criteria relating to the quality, performance, on-site and off-site effects of a proposed development, or where an application varies from stated policy. Expert assessment would be carried out by professional assessors.

Track 6: Impact assess

This track provides for the assessment of proposals against complex technical criteria that may have a significant impact on neighbouring residents or the local environment. Expert involvement would be required to prepare the application and generate predictions. Expert involvement is required to assess impacts and the accuracy of predictions. This track expects that the proponent would prepare an impact assessment as part of the application and that there would be pre-set criteria for the content and quality standards of that impact assessment.

Source: DAF 2005.

Table 3.9 shows which development assessment tracks have been implemented by each state and territory jurisdiction. The ACT and Victoria have most consistently adopted these tracks and the latter is currently considering the implementation of the code assess track. New South Wales, Western Australia and Queensland have also substantially implemented the development assessment tracks.

Table 3.9 **DAF development assessment tracks, state and territory agencies**

Shows which tracks have been implemented by each jurisdiction

Track	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Exempt	✓	✓	✓	✓	✓	✓	✓	✓
Prohibited	-	✓	✓	✓	-	✓	✓	✓
Self assess	✓	-	✓	-	-	**a**	-	✓
Code assess	**b**	**c**	**d**	✓**e**	✓	-	✓	✓
Merit assess	**f**	✓	-	✓**g**	✓	-	✓	-
Impact assess	**h**	✓	**i**	✓**g**	✓**j**	**k**	✓	-

a Permitted development. **b** Complying development. **c** Victoria is looking to implement the code assess track under the planning system. **d** Compliance assessment. **e** Quantitative standards residential code. **f** Local development. **g** Performance standards residential code. **h** Regionally significant or state significant development. **i** Assessable development. **j** Major developments process. **k** Discretionary development .

Source: State and territory planning agency websites.

Statutory timeframes

Planning legislation sets out timeframes for a decision to be made on a development application, however some timeframes are more binding than others. For example, the jurisdictions differ in whether and how easily the timeframes can be extended, and the consequences when timeframes are not met. Timeframes are subject to 'stop the clock' provisions whereby certain periods of time are not counted — for example, when the applicant is responding to a request for more information. Details on timeframes and consequences for failing to meet them are in table 3.10.

Table 3.10 Statutory timeframes for deciding development applications [a]

	Time	*Consequence for regulators of failure to meet timeframe*	*Consequence for applicant of regulator failure to meet the timeframe*
	Days[b]		
NSW	40-60[c]	no consequence for the regulator is apparent from legislation[h]	deemed refusal the applicant can appeal
Vic	60	no consequence for the regulator is apparent from legislation[h]	no decision the applicant can appeal
Qld	7-21[d]	no consequence for the regulator is apparent from legislation[h]	deemed refusal[h] the applicant can appeal[h]
WA	60	no consequence for the regulator is apparent from legislation[h]	deemed refusal the applicant can appeal[h]
SA	14-196[e]	the regulator must pay court costs of an appeal, unless the delay is not attributable to an act or omission of that authority	deemed refusal[h] the applicant may appeal
ACT	28-63[f]	referral agencies have only three weeks before they are deemed to have consented to the development no consequence for the regulator is apparent from legislation[h]	deemed refusal[h] the applicant can appeal[h]
Tas	42[g]	the planning authority must pay the applicant's costs for the tribunal hearing	deemed decision to grant a permit on conditions to be determined by the appeal tribunal (RMPAT[i]) RMPAT makes an assessment
NT	84	no consequence for the regulator is apparent from legislation[h]	no decision applicant may appeal the failure to make a decision

[a] These timeframes apply to any type of development application. These are statutory decision times — see chapter 6 for details on actual decision times by state. [b] Calendar days. [c] 60 days for designated development, integrated development or development for which the concurrence of a concurrence authority is required, as defined in the planning Act and Regulations; plus possible extensions depending on the submission period. [d] 7 days for a limited certificate, 14 days for a standard certificate or 21 days for a full certificate. [e] Two weeks for complying developments, but up to 12 weeks for other approvals and potential extensions of six weeks for referrals and 10 weeks for ministerial input, plus potential extensions. [f] Four weeks for code track applications; nine weeks for merit and impact track or six weeks 'if no representation is made in relation to the proposal.' [g] The planning authority and applicant may agree in writing to extend the deadline. [h] Will be confirmed for the final report. [i] Resource Management and Planning Appeal Tribunal

Source: *Environmental Planning and Assessment Regulation 2000* (NSW) cl. 113; *Planning and Environment Regulations 2005* (Vic) cl. 31 and *Planning and Environment Act 1987* (Vic) s. 79; *Sustainable Planning Act 2009* (Qld) s. 741; *Development Act 1993* (SA) s. 41 and *Development Regulations 2008* (SA) s. 41; *Planning and Development Act 2005* (WA) s. 249; *Land Use Planning and Approvals Act 1993* (Tas) ss. 57, 59; *Planning ACT 2009* (NT) s. 112; *Planning and Development Act 2007* (ACT) ss. 150, 118, 122, 131.

Table 3.10 shows a very wide range of timeframes set for DA decisions, with minima between seven and 84 days (Queensland and the Northern Territory respectively) and maxima between 21 and 196 (Queensland and South Australia).

While timeframes would be expected to differ for matters of varying complexity — for example, a complex infill apartment building application beside a local park should obviously take more time and attention from a regulator than a simple new shop in a greenfield area — it is nevertheless unclear why similar applications in different jurisdictions should be the subject of decision-making differences of such magnitude.

For most jurisdictions, the consequence for failing to meet the statutory deadline is that the development is deemed to have been refused, allowing applicants to appeal. However, appealing is very costly and time consuming for an applicant. Courts are a necessary path of redress however the system should, as much as possible, be geared toward resolving conflict at an earlier stage. In the ACT a failure to meet the referral time limit is a deemed approval from the referral agency — the only jurisdiction to have implemented such a disciplining measure.

3.3 Appeal processes

Planning decisions can be highly complex and involve significant trade-offs between the interests of different parties. As a result, there are various channels available to development applicants and third parties to have DA decisions reviewed. These channels include internal administrative review mechanisms as well as formal merit and judicial appeals (table 3.12).

Appeal data for 2009-10

The number of DA appeals from state and territory agency decisions in 2009-10 was quite low in all jurisdictions which provided this data (table 3.11). The ACT and Northern Territory reported minimal appeals despite the territory agencies being responsible for all DA decisions. In New South Wales the figure was zero, and less than one per cent of decisions made by the Western Australian Planning Commission were appealed.

On absolute numbers, Victoria has almost six times more appeals than any other jurisdiction. When adjusted for population, Victoria and Tasmania have more than three times the number of appeals of any other jurisdiction. This reflects, unsurprisingly, the fact that Victoria and Tasmania allow for more third party appeals than other jurisdictions (table 3.13).

Table 3.11 **Number of appeals against DA decisions, 2009-10**

	total appeals[a]	*Total DAs*[b]	*per '000 DAs*	*per million population*[c]
NSW	577	47358	12	80
Vic	3326[d]	32701	102	600
Qld	13[e]	11035	1	3
WA	355[f]			155
SA	304			185
Tas	299[g]			589
ACT	26[h]	1469	18	72
NT	10[i]			44

[a] Merit appeals only, where that data is separately available. Appeals lodged in 2009-10. Data sourced from court and tribunal annual reports. Merit appeals only, where that data is separately available. Appeals lodged in 2009-10, not decided in 2009-10. Data is state wide, not limited to the cities in this study. [b] State planning department data (table 6.11), not PC council survey data. [c] Population by state at 30 June 2010. [d] Planning matters lodged 2009-10. Breakdown of merit and judicial appeal data is not available. [e] Matters filed in the Planning and Environment Court 2009-10. Breakdown of merit and judicial appeal data is not available. [f] 444 applications received by the development and resources stream of State Administrative Tribunal: 80% of these are review of decisions of State and local government authorities in relation to planning (development and subdivision) applications. [g] Appeals and applications under the Land Use Planning and Approvals Act, 2009-10. The majority of the Tribunal's work is concerned with 'permit' appeals, but a breakdown was not available. [h] Cases lodged for administrative review of planning matters. Breakdown of merit and judicial appeal data is not available. [i] Planning appeals lodged. Breakdown of merit and judicial appeal data is not available.

Source: Annual reports from the following state and territory courts and tribunals: Land and Environment Court (NSW), Victorian Civil and Administrative Tribunal (Vic), Planning and Environment Court (Qld), State Administrative Tribunal (WA), Environment, Resources and Development Court (SA), Resource Management and Planning Appeal Tribunal (Tas), ACT Civil and Administrative Tribunal (ACT), Lands, Planning and Mining Tribunal (NT); PC state and territory survey question 23 (unpublished); PC local council survey question 26; ABS 2010d.

Applicant appeals

There has been widespread agreement across the states and territories through the DAF leading practice model that, in respect of applicant appeals, 'An applicant should be able to seek a review of a discretionary decision. A review of a decision should only be against the same policies and objective rules and tests as the first assessment.' (DAF 2005; box 3.1) States and territories differ in the extent to which this principle is implemented in their planning or other more generic legislation, however all offer various avenues for applicants to seek a review (table 3.12).

Under Australian administrative law, any government decision is subject to judicial review — that is, it can be brought before the courts for a ruling on whether it was made according to law and according to procedural fairness. Review of the merits of a decision is only available when provision for such a review is included in the planning legislation.

Table 3.12 **Appeal paths available to development applicants**

	Internal review	*Mediation*	*Independent merits review*	*Judicial review*[a]
Commonwealth				
• EPBC Act	none	none	none	Federal Court
• National Capital	none	none	none	Federal Court
New South Wales		Court may order	Land and Environment Court	Court of Appeal
Victoria		Court may order	Victorian Civil and Administrative Tribunal	Supreme Court of Victoria
Queensland		Court may order	Planning and Environment Court	Court of Appeal
Western Australia		Strongly encouraged	State Administrative Tribunal	Supreme Court of Western Australia
South Australia		Compulsory	Environment, Resources and Development Court	Supreme Court of South Australia
Tasmania	Objection to DAP[b]	Compulsory	Resource Management and Planning Appeal Tribunal	Supreme Court of Tasmania
ACT	Reconsideration by ACTPLA	Usually compulsory	ACT Civil and Administrative Tribunal	Supreme Court of the ACT
Northern Territory		Court may order	Lands, Planning and Mining Tribunal	Supreme Court of the Northern Territory

[a] No merits review available: applicant can only appeal on procedural fairness or a question of law. [b] The Development Assessment Panel will hear objections only on draft conditions and only in relation to projects of regional significance.

Source: PC state and territory survey question 25 (unpublished); DAF 2009; *Administrative Appeals Tribunal Act 1975* (Cwlth) s. 44; NSW, *Land and Environment Court Act 1979* (NSW) s. 57; *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s. 148; *Planning and Environment Court Rules 2010* (Qld) s. 44; *Environment, Resources and Development Court Act 1993* (SA) s. 30; *State Administrative Tribunal Act 2004* (WA) s. 105; *Resource Management and Planning Appeal Tribunal Act 1993* (Tas) s. 25; *Lands, Planning and Mining Tribunal Act 2010* (NT) s. 37; *ACT Civil and Administrative Tribunal Act 2008* (ACT) s. 86.

In all jurisdictions, development applicants can apply for an independent merits review by a court or tribunal. The enforcement of conditions imposed on development can also be appealed everywhere except in Queensland and the ACT. Rezoning is not appealable in any jurisdiction.[3] Of state and territory planning department decisions, only development application decisions can be appealed.

[3] Note that zoning changes are not classed as development applications; the decision to consider whether to re-zone or seek a scheme amendment is at the discretion of consent authorities or other regulators. The Victorian system includes public hearings by Planning Panels Victoria where there are unresolved submissions in relation to a rezoning or other scheme amendment. These hearings provide an opportunity for independent assessment of a proposal before a decision is made, and off-set the implications of decisions not being appealable.

Decisions made by the Commonwealth under its environmental conservation laws or National Capital legislation are not subject to either internal review or formal review, including by the Administrative Appeals Tribunal.

Internal merits review is available in the ACT and to a limited extent in other jurisdictions. Internal merits reviews can be a faster, cheaper and less formal review path and are utilised as an additional option to the formal independent review processes available.

Third party appeals

Third party (that is, non-applicant) appeals may improve the quality of decisions made by reducing the scope for deals between developers and regulators and by catching poor decisions. Furthermore, the ability to appeal an unpopular development can protect neighbourhood amenity and enhance community trust in the system. However, this comes at the cost of increased delay for developers and possible frivolous or anti-competitive claims (see chapter 7.6).

The DAF leading practice model, which has been endorsed by state and territory planning ministers (LGPMC 2005) provided that:

- 'Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests.
- Opportunities for third-party appeals may be provided in limited other cases.
- Where provided a review of a decision should only be against the same policies and objective rules and tests as the first assessment.' (DAF 2005, box 3.1).

Where applications have been wholly assessed against objective rules and tests (DAF tracks 1-4 box 3.1), judicial review is available in all jurisdictions if the applicant believes the assessment has not been done according to those rules.

Trenorden (2009) suggests that endorsement by LGPMC of the DAF leading practice for third party appeals was a catalyst for reducing the extent of third party appeal rights in the states and territories. In practice, the states and territories differ considerably in the extent to which they have implemented these agreed principles for third party appeals.

Most states and territories have strict requirements to prevent or limit the number of third party appeals of the merits of a DA decision, table 3.13. Western Australia has no third party appeal rights. New South Wales and Queensland allow third party appeals only for a very limited number of types of development applications.

Third party appeals are generally excluded in Australian jurisdictions where:

- developments are smaller in scale and impact
- developments are assessed on objective criteria without public consultation
- the third party did not make an objection at the public consultation stage.

The first two points align to DAF principles, however, they are implemented differently in different jurisdictions. In Queensland, for example, most applications to extend or construct new buildings within commercial centres and industrial zones are code assessable development and therefore no third party appeal rights exist. (Brisbane City Council, sub. no. 18 , p.2). New South Wales and South Australia similarly limit appeals to DAs that have been through the more rigorous assessment process.

The ACT is the only jurisdiction to fully follow DAF leading practice in this area — that is, to exclude third party merit appeal where the decision is made under exempt, prohibited, self-assess and code assess development tracks; and allow appeals in the remaining cases (merit and impact development tracks).

At the other end of the spectrum, Victoria allows third party appeals by any party in almost all cases, and Tasmania allows appeals by anyone who objected at an earlier stage in the planning process.

Table 3.13 **Third party appeal rights**

NSW	• a very limited number of types of DA are subject to third party appeal if the third party formally objected at an earlier stage. Designated development which can be appealed includes farming, mining and polluting industries but not houses, flats or retail buildings.[a] Third parties have more scope to appeal projects decided under Part 3A (Major infrastructure and other projects).[b]
Vic	• third party appeals are possible for almost all DA decisions[c]
Qld	• no third party appeal are available on code assessable development,[d] compliance assessment applications, master plans, enforcement notices, compensation claims or infrastructure charges, in any circumstances • third parties who have made a submission during consultation can appeal an application or the part of an application that requires impact assessment
WA	• no third party appeal rights[e]
SA	• no third party right of appeal is available against Category 1 or 2 development applications[f] • appeal rights are only available to persons who have made a representation to a Category 3 development application.
Tas	• third party objections are possible on all discretionary applications • third party appeals are open to anyone who made an objection at the first stage
ACT	• a third party can appeal merit or impact track development applications that went through the major notification process if (a) they made an objection during the public consultation phase and (b) they can establish they could suffer material detriment if the development goes ahead[g]
NT	• a third party who made a submission under the Act in relation to a development application within or adjacent to a residential zone may appeal the decision in very limited circumstances[h]

[a] A definitive list can be found in Schedule 3 of the Environmental Planning and Assessment Regulation 2000 (NSW). [b] No appeal can be made if a concept plan has been approved for the project; or the project has been the subject of either a Commission of Inquiry or a report prepared by a panel of experts; or when the project has been declared critical infrastructure. [c] Exceptions: a developer can request the Minister remove the third party appeal process from applying to a DA, provided there has been some form of public consultation; there are no third party appeal rights for 'complying developments'. [d] With one minor exception relating to fisheries. [e] Only exception is if a local planning scheme or local law allows a third party to apply to the State Administrative Tribunal (SAT) for review of a decision. SAT may allow a third party who has a sufficient interest in a matter to make submissions, where 'sufficient interest' is considered to be a legal interest or some other direct, material and special interest in the outcome of the application that is unique to it and not shared by the public generally or a segment of the public. [f] Categories 1 and 2 include all development within the appropriate zone, eg housing within a residential zone. Category 3 is everything not in Category 1 or 2. [g] Not including material detriment to commercial competitors for DAs in town centres, civic or industrial areas. [h] Decisions relating to a detached dwelling or attached dwellings that do not exceed two storeys above ground level are not appealable; nor are non residential uses within a residential zone (such as bed and breakfast accommodation, home occupations, child care centres, caretakers residences and medical consulting rooms) if the use complies with the provisions of the Planning Scheme and the consent authority has not varied or waived any requirements of the provisions.

Source: State and territory planning agency websites; PC state and territory survey, question 43 (unpublished); Trenorden 2009; *Environmental Planning and Assessment Act 1979* (NSW) ss 75L, 98; *Planning and Environment Act 1987* (Vic) s 82; *Sustainable Planning Act 2009* (Qld); *Development Act 1993* (SA); *Planning and Development Act 2005* (WA); *Land Use Planning and Approvals Act 1993* (Tas); *Planning Act 2009* (NT) s 117; *Planning and Development Act 2007* (ACT) s 156 and schedule 1.

3.4 Recent and proposed reforms

The state and territory planning systems are highly complex and are continually being updated. All the states and territories have implemented recent reforms or are in the process of doing so. Outlined below are details of significant changes within each jurisdiction that have taken place since 2008 or are scheduled for implementation in 2011.

New South Wales

Reforms recently completed include:

- the New South Wales Planning Assessment Commission commenced operation November 2008
- joint regional planning panels commenced operation July 2009
- planning reform legislation was passed mid 2008, including changes to infrastructure contributions, codes, accreditation and local planning scheme creation
- a standard instrument was created in 2006 to harmonise local environmental plans, including promoting consistent use of terminology. It has 34 standard zones and approximately 300 standard definitions, replacing approximately 3100 zones and 1700 definitions. At 30 June 2010, the Standard Instrument Local Environment Plans had been 'notified'[4] for only 16 of the 152 local government areas in New South Wales (New South Wales Government, pers. comm., 17 January 2011).[5]
- the draft activity centres policy was placed on exhibition 9 April 2009
- s94 infrastructure levies were capped at $20 000 or $30 000 for greenfield development in September 2010. The Urban Taskforce claims that 19 councils exceed this cap (sub. 59 pp 7-8).
- a new metropolitan plan was announced December 2010

An integrated Metropolitan Plan was released in February 2010, which aligns the transport plan with the metropolitan strategy and includes a 10-year funding guarantee (Department of Planning (NSW) 2010).

4 A Local Environment Plan (LEP) only comes into effect once it has been notified in the Electronic Government Gazette.

5 As at 30 November, the number of Standard Instrument LEPs notified has increased to 26.

Proposed reforms include[6]

- *appeals:* the amount of time applicants have to lodge a merits appeal has been cut from 12 months to six months. The legislation has been passed (Nov 2010) but not yet come into force
- timeframes: new regulations have been drafted to increase the statutory decision timeframe (from 40 or 60 days to 50 or 90 days), while limiting 'stop the clock' provisions. If passed in their current form, the new regulations will also raise the bar for what amounts to "physical commencement" to prevent the lapsing of a development consent (survey work will no longer be enough).

Victoria

Melbourne @ 5 Million was released in December 2008 to plan for population growth to five million. However, Victoria is in the process of developing a new Outcomes Based Metropolitan strategy to replace Melbourne 2030 and Melbourne @ 5 Million.

Development Assessment Committees were introduced in March 2010 to consider and determine planning permit applications for projects of metropolitan significance that are located within Melbourne's key activity centres. Victoria has committed to commence reforms to the Act to replace Development Assessment Committees with Planning Referral Authorities which will be triggered on an opt-in, opt-out basis via a vote of the relevant municipality to make decisions on specified development applications.

The Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2010 was passed and commenced operation on 1 July 2010. It included a significant expansion of the Urban Growth Boundary to accommodate an additional 284 000 dwellings.

The Victorian Government is reviewing and updating the *Planning and Environment Act 1987*. The review will identify opportunities to introduce the Code Assess track for certain planning permit matters, and a new process for assessment of State significant development.

The Government's election policy commits to establishing an independent, broad-based anti-corruption Commission for Victoria which will have the power to investigate planning decisions in Victoria.

6 Australia: NSW planning laws update - mixed blessings; Real Estate Markets Insights, 19 December 2010, Article by Nick Thomas

Relevant reviews and studies recently undertaken in Victoria include:

- Victorian Auditor-General review of *Victoria's Planning Framework for Land Use and Development*, 2008
- Victorian Competition and Efficiency Commission, *A state of liveability: an inquiry into enhancing Victoria's liveability*, October 2008
- Victorian Competition and Efficiency Commission, *Local government for a better Victoria: an inquiry into streamlining local government regulation*, April 2010
- Department of Planning and Community Development, *New Residential Zones for Victoria* and the *Planning Permit Activity Report*.

Queensland

In December 2009, Queensland undertook major restructuring of its planning system. The *Integrated Planning Act* 1997 was repealed and the *Sustainable Planning Act* 2009 passed, with aims to better manage the effects of development on the environment while co-ordinating and integrating local, regional and State planning (Department of Infrastructure and Planning (Qld) 2010a).

One of the major changes is the code assessment system, which provides a quick and simple (non-council) approval process for low-risk developments that comply with certain standards (Department of Infrastructure and Planning (Qld) 2009a).

Other changes include:

- further powers were given to the state minister to amend or require the amendment of local planning instruments
- some changes were made to the way appeals can be dealt with, including expanded power for the court to award costs against litigious competitors and to excuse minor procedural non-compliance
- changes were made to the way infrastructure plans are created and the way infrastructure charges are applied and negotiated.

Western Australia

Reform currently underway includes:

- the creation of DA panels to deal with all projects over $7 million and those over $3 million that opt for the panel process[7] — these will be operational from 1 July 2011
- regional planning committees, soon to be introduced as a planning solution for remote regions of Western Australia
- the electronic Land Development Process will replace paper forms with an electronic process for subdivisions from application to registration of title
- *Directions 2031* is the draft strategic plan for land use in metropolitan Perth and Peel, and was released in June 2009.

Further legislative reform has been proposed to create call in powers for the minister, similar to New South Wales' Part 3A powers; and to increase the ability of state planning policies to amend local planning schemes.

The recent report, *Planning makes it happen*, proposes 11 key strategic priorities for reforms, but these have not all been agreed by the Western Australian Government (Western Australian Planning Commission, 2009).

South Australia

South Australia recently completed a three-year planning reform program. Key changes include (South Australian Government, sub. 57, p. 3):

- residential development code, such that minor developments do not need planning consent
- more efficient planning instruments in the form of structure plans and precinct plans
- five new Regional Plans.

A further addition to the South Australian planning system is the Housing and Employment Land Supply Program, to monitor availability of land and effectiveness of the Planning Strategy. The first report was released in October 2010 (South Australian Government, sub. 57).

Tasmania

Tasmania is currently undertaking legislative review of the planning system.

7 In the City of Perth the thresholds will be $15 million or an opt-in threshold of $10 million.

- A metropolitan strategic plan, a structure plan and an implementation plan for Greater Hobart are being developed through the COAG Capital Cities project.
- The three regional groupings of local governments in Tasmania are preparing separate regional plans through the Regional Planning Initiative. They are aimed at providing consistent regimes across the three regions the plans will cover. After they come into effect, the local planning schemes will need to be updated.
- Some local plans are 40 years old. A requirement to review them every five years is soon to be introduced.

ACT

The ACT Government spent several years consulting on improvements to the planning system and new legislation came into effect in March 2008. The changes closely follow the DAF Leading Practice Model.

The key planning changes made are outlined as follows (ACTPLA, 2008):

- a restructured Territory Plan:
  - over 80 land-use policies were consolidated into a single planning scheme
  - technical amendments to the plan can be processed faster
  - clear rules and criteria to be used in making assessments
- a new piece of legislation, the *Planning and Development Act* 2007
- an updated DA process:
  - DAF Leading Practice Model DA tracks
  - likely timelines for DA
  - referral entities must meet deadlines or be deemed to support the application
  - tighter eligibility requirements for third party appeals
  - no first or third party appeals for code track DAs
  - an applicant can request written advice prior to lodging an application
  - new fee structure aligned to development track.

Northern Territory

The commencement of a 'development one stop shop' in 2009 was heralded by the Northern Territory Government as its biggest planning reform in a decade. The 'one stop shop' provides three services:

- meetings with planners to help guide people through the development application process
- pre-application forums where potential developers can meet with government agencies, local government and other relevant bodies to get advice and feedback on their development application requirements
- pre-application briefings with the Development Consent Authority (DCA) so potential developers can get feedback from the DCA on their forthcoming proposal (Lawrie 2009).

In December 2009, a new strategic plan was introduced: *Territory 2030 Strategic Plan* (Department of the Chief Minister (NT) 2009).

By 2011, the Urban Design Advisory Panel (a transitional body) will be replaced by an independent Office of Urban Design, under the 2030 Plan (KPMG, 2010).

COAG

In late 2008, the Local Government and Planning Ministers' Council endorsed a National Development Assessment Reform Program, consisting of five projects designed to highlight the way forward in DA reform. Each project was led by one jurisdiction:

1. South Australia: national DA performance measures to enable review of DA systems across jurisdictions
2. Queensland: national planning systems principles to inform and progress strategic planning systems reform including appropriate governance structures, see chapter 9 (box 9.1)
3. Victoria: benefits and implementation of electronic DA processes, including development of costed options and funding proposals for promotion of implementation and uptake
4. New South Wales: code-based DA templates for residential, commercial & industrial developments
5. ACT: measuring the financial benefits of the preceding four reform projects, including examination of cost savings & efficiency dividends.

These projects have either been completed or are well progressed.

COAG's work on capital cities and housing is ongoing, including the COAG Reform Council's Review of Capital City Strategy Planning Systems to judge whether planning systems are consistent with the national criteria.

The Housing Supply and Affordability Reform Working Party reported to COAG mid 2010 on the housing supply pipeline and Government obstacles to meeting housing demand (COAG 2010).

4 Supply of land

Key points

- The jurisdictions all take very different approaches to planning the supply of land for their capital cities — most notably in respect to how they define and plan their urban boundaries, activity centres and protected lands (such as conservation areas).
  - In 2009-10, Tasmania was the only jurisdiction to leave the land use planning and supply processes entirely to the discretion of each individual local council. However, three regional planning strategies are now being prepared to guide future development in Tasmania.
- Land for residential uses is given the most focus and is subject to the most detailed analysis by jurisdictions when monitoring land supply outcomes, with industrial land receiving less attention and commercial land the least attention.
- The most common causes of delays and extended timeframes in the land supply process of all jurisdictions are the rezoning/planning scheme amendment process, structure planning process and overcoming community concerns and/or addressing objections. The long time taken to complete the rezoning and structure planning processes (which can take as long as six years) is not surprising given the complexity of each process and the absence of any statutory time limits for these processes.
- A sample of 20 residential developments in greenfield areas spread across Australia's five largest cities reveals that as many as 10 years may pass between from the time a developable parcel of land is assembled and the subdivision of that land is completed.
- Government land organisations (GLOs) hold significant 'development inventories'. On the limited data available to the Commission, it appears GLOs complete fewer lots/dwellings each year compared to those private sector developers with comparable inventories (even after allowing for differences in the operations and objectives of government developers), though they often tend to take on the more difficult and time-consuming projects.
- Some leading practice approaches and areas for improvement in land supply include:
  - implementing statutory timeframes for rezonings and statutory planning to provide discipline to the regulatory processes and also to provide developers with a better idea of the timeframes they should allow for in their due diligence
  - the implementation of Melbourne's Urban Growth Boundary, in particular the automatic zoning of land within the boundary for 'urban use', has been cited by developers as a potentially major time saving in the land supply process
  - greenfield subdivision developments seem to proceed more 'smoothly' in areas where some development has already occurred. As such, there can be a role for government land organisations as the first developer into new settlement areas. This would provide precedent planning decisions on which other developers could base their due diligence and would ensure major 'lead in' infrastructure was in place
  - preserving and enforcing buffer regions around active industrial areas, such as ports, helps ensure the industrial activities in those areas are not curtailed by the encroachment of other, incompatible land uses.

The terms of reference ask the Commission to consider the processes in place, within the planning and zoning system, for maintaining 'adequate supplies of land suitable for a range of activities' with a view to determining best practice. The Commission has thus analysed how planning and zoning regulations and their implementation impact on land supply.

Australia covers an area of 7.7 million square kilometres (Geoscience Australia 2010) of which a total area of around 65 000 square kilometres (or under one per cent) is covered by the state and territory capital city planning areas.[1] So technically, raw land is not in short supply. However, the nature of the Australian landscape and climate, Australians' preferences for settlement locations (typically coastal), availability of water and costs to supply infrastructure mean that many areas are unable to sustain any sizable modern settlement, are not economically viable to settle or both. Planning, zoning and development assessment (DA) regulation further limits the amount of land that is available for residential, commercial and industrial uses (box 4.1) and it is on those limitations that this chapter is focused.

Box 4.1 Land for urban/city uses

In planning their cities, planning authorities identify areas of land for future urban/city use. This broad categorisation includes land to be put to residential, commercial and industrial uses. It also includes land allocated to green space, public areas and facilities, schools, community centres and roads (to name a few uses). Some land set aside for future urban/city use will be unusable for any purpose (aside from conservation) due to natural constraints.

For the purpose of this chapter, the broad categories of residential, commercial and industrial land uses are taken to include:

- ***residential*** — land to be used for private dwellings and accommodation
- ***commercial*** — includes those land uses related to commerce and trade (such as shopping centres and individual shops) and office buildings
- ***industrial*** — land to be used for activities such as manufacturing, assembling, processing, storage and distribution (of goods and services). It can include wholesaling and some retailing of goods and may also include some activities related to primary production. It can be large scale — such as a major distribution centre for a supermarket chain or metal works or small scale, such as a motor mechanic or cabinet maker (Southern Tasmanian Councils Authority 2010a).

1 This is based on the planning area of South East Queensland (SEQ), rather than Brisbane.

The reasons governments intervene to control and/or influence the supply of urban/city land include:

- to ensure adequate amounts of land are made available in a timely and coordinated manner and that all land has sufficient infrastructure to support its intended use (Adelaide City Council, sub. 23)
- to prevent urban sprawl, locate development away from environmentally sensitive areas and heritage areas, promote and/or facilitate government objectives such as affordable housing (Planning Institute of Australia, sub. 1).

The importance of land supply is explored further in section 4.1, while section 4.2 compares how the jurisdictions plan the supplies of land for their capital cities. Section 4.3 analyses how jurisdictions go about implementing these plans. This analysis is carried into section 4.4 where land supply outcomes across the capital cities are considered. Section 4.5 summarises the leading practice insights from the analysis contained in sections 4.1 to 4.4.

Scope of this chapter

The land available for urban/city use includes that land which has previously been developed (typically land occupied by a building or structure)[2] and that which has just passed through the planning processes to become available for urban/city use (typically vacant land).[3] As most jurisdictions first assess the amount of land needed for each separate land use (for example, residential, commercial, industrial, conservation and so on) in order to determine the total amount of land required for urban/city use, much of the analysis in this chapter focuses on the broad land uses — residential, commercial and industrial.

Factors from outside the planning system are excluded

Factors outside the planning system can have a significant effect on the supply of land for different uses. For example:

2 Previously developed land may be vacant if, for example, any buildings have been demolished or construction never commenced on the land.

3 Agricultural land, forests and other unaltered natural land scapes that are being brought into urban use are referred to as 'greenfield' land. In contrast, 'infill development' takes place in areas that have already been developed and typically (though not always) involves the redevelopment of under utilised land.

- the attachment of owners to their land (particularly their homes and farms) can lift their reservation price for their land above that at which development is viable
- non-planning regulations, such as restrictions on retail trading hours,[4] can limit the use of land or render its zoned use unviable (Western Australian Local Government Association, sub. 41)
- the global financial crisis has had a significant impact on the completion of developments (including land supply projects) as a result of developers' inability to secure finance (Council of Capital City Lord Mayors, sub. 31). For example, in December 2010, the Commonwealth Bank said it will not be funding any new development projects on Queensland's Gold Coast (Cranston 2010)
- conveyance duties, subsidies to first-home buyers, negative gearing and ending land tax exemptions for owner-occupied housings have been identified by the Organisation for Economic Co-operation and Development as areas that could be reformed to 'boost housing supply' (OECD 2010).

As the focus of this report is on planning, zoning and DA systems, these influences from outside of the planning system are not considered in any detail in this chapter except where there are aspects of the planning systems of the jurisdictions that specifically seek to address them. This can be a fine distinction where it is difficult to distinguish between the effects of the planning system and other factors such as market forces and individuals' private motivations.

Infill development

This chapter considers the jurisdictions' approaches to strategic planning and the balance between greenfield and infill development. It also considers the 'land supply processes' relevant to infill development, namely the rezoning process (which rebalances the stock of land between its uses and is discussed in section 4.3, below) and the subdivision process (also discussed in section 4.3).

This chapter does not address the planning processes and issues which a developer may need to complete in order to take an infill development to its ultimate intended use (such as DA and community consultation processes) — these matters are covered in chapters 6 (DAs) and 9 (community consultation). More generally, the issues relating to infill development and how it affects the supply of housing (as

4 While some of the zones defined in town planning schemes define hours of operation for businesses located in those zones, regulation directing hours of trade is more commonly found outside the planning system.

distinct from the supply of land) are discussed in some detail in the National Housing Supply Council's *2nd State of Supply Report* (box 4.2).

Box 4.2 **Adding to house supply through infill development**

There is a trend towards higher density living in Australia that has been driven by a number of factors, including:

- changing housing preferences (for example, more people are seeking to live and work in central business districts)
- limited supply of new land in existing suburbs and space constraints
- increasing land values in existing suburbs
- state and local government planning frameworks that encourage densification and infill development.

Against this trend are a number of barriers to additions to the stock of housing through infill development. These barriers include:

- higher construction costs in most jurisdictions for medium- and high-density dwellings when compared to detached dwellings
- difficulties in aggregating and preparing land for construction
- difficulties in securing development finance
- lengthy and sometimes uncertain planning and development assessment processes
- delays in securing legal title for flats, units or apartments
- community opposition to infill and to medium- to high-density dwellings.

The National Housing Supply Council found that state and territory governments have a range of options available to them to encourage infill development, including: reforming planning laws and development assessment processes (especially as they apply in areas already developed) and using government-owned land and development agencies to facilitate development.

Source: NHSC (2010).

Compliance costs, infrastructure charges and developer contributions

The costs incurred by developers in complying with planning and zoning regulation and meeting statutory obligations (such as infrastructure charges and developer contributions) directly affect the profitability of their projects — including those projects that result in an increase in the supply of land. Developer contributions (for infrastructure) are considered in chapter 5 and compliance costs are considered in chapter 6 and are not considered again here, other than to note that:

- the greater the infrastructure and compliance costs are, the less incentive developers have to undertake development projects
- generally speaking, when fewer development projects are being completed, the additions to the land supply will be lower (and there will be fewer instances of land being used more intensely via infill developments).[5]

4.1 Why the 'supply of land' is important

The supply of land is important for a variety of social, economic and environmental reasons. The supply of land is most commonly raised as an issue in relation to the housing needs of the community, and, in particular, its impact on the cost and affordability of housing (for example, subs. 28, 31, 32, 41, 53 and 59, Campion 2010a and Colebatch 2010). However, as outlined in chapter 2, the supply of land is only one factor that affects housing affordability, while the Local Government Association of Queensland (2010, box 4.3) has found that the level of housing stock was only one influence, along with the All Ordinaries index, real interest rates, unemployment and the consumer price index, on house prices in South East Queensland (SEQ).

Box 4.3 Factors affecting real median house prices in South East Queensland

Modelling by the Local Government Association of Queensland found that, on average, a 1 per cent *increase* in the:

- All Ordinaries Index resulted in a 0.25 per cent *decrease* in real median house prices
- real interest rate resulted in a 0.07 per cent *decrease* in real median house prices
- unemployment rate resulted in a 0.44 per cent *decrease* in real median house prices
- Consumer Price Index resulted in a 0.79 per cent *increase* in real median house prices.

Source: Local Government Association of Queensland (2010).

Aside from influencing housing prices, the supply of land for housing (residential use) also affects the community's housing choices. For example, as the land available for residential uses declines relative to the number of people seeking accommodation, the price of dwellings and cost of rent tends to increase. This in turn limits some people's housing choices to less preferred choices, such as shared accommodation (including with family and 'sofa surfing'), caravan parks, boarding

[5] Land supplies may be unaffected by a decrease in the number of projects completed if there is a compensating increase in the size of projects that are completed.

houses and, in the very extreme, homelessness. A shortage of supply will also typically increase the demand for social and community housing and the associated cost to governments of supporting such programs.

Infill development has become increasingly important to housing outcomes as the jurisdictions have sought to limit the area covered by their cities in order to reduce the costs of supplying supporting infrastructure and to reduce the impact of cities on the environment and heritage areas. Also, if the supply of greenfield land for housing is constrained due to natural or economic limitations or slow release by governments, the only way to accommodate an increasing population in a city is by increasing population density in existing developed areas via infill development. Unless this increase in density is accompanied by upgraded infrastructure, the city's residents can face costs arising from traffic congestion and overloading of water and power infrastructure. On the other hand, a high supply of greenfield land may lead to dispersed settlements that are costly to service. The likely high cost of providing infrastructure to geographically dispersed settlements could provide a disincentive to private development and could lead to governments needing to either subsidise greenfield development or intervene more directly in order to maintain supply.

The supply of land is also important for business. A limited choice of commercial and industrial land can curtail the opportunities for businesses to expand within a market or to enter a new market. For example, Aldi (sub. 11) identifies a shortage of appropriately zoned land as the primary inhibitor on its growth in Australia. A shortage of supply may also increase the price of land for commercial and industrial use which contributes to higher business costs — either through interest expense for debt funded acquisitions, increased rent or opportunity costs — and so adversely affect new entrants to a market when compared to incumbents (the implications for competition posed by the effects of limited land supply are discussed in chapter 7). Conversely, a relatively high supply of land for retail businesses — especially in locations away from existing centres — can reduce rents and draw businesses away from the existing centres, thereby giving rise to the problem of dead centres discussed in chapter 7.

While the amount of land available for housing and business uses is an important consideration, the location of the land supplied is also important. For example, in the 1980s, British builders and developers were seeking the release of more land while local planning authorities argued there was adequate land available. Eventually, both parties agreed that there was no shortage of land for development but that the land available was not in the areas sought by builders and developers (Evans 2004). This dilemma of locating supply where there is demand is present in Australia today. For example:

> There is a shortage of available development sites and land for housing in areas of Sydney where most households most want to live (Applied Economics 2010, p. 5)
>
> Claims that there is insufficient land supply in Queensland are not correct; however research suggests that escalating housing prices may be a result of supply being located in areas not currently in market demand (Local Government Association of Queensland, sub. 29, p. ii).

As in all markets, higher quality products usually receive higher prices and the extent of the variation price for different qualities (or in land's case, different locations) signals how much the differences are valued. Usually higher prices result in increased production of the higher quality version of the product. However, where the product is non-renewable, 'one of a kind', requires a long time to produce, or is highly regulated (as is the case for land), the increase in supply can be small or non-existent. For land, when prices rise, the tendency is to use it more intensively given the regulatory constraints and the extended timeframes required to introduce new supply. Hence, the centres of cities usually have higher population densities, taller office blocks and more closely packed shops than occurs on the edge of a city. So, requests for increased supply, in areas that are already in high demand, are actually calls for changes to zones and building requirements so that the fixed supply of land can be used even more intensively.

Unbounded expansion of cities and towns can impact upon the natural environment in some areas and, in other areas, can impinge on prime agricultural land. Such matters form an important consideration for policy makers seeking to determine an 'adequate supply of land' for different uses, as do the costs (and inefficiency) of providing infrastructure across such large areas.

The land supply decisions of today have implications for the planning decisions and development activity of coming years. Decisions, such as those made previously in Sydney, to allow a large number of multi-hectare blocks on the then city's fringe create difficulties for modern day developers seeking to assemble land for a development site (Applied Economics 2010).

Finally, as 'in any given region — even without zoning restrictions — there are likely to be few suitable sites ripe for large scale residential, retail or commercial development' (Urban Taskforce Australia, sub. 59, p. 8), getting the planning decisions 'right' for land supply takes on even greater importance.

4.2 Planning for adequate supplies of land

Strategic land use plans for the capital cities

As outlined in chapter 3, all capital cities aside from Hobart and Darwin have a strategic land use plan — there is, however, a broad strategic plan for Darwin city which considers some aspects of strategic land use planning. In Tasmania, the land use planning and land supply process is managed by individual local councils at their discretion.[6] Leaving the planning and land supply process to local councils alone increases the risk that one or more of the following will occur, as judged from the state or national perspective:

- there is an overall over allocation of land to one or more specific uses (residential, commercial or industrial) when the multiple land allocations of all councils is aggregated
- there is an overall under allocation of land to one or more specific uses where the returns to an individual council do not justify development, even though net benefits would accrue to the broader community/state or nation through such land allocations
- developments take place in sub-optimal locations, due to either more streamlined application process (hence lower development transaction costs) in a given council or insufficient land being made available in areas better suited to a given land use (Concept Economics 2008).

The strategic land use plans of the capital cities typically set out:

- the broad objectives the jurisdictions are seeking to achieve in their cities through their land use planning (for example, the number of additional dwellings to be provided, the areas of green space to be conserved and so on)
- the issues that are driving the broad objectives of the plans (for example, current population trends and forecast population growth)
- the challenges the planning system may need to overcome to achieve the plans' objectives (for example, constraints imposed by the geography of the city and environmental concerns)
- the high level strategies for achieving the plans' objectives

6 The Tasmanian Planning Commission in conjunction with local councils is in the process of preparing the three regional strategic land use plans. The public consultation period for the Southern Tasmania Regional Land Use Strategy (which includes Hobart) closed in December 2010.

- the next major settlement areas for the city and the areas that will be subject to urban intensification.

These strategic objectives and strategies then inform the planning policies and land use plans of the state/territory and local governments and therefore determine the aggregate amount of new land that will be added to the city, the proportions in which it will be allocated to different uses, as well as the rezoning and other measures that will be applied in order to make better use of existing urban/city land.

Considerations and objectives of the strategic land use plans

There are significant differences in the nature of the capital cities and the challenges to be overcome in achieving the objectives of their respective strategic land use plans. Key differences between the cities include the overall land areas being planned; the current and forecast population levels; and the number of dwellings that will be required to house the cities' future populations (table 4.1). Some jurisdictions include targets for jobs within their strategic plans, aligning the target growth in jobs closely with the forecast population growth. Dwelling targets, where they are included in the plans, are not so closely aligned to population growth — for example, while SEQ is forecasting its population to grow by 57 per cent by 2031, it is targeting an increase in the number of dwellings of around 67 per cent. Similarly, Sydney is targeting a 40 per cent increase in the number of dwellings by 2031 against a forecast increase in its population of 24 per cent.[7]

Part of the reason for the disparities between forecast population growth and the targeted number of dwellings are differences in the assumptions of the jurisdictions regarding household structures (for example, the number of people living in each dwelling — table 4.1), which are themselves informed by differences in demography across the cities.

[7] The *Metropolitan Plan for Sydney 2036* released in December 2010, has updated these forecasts for Sydney to reflect a 40 per cent increase in the population by 2036 and a 46 per cent increase in the number of dwellings over the same period. The primary reason for the change is a slowing in the reduction of household size (New South Wales Government, pers. comm., 17 January 2011).

Table 4.1 **Summary details from strategic land use plans**

	Syd[a]	*Mel*[b]	*SEQ*[c]	*Per*[d]	*Adel*[e]	*Hob*	*Can*[f]	*Dar*[g]
Date created	Dec 2005	Oct 2002/ Dec 2008[h]	Jul 2009	Aug 2010	Feb 2010	No plan	Mar 2004	Dec 2009
Population (at time of plan)	4 200 000	3 500 000[i,u]	2 827 000	1 650 000[u]	1 300 000	n.a[j]	376 000[k]	n.p[l]
Forecast population	5 300 000 (2031)	5 000 000[m] (2030)	4 430 000 (2031)	2 200 000[u] (2031)	1 850 000 (2036)	n.a	465 000[n] (2032)	n.p
Annualised forecast rate of population growth (% per annum)	0. 90	1.28	2.06	1.38	1.37	-	0.76	-
Land area covered by constituent local councils (km^2)	12 138	8 824	22 890	7 261	9 050	6 150	n.a[o]	3 079
Number of dwellings	1 600 000[u]	n.p	1 124 200	684 000	546 000[p]	n.a	114 800[q]	n.p
Target number of new dwellings	640 000 (2031)	620 000[i] (2031)	754 000 (2031)	328 000 (2031)	258 000	n.a	60 200[u] (2032)	n.p
Number of jobs (at time of plan)	2 000 000[u]	1 860 000[m]	n.p	640 000	627 200[u]	n.a	n.p	n.p
Target number of new jobs	500 000 (2031)	1 140 000[m] (2036)	n.p	353 000 (2031)	282 000 (2036)	n.a	n.p	n.p
Average household size at time of plan (people per dwelling)	2.65	2.60	2.51[r]	n.p	2.38	n.a	2.60[s]	n.p
Forecast average household size (people per dwelling)	2.36 (2031)	2.25 (2030)	2.36[r] (2031)	n.p	2.30 (2036)	n.a	2.20[s] (2036)	n.p
Number of local council areas	43	31	11	31	26[t]	7	n.a	3

n.a not applicable. **n.p** not provided in plan. [a] City of Cities: A Plan for Sydney's Future. In December 2010, the New South Wales Government released the *Metropolitan Plan for Sydney 2036*. This document supercedes the *Metropolitan Strategy for Sydney to 2031* (including *City of Cities: A Plan for Sydney's Future*) and provides updated data to that presented in this table. However, the *City of Cities: A Plan for Sydney's Future* remains the relevant planning document for the benchmarking period of 2009-10. [b] Melbourne 2030 and Melbourne @ 5million (Melbourne 2030: A Planning Update). [c] SEQ Regional Plan 2009–2031. [d] Directions 2031. [e] 30-year Plan for Greater Adelaide. [f] The Canberra Spatial Plan. [g] Territory 2030 — while not a dedicated strategic land use plan, it does address some planning issues. [h] Melbourne 2030 was released in October 2002, while Melbourne @ 5million was released in December 2008. [i] From Melbourne 2030. [j] The combined population of the constituent local councils in 2009 was approximately 219 000 people. [k] Includes Queanbeyan. [l] The combined population of the constituent local councils in 2009 was approximately 124 000 people. [m] From Melbourne @ 5million. [n] Includes Queanbeyan and represents the mid point of the range of estimates — 430 000 to 500 000 people. [o] The majority of development is to be contained within a 15 kilometre radius of the city centre. The entire ACT (not just the metropolitan area) covers approximately 2 400 km^2. [p] Commission estimate based on estimates of Adelaide's population and dwelling requirements per thousand people outlined in the plan. [q] The plan refers to the number of occupied dwellings as at August 2001. [r] Productivity Commission calculations. [s] Excluded Queanbeyan. [t] Excludes Murray Bridge which, while referred to in the *30-year Plan for Greater Adelaide*, lies outside the area designated as Greater Adelaide. [u] Approximate figure.

Sources: ACTPLA (2004); Department of Infrastructure (Vic) (2002); Department of Infrastructure and Planning (Qld) (2010b); Department of Infrastructure and Planning (Qld) (2010c); Department of Planning (NSW) (2005); Department of Planning (WA) (2009b); Department of Planning (WA) (2010a); Department of Planning and Community Development (Vic) (2008); Department of Planning and Local Government (SA) (2010a); ABS (2010 unpublished).

The nature of the housing needs in each city also varies — for example, the average age of Adelaide residents is higher than the national average and accommodation for those aged over 65 is one of the matters considered in the Adelaide plan. In contrast, an issue covered in the Perth plan is how to accommodate the increase in demand expected from 'younger people' for housing in inner city locations. More generally, changing household structures and preferences are challenging planners to provide a diverse mix of housing types and densities — including detached housing, high density dwellings (such as townhouses, mid-to-high rise apartments and flats), as well as villas and less dense forms of multi-unit housing.

All of the strategic land use plans of the capital cities are premised on forecasts of the future population. These forecasts typically concentrate on the resident population and do not include the number of visitors to each of the capital cities. This means that land use planning can underestimate the number of people in the cities at any given time, and thus underestimates the need for certain types of land, including land for short stay accommodation and tourism facilities (Tourism and Transport Forum, sub. 50).

The strategic land use plans also tend to be strongly focused on residential land supply (City of Onkaparinga (Council), sub. 52). All six jurisdictions with city plans include dwelling targets in those plans (table 4.1); but only four jurisdictions include employment targets in the strategic plans for their cities. Further, only in some plans is the location of 'employment land' and its proximity to (and accessibility from) residential areas considered. The Sydney plan, which includes a 'jobs to population ratio' as a key planning consideration, is one plan that includes a more balanced focus across a range of land uses (Productivity Commission survey of state planning departments and agencies (2010, unpublished)).[8]

Planning strategies

The jurisdictions employ a number of planning strategies for managing urban development and seeking to deliver against the objectives of the strategic plans (table 4.2).

[8] While not addressed in Melbourne's strategic land use plan, Victoria's Precinct Structure Planning Guidelines (GAA 2009) include an employment target for growth areas.

Table 4.2 **Planning strategies[a]: June 2010**

	Syd[b]	*Mel*	*SEQ*	*Per*	*Adel*	*Can*	*Dar*[c]
Urban growth boundary[d]	×	✓	×	×	×	✓[e]	×
Urban footprint[f]	✓	×[g]	✓	✓	✓[h]	✓	×
Centres policy	✓	✓	✓	✓	✓	✓	×
Transit oriented development[i]	✓	✓	✓	✓	✓	✓	×
Protected areas[j]	×[k]	✓[l]	✓[m]	✓[n]	×[k]	✓	×

[a] Hobart has been excluded from the table as there is no strategic land use plan for the city. [b] Table data relates to the *City of Cities: A Plan for Sydney's Future* which was released in 2005 and was the relevant planning document for 2009-10. The *Metropolitan Plan for Sydney 2036* was released in 2010 and contains similar strategies to those to be employed under *City of Cities: A Plan for Sydney's Future*. [c] There are no planning strategies detailed in the Territory 2030. [d] Urban growth boundaries set binding limits to urban growth that prohibit urban development outside the area enclosed by the boundary. [e] The National Capital Plan specifies an Urban Growth Boundary for Canberra. [f] Urban footprints identify the amount and location of land necessary for urban uses and seek to limit development to those areas. [g] Victoria now requires all local councils with major activities areas to fully define the boundaries of those areas so as to provide certainty on exactly where development and urban change can occur. [h] Previously known and referred to as the 'Urban Growth Boundary for metropolitan Adelaide'. [i] Including development along transit corridors. [j] Includes green space, conservation areas and, in some jurisdictions, rural uses. Excludes National Parks and State Parks. [k] Rather than listing specific areas for protection in their strategic land use plans, Sydney and Adelaide limit development to defined areas. [l] Green wedges. [m] Conversation area, biodiversity and habitat corridors. [n] Bush Forever program.

Sources: ACTPLA (2004); Department of Infrastructure (Vic) (2002); Department of Infrastructure and Planning (Qld) (2010b); Department of Infrastructure and Planning (Qld) (2010c); Department of Planning (NSW) (2005); Department of Planning (WA) (2009b); Department of Planning (WA) (2010a); Department of Planning and Community Development (Vic) (2008); Department of Planning and Local Government (SA) (2010a); NHSC (2010); Victorian Government; pers. comm., 19 January 2011.

Urban growth boundaries and footprints

Each city plan outlines a strategy to restrict urban development to a designated area. Melbourne's Urban Growth Boundary, which can only be amended by an Act of Parliament, is the only such restriction to have statutory backing. Although the Canberra's boundary can be adjusted, it requires the amendment of the *National Capital Plan* (which is subject to disallowance by the Federal Parliament). In all other cities (Sydney, SEQ, Perth and Adelaide), an 'urban footprint' is notionally defined and serves as 'a guide' to limit urban development outside of the various activity centres and designated growth areas detailed in their respective plans.[9]

The strategic land use plans for each city take a different approach to defining the urban boundary/footprint. For example, SEQ's plan consists of a network of urban footprints across its various regions and districts. In comparison, Adelaide's plan consists of a single footprint which outlines the greater metropolitan area and

[9] Adelaide's 'urban footprint' was previously known and referred to as the 'Urban Growth Boundary for metropolitan Adelaide'.

Canberra's Spatial Plan aims to have 50 per cent of development take place within a 7.5 kilometre radius of the city centre and contain the balance of growth to within 15 kilometres of the city centre.

The size of the overall planning areas for each capital city detailed in table 4.1 provides a rough guide to the varying sizes of the urban footprints/boundaries across the cities.[10] The size of these footprints/boundaries effectively sets the total amount of land that is available for urban uses within each city — although this supply can be augmented by land available in satellite towns connected to the city via public transport networks (Buxton and Taylor 2009).[11] All other strategies within the strategic land use plans affect the amount of land that will be allocated to different uses and the location of that land, rather than the total amount.

Centres policies

The centres policies of the jurisdictions also influence the proportions in which land is allocated to different uses and their placement. These policies focus on creating areas within cities that attract large numbers of people for a variety of purposes — including employment, retail/shopping, social activities and access to services (such as health and professional services, government services and education facilities).[12] The number, type, location/distribution and accessibility of these centres (commonly known as 'activity centres') through a city are important determinants of how well centres serve their purpose. The planning rationale for activity centres is outlined in box 4.4, while the competition issues arising from centres policies are discussed in chapter 7.

The location of different centre types is not only important to those who wish to use them (for example, travelling distance and ease of access), but also for how these centres contribute to achieving other objectives of a city's strategic plan. For example, an absence of centres in proximity to new residential developments may result in the residents in those developments facing extended commuting times to their jobs. On the other hand, locating centres away from public transport or without easy access for potential employees and customers may create difficulties for businesses within those centres in seeking to attract employees and customers.

10 The Melbourne Urban Growth Boundary was expanded by 24.5 square kilometres on 29 July 2010.

11 For example, Victoria's Regional Fast Rail program that connects Melbourne with Geelong, Ballarat and Bendigo.

12 Increasingly, mixed use centres are being planned which incorporate land for housing among a mix of commercial activities — for example, blocks of units situated above a strip shopping area.

Most jurisdictions encourage particular commercial activities to locate within a designated hierarchy of activity centres (tables 4.3 and 4.4) or within specialised centres.[13] While locating commercial activities outside of these centres is discouraged to varying degrees, 'out of centre' developments have been an increasing occurrence since the 1990's — especially for bulky goods retailers who have taken to locations in industrial areas with access to main roads.

Box 4.4 Planning rationale of activity centres

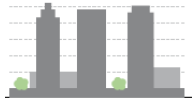
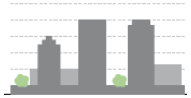
Part of the rationale for locating so many activities in centres is to improve the accessibility, productivity and the efficient use of infrastructure — particularly through the increased use of public transport to get to these centres. Activity centres are also intended to decrease car travel by providing a single destination to meet the majority of most people's everyday needs. Activities that may be located in centres typically include a range of residential, retail, commercial, government, educational, research and/or social activities.

All jurisdictions with a strategic land use plan have activity centres policy provisions of some kind (table 4.2) — either as stand alone policy documents or as a part of their strategic plan (see chapter 3 for details). These policies encourage particular activities to locate in a designated hierarchy of 'activity centres' and, to varying degrees, discourage 'out-of-centre' development, usually of commercial activities. The New South Wales Government's Metropolitan Strategy describes centres as 'encouraging collaboration, healthy competition and innovation amongst businesses from clustering ...' (City of Sydney (Council), sub. no 15, p.3). Activity centre approaches are also endorsed by business groups: 'activity centres policies that promote commercial and retail developments to co-locate within identified activity centres (such as regional, town and village centres) should remain the cornerstone of orderly and proper planning and must be maintained' (Shopping Centre Council of Australia, sub. no. 43, p.3).

There are different parameters defining each jurisdiction's hierarchy of centres. Compared to other jurisdictions, the New South Wales planning guidelines for activity centres are quite prescriptive regarding the land use zones which can be applied in different levels of centres and, in turn, the nature of activities permitted therein. In other jurisdictions, such as South Australia, the centre's hierarchy is presented more as a general framework rather than as prescriptive requirements.

[13] Depending on the jurisdiction, specialised centres exist for activities including: education; research; health and medical services; aviation and logistics; ports; and bulky goods retail.

Table 4.3 **Centres hierarchies by jurisdiction**

	City centres	*Major regional centres*	*District centres*	*Suburban centres*	*Local centres*
					
Syd[a]	• **Global Sydney** (Sydney CBD and North Sydney)	• **Regional Cities** (eg Parramatta) • **Major centres** (eg Bondi Junction)	• **Town Centres**	• **Neighbourhood Centres** • **Villages**	
Mel[b]	• **Central Activities District** (Melbourne CBD)	• **Principal Activity Centres** (eg Doncaster Hill)	• **Major Activity Centres** (eg Mount Waverley)	• **Neighbourhood Activity Centres**	• **Local centres**[h]
SEQ[c]	• **Primary Activity Centre / City Centre** (Brisbane CBD)	• **Principal Regional Activity Centre** (eg Robina)	• **Major Regional Activity Centre** (eg Toowong)	• **Suburban Centres**	• **Convenience Centres**
Per[d]	• **CBD / Perth Central Area** (Perth CBD)	• **Strategic Metropolitan Centres** (eg Rockingham)	• **Secondary centres** (eg Subiaco)	• **District Centres**	• **Neighbourhood Centres**
Adel[e]	• **Capital City** (Adelaide CBD)	• **Regional Centres** (eg Elizabeth)	• **Major Districts** (eg Glenelg) • **District Centres** (eg Norwood)	• **Neighbourhood Centres**	• **Local Centres**
Can[f]	• **CBD / Civic** (Canberra CBD)		• **Town Centres** (eg Belconnen)	• **Group Centres**	• **Local Centres**
Proposed:					
Hob[g]	• **Primary activity centre**	• **Principal activity centre**	• **Major activity centre**	• **Minor centre** • **Neighbourhood town centre**	• **Local strip/village**

[a] Sydney City of Cities: A Plan for Sydney's Future. [b] Melbourne 2030. [c] SEQ Regional Plan 2009-2031 and *Brisbane City Plan 2000*. [d] Directions 2031 and *Activity Centres for Perth and Peel 2010*. [e] 30-year Plan for Greater Adelaide. [f] The Canberra Spatial Plan. [g] Proposed Regional Land Use Strategy for Southern Tasmania. [h] Defined in Victoria's Precinct Structure Plans for growth areas (GAA 2009).

Source: ACTPLA (2004); *Activity Centres for Perth and Peel 2010*; *Brisbane City Plan 2000*; Department of Infrastructure (Vic) (2002); Department of Infrastructure and Planning (Qld) (2010b); Department of Infrastructure and Planning (Qld) (2010c); Department of Planning (NSW) (2005); Department of Planning (WA) (2009b); Department of Planning (WA) (2010a); Department of Planning and Community Development (Vic) (2008); Department of Planning and Local Government (SA) (2010a); Southern Tasmanian Councils Authority (2010); GAA (2009); Victorian Government, pers. comm., 19 January 2011.

Table 4.4 **Number of each centre type (by jurisdiction)**

Broad category of centre	*Description*	*Syd*[a]	*Mel*[b]	*SEQ*[c]	Per[d]	*Adel*[e]	*Can*[f]
City centres	Primary centre for finance, law, education, health, arts, tourism, specialised and high end retail. Preferred location for land uses of state, national and international significance. Major employment area and transport hub. City, and even state, wide catchment.	2	1	1	1[g]	1	1
Major regional centres	A 'strategic centre' providing a wide range of retail, commercial, administrative, entertainment, recreation and regional community facilities. Key employment area and transport hub. Catchment drawn from a significant part of the city.	16	25	14	10	6	n.a
District centres	Centre for a range of retail, commercial services, office and community facilities.	62	79	28	19	9	4
Suburban centres	Centre for sourcing weekly needs and certain personal services. Catchment of local and nearby suburbs.	>900	>900	n.av	71	n.av	17
Local centres	Centre for meeting the day-to-day needs of those in the suburb.			n.av	n.av	n.av	53

n.a not applicable. **n.av** not available. [a] Sydney City of Cities: A Plan for Sydney's Future. [b] Melbourne 2030. [c] SEQ Regional Plan 2009-2031 and *Brisbane City Plan 2000*. [d] Directions 2031 and *Activity Centres for Perth and Peel 2010*. Count of centres includes emerging centres. [e] 30-year Plan for Greater Adelaide. [f] The Canberra Spatial Plan. [g] Perth CBD, although listed in *Activity Centres for Perth and Peel 2010* as Perth, Northbridge, West Perth and East Perth.

Source: ACTPLA (2004); *Activity Centres for Perth and Peel 2010*; *Brisbane City Plan 2000*; Department of Infrastructure (Vic) (2002); Department of Infrastructure and Planning (Qld) (2010b); Department of Infrastructure and Planning (Qld) (2010c); Department of Planning (NSW) (2005); Department of Planning (WA) (2009b); Department of Planning (WA) (2010a); Department of Planning and Community Development (Vic) (2008); Department of Planning and Local Government (SA) (2010a); Martin Stone Pty Limited (2009); Southern Tasmanian Councils Authority (2010b).

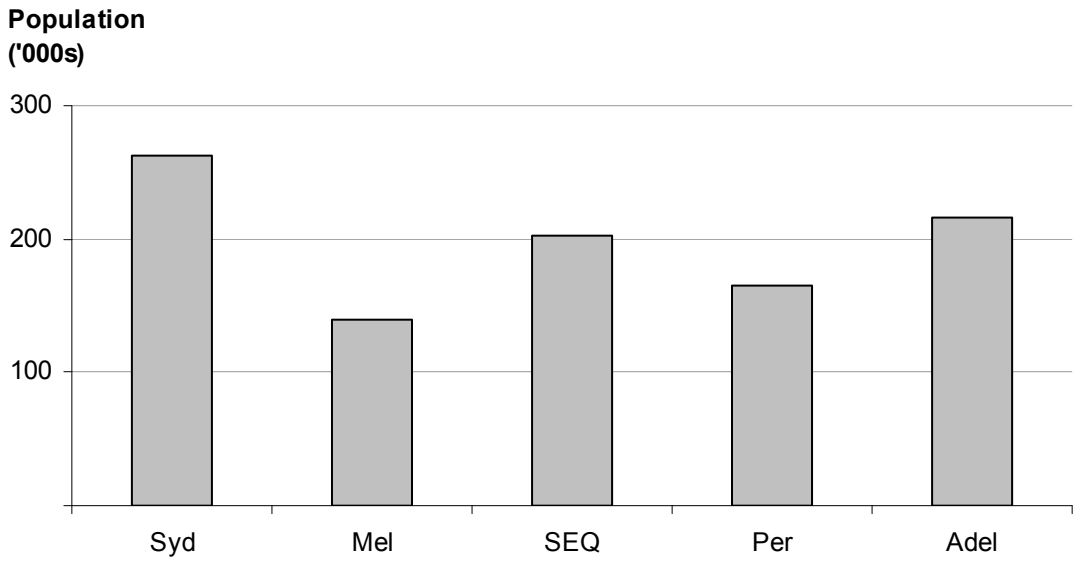
Prescriptive definitions for each category of centre can limit the availability of sites in those centres for different business uses. For example, large grocery retailers may be excluded from operating in a 'local centres' (in the terminology of table 4.3) as they are deemed to provide goods meeting the 'weekly needs' of locals rather than their 'day-to-day needs' for which local centres are intended. On the other hand, specialised retailers might also be excluded from 'local centres' where their products are consumed irregularly rather being required on a day-to-day basis. Chapter 7 provides further examples of how the definitions applied to the different levels of centres can impact upon the allowable land uses within those centres.

New South Wales is unique among the jurisdictions in having two designated 'city centres' (Sydney Central Business District and North Sydney) in its capital city — all other jurisdictions have only one such centre (table 4.4). Melbourne and Canberra are similar in providing one 'suburban' or 'local' centre for every 4000–5000 people (in aggregate across their respective planning areas). In Sydney, there are over a 250 000 people for each 'major regional centre' whereas in Melbourne there is one 'major regional centre' for around every 140 000 people. The ratio is around one for every 200 000 people in SEQ, for every 165 000 in Perth and for around every 215 000 in Adelaide (figure 4.1). The lower number of people for each 'major regional centre' in Melbourne, accompanied by its more compact planning area, suggests a greater ease of access to these centres in Melbourne than in Sydney, SEQ, Perth or Adelaide. As customer numbers are an important driver in the demand for land (and floor space) for commercial uses, these numbers suggest a relative shortage of supply of major regional centre locations in Sydney when compared to other capital cities. Woolworths describes the impact of this shortage as follows:

> [The] limited availability of retail floorspace in Sydney means that the retailers with stores in Sydney often experience greater customer numbers in store with consequent impact on convenience, amenity and customer experience. In practical terms, this means that customers in the Sydney Metropolitan Region are more likely to experience congested carparks, traffic jams in and around retail precincts, longer queues at checkouts and more crowded retail outlets than those elsewhere in Australia. (sub. 62, p. 8)

Figure 4.1 **Number of people per major regional centre[a]**

’000 people per major regional centre



a The table excludes Canberra as there are no major regional centres (as defined in table 4.4) in the ACT (Canberra does have other higher and lower order centres).

Data source: tables 4.1 and 4.3.

Transit oriented development

Transit oriented development strategies place an emphasis on development near public transport nodes and terminals, while transit corridor development strategies focus development along public transport corridors. In all jurisdictions, these strategies form part of the approach to infill development (infill development is discussed further below) and in some cities they also support a centre’s policy (Shopping Centre Council of Australia, sub. 43).

While each city with a dedicated strategic land use plan employs a transit oriented strategy, a transit corridor strategy or both, the cities differ in their approaches, for example:

- Sydney seeks to have 66 per cent of development located either within 800 metres of a rail station or 400 metres of a high frequency bus service in the morning peak by 2013. Similarly, the SEQ plan seeks to place those high density residential and professional services land uses that generate high demand for public transport within 400–800 metres (or 10 minute walk) of a bus stop or train station in its transit corridors

- over the life of *City of Cities: A Plan for Sydney's Future,* Sydney is looking for at least 80 per cent of housing to be built within the 'walking catchments' of existing and planned centres of all sizes with good public transport[14]
- part of the Transit Cities program for metropolitan Melbourne and regional centres is premised on higher density mixed-use development around key transport nodes which are serviced by fast rail
- both Melbourne and Adelaide use these strategies as a way of supporting a growing population while maintaining the character of the majority of existing suburban neighbourhoods
- part of SEQ's approach to transit oriented precincts includes a walking and cycle-friendly 'core' by which to access rail and/or bus services

Transit oriented and transit corridor development strategies have their challenges. As noted in the Sydney plan, these include maintaining the status of corridors as employment locations while using their potential for additional housing and achieving high amenity outcomes in corridors where traffic volumes are significant.

Protected areas

All of the strategic land use plans recognise the importance of retaining areas of land for 'uses' such as environment, conservation and agriculture. However, only Melbourne, SEQ and Perth explicitly set aside areas in their plans for these purposes. Sydney and Adelaide on the other hand seek to preserve these areas by containing development to defined areas. Canberra employs a mix of approaches — containing development in order to preserve protected areas[15] and setting aside land under the National Capital Open Space System (under the National Capital Plan).

Some other notable differences in the approaches of the jurisdictions include:

- Melbourne's green wedge areas include permissible uses of: conservation, recreation, agriculture, airports, sewage treatment and quarries
- among other things, the SEQ plan seeks to ensure there is no net fragmentation of large tracts of vegetation over 5000 hectares.

The greater the amount of land within the urban footprint/boundary that is set aside as a protected area, the smaller is the amount of land available for uses such as

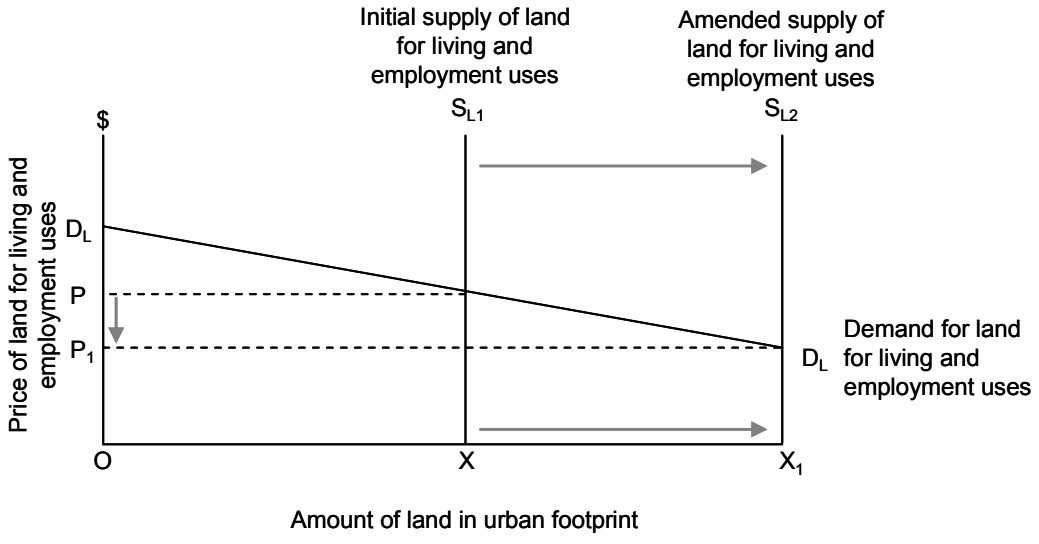
[14] The same target has been included in the *Metropolitan Plan for Sydney 2036* (which was released in December 2010).

[15] Canberra's strategic land use plan seeks to limit all growth to within 15 kilometres of the city centre.

housing and industry. Further, land set aside as a protected area (such as conservation) may limit how abutting land may be used (for example, extensive setbacks from the boundary may be required).

Figure 4.2 illustrates the theoretical impact on urban land supply and prices when land within an urban footprint/boundary formerly set aside as a 'protected area' is allowed to be put to urban uses.[16] While such an action would increase the supply of urban land and reduce its price, it would also reduce the community benefits, such as amenity and quality of environment, accruing from the protected areas. The decrease in community benefits may well exceed any incremental benefits arising from the increased amount of land for residential, commercial and industrial uses (and its decreased price). As such, finding the balance between land for residential, commercial and industrial uses and protected areas is part of the overall challenge faced by planners in balancing economic, social and environmental considerations in their planning decisions. Of course, the other option is to increase the urban footprint/boundary which would allow both the preservation of the protected areas and increase the availability of land, and lower land prices for residential, commercial and industrial uses; however, as noted earlier, this may well create other challenges in relation to infrastructure provision and so on.

Figure 4.2 **Allocation of land between 'employment and living' uses and protected areas**



Source: Based on Evans (2004).

16 Figure 4.2 assumes land within the urban footprint/boundary ($0X_1$) has only two uses — protected areas and 'employment and living' uses (that is, residential, commercial and industrial uses, collectively).

Planning limitations on land designated for urban use

Not all of the land approved for subdivision is put to residential, commercial or industrial uses. In fact, one developer responding to the Commission's questionnaire estimated that, depending upon the site, up to 40 per cent of land is 'lost' to natural constraints and planning requirements for public space, schools, community centres, roads. In respect to residential land uses, the Urban Development Institute of Australia has highlighted:

> … [the] demands on urban land for non-residential uses such as commercial and employment areas, wetlands and buffers, conservation areas, on-site drainage, easements of various kinds and buffers to major roads and other incompatible uses. A 25% margin of the greenfield land requirement must be allowed to accommodate non-residential uses (sub. 53, p. 13).

Recognising these constraints, the South Australian government allows for the following discounts when seeking to determine the dwelling potential for land designated for future development:

- the total area is discounted by 25 per cent to allow for land that remains undeveloped due to factors such as landowner decisions, environmental constraints, buffer requirements and government policy requirements
- the remaining land supply is then discounted by a further 25 per cent to allow for non-housing land uses such as roads, reserves, community facilities and commercial uses (Department of Planning and Local Government (SA) 2010b).

In South Australia, up to 12.5 per cent of a subdivision is required to be set aside for open space (Productivity Commission survey of state planning departments and agencies, 2010 unpublished), while the open space requirement in Western Australia is 10 per cent (*State Planning Policy 3.6 — Development Contributions for Infrastructure*). The land required as part of 'developer contributions' is discussed further in chapter 6.

Land can also be unavailable for residential, commercial or industrial uses due to environmental considerations. For example, of the 10 209 hectares of Key Resource Areas (production and processing areas) in SEQ, around 2425 hectares are now constrained by koala conservation considerations, while a further 1910 hectares are constrained by vegetation management legislation (Cement Concrete and Aggregates Australia, sub. 4). Requirements to set aside land as a condition of approvals granted under Commonwealth, state and territory environmental legislation also detract from the amount of land applied to residential, commercial and industrial uses. One approval under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cwlth) in 2009-10 for an urban development

required 8.4 hectares of land to be set aside for each hectare of development. These 'land offsets' are discussed further in chapter 11.

Finally, allowing non-compatible land uses to encroach upon each other can limit the usefulness of land for its zoned use. For example, allowing residential land uses to encroach into the buffers around ports can:

- reduce the amenity of those houses constructed near the port (relative to locations away from the port)
- place limits on the scope of the port's operations through means such as curfews (should nearby residents be sufficiently vocal and persuasive in complaints over noise from the port)
- increase traffic congestion and potentially limit road access to the port, thereby further limiting its operations.

While the examples above relate to ports, similar arguments and examples can be made for any industrial land use that warrants a buffer between it and residential uses. The tension (and difficulty) in finding the right balance between residential and industrial uses is highlighted in the *National Aviation Policy White Paper:*

> Suitable locations for airports are scarce. In the interests of safety and public amenity there should be minimal development in the vicinity of airport operations. However, there is also a need for airports to be easily accessible to population centres. Inappropriate development around airports can result in unnecessary constraints on airport operations and impacts on community safety. There is hence a need to ensure that construction and development are undertaken in a way that is compatible with airport operations, both in the present and taking into account future growth. (Department of Infrastructure, Transport, Regional Development and Local Government 2009a, p. 166).

Land supply targets

Development is often characterised as 'greenfield' or 'infill'. Greenfield developments take place on what are additions to the stock of land for urban/'city' use, whereas infill developments represents a 'recycling' and/or intensified use of land already in urban/'city' use. Both forms of development are important parts of the jurisdictions' strategies for accommodating their growing populations.

For areas with greenfield land available, the balance between greenfield and infill development is an important planning consideration as the more intensively existing urban/'city' land is used, the less greenfield development is required for a given population. For areas with no greenfield land available, such as capital city central

business districts, the only way by which increasing demand for 'land uses' (such as accommodation and retail floorspace) can be met is through infill development.

Targets for infill and greenfield development

The capital cities have set different targets for infill and greenfield development (table 4.5). For example, Sydney is aiming for 60-70 per cent of its residential developments to be infill by 2031, while South-East Queensland is targeting 50 per cent by the same year (table 4.5).[17] Higher infill targets generally foreshadow a more intense use of existing zoned land.

Table 4.5 **Balance of development**[a]

	Syd[b]	*Mel*[c]	*SEQ*[d]	*Per*[d]	*Adel*[e]	*Can*	*Dar*
Infill target (residences)	384 000-448 000	318 000	377 000	180 400	129 000-180 600	No target[g]	No target
Infill target (%)	60-70	53	50	55	50-70[f]	50	No target

[a] Hobart has been excluded from the table as there is no strategic land use plan for the city. [b] Between 2005-2031. [c] Between 2009-2030. [d] Between 2009-2031. [e] Between 2010-2040. [f] Transition from 50% to 70% over the period. [g] The plan identifies proposed urban areas within the ACT for future development to meet projected demand of between 58 000 and 90 000 additional dwellings by 2032. This equates an infill target of 29 000 to 45 000 residences.

Sources: NHSC (2010).

The jurisdictions also differ in how they allocate aggregate city targets across their cities. In Sydney, the targets for housing (dwellings) are set out on a 25 year basis for each subregion in Sydney's Metropolitan Strategy and, in turn, for each local government area in each subregion. These targets are updated with the Metropolitan Strategy review every 5 years (Productivity Commission survey of state planning departments and agencies (2010, unpublished)). A similar approach is taken in Adelaide and Perth, where targets are assigned to each of the subregional planning areas and, in turn, cascaded down to the constituent local councils.

Targets for supplies of greenfield land

While all jurisdictions set long range targets for new dwellings (table 4.1), only Sydney, Melbourne, Adelaide and Perth have a land supply target within their strategic land use plan, land management/supply programs and/or as part of government policy (table 4.6). These targets are set for different land uses and for

[17] While the long term infill target for Sydney is 70 per cent, infill development has accounted for around 80 per cent or more of development for several years (New South Wales Government, pers. comm., 17 January 2011).

land at different stages of the planning process — typically those key steps in the process over which the government has most control. The targets are typically expressed in terms of the level of supply sufficient to meet a set number of years of anticipated future demand. As all targets for all land uses in table 4.6 are expressed relative to forecast demand, there is no apparent reason (aside from uncertainty around the demand projections) that the jurisdictions would differ in their targets.

Table 4.6 **What is an adequate supply of greenfield land?[a]**

Benchmarks for adequate supply — years of accumulated demand

	Syd	*Mel*	*SEQ*	*Per*	*Adel*	*Can*	*Dar*
Land designated for future development							
Residential land	15[b]	15–25[e]	n.t	25	25	n.t	n.t
Commercial land	n.t	n.t	n.t	25	25	n.t	n.t
Industrial land	n.t[c]	15-25[e]	n.t	25	25	n.t	n.t
Land zoned for urban development							
Residential land	8[d]	n.t	n.t	15	15	n.t	n.t
Commercial land	n.t	n.t	n.t	15	15	n.t	n.t
Industrial land	n.t[c]	n.t	n.t	15	15	n.t	n.t

n.t no target. [a] Hobart has been excluded from the table as there is no strategic land use plan for the city. [b] Relates to the amount of that land which has been released by Government for rezoning and servicing. [c] The New South Wales Government plans to release benchmarks for industrial land as part of a report on the Employment Lands Development Program to be released in early 2011. [d] Sydney also has a benchmark target of 7.3 years supply of zoned land with lead in infrastructure in place. [e] Target is to ensure up to 25 years of land supply, with a minimum of 15 years.

Sources: ACTPLA (2004); Department of Infrastructure (Vic) (2002); Department of Infrastructure and Planning (Qld) (2010b); Department of Infrastructure and Planning (Qld) (2010c); Department of Planning (NSW) (2005); Department of Planning (NSW) (2010c); Department of Planning (WA) (2009b); Department of Planning (WA) (2010a); Department of Planning and Community Development (Vic) (2008); Department of Planning and Local Government (SA) (2010a); New South Wales Government, pers. comm., 17 January 2011; Victorian Government (2008).

Compared to residential land, setting targets for industrial land can be a difficult task given the variety of possible uses and their unique requirements and possible impacts beyond their properties (table 4.7). More generally, land areas set aside for industrial uses should:

- enable a wide range of industrial activities to be undertaken without adversely affecting other land uses (including sufficiently large buffer zones around residential areas)
- have easy access to transport infrastructure and have adequate electricity supply/infrastructure and water infrastructure for industrial uses
- allow for changing industrial activities over time

- provide a range of lot sizes, locations and permitted uses (Department of Planning and Local Government (SA) 2010b, Department of Planning (WA) 2009a, Department of Sustainability and Environment (Vic) 2004).

Table 4.7 **Requirements for industrial land**

Industrial use	*Land Requirement*	*Location / Access*
Heavy Manufacturing	• Medium to Large sites • Flat land • Large separation buffers • Provision of utilities and information, Communications and Technology (ICT)	• B-double access • Proximity to freight route • Proximity to container port, rail terminal
Light Manufacturing	• Small to large sites • Flat land • Small to medium separation buffers • Provision of utilities & ICT	• Truck access, possibly including B-double • Proximity to freight route • Access to supply chain/ labour/customers
Transport / Warehousing	• Large sites • Flat land	• Ready site access/egress B-double access • Ready access to intermodal facility
Local Trade Services	• Small sites • Minor buffers	• Central to customers

Based on: Planning SA (2007).

There is general agreement that a supply of undeveloped land sufficient to meet 15 years of projected demand is required to both avoid speculative pressure and aid efficient 'production' of land (Local Government Association of Queensland 2006, PC 2004, Southern Tasmanian Councils Authority 2010a). Perth and Adelaide both provide for a target well in excess of 15 years. In the case of Perth, the Urban Development Institute of Australia would suggest this is appropriate given:

> History suggests that a 20 year zoned land supply is insufficient. In March 1996 there was a combined stock of nearly 32 000 ha of existing undeveloped urban and urban deferred zoned land in the Perth metropolitan region which was estimated to equate to a land supply of 28 years. Ten years later in 2006, the Perth metropolitan region experienced a major land supply crisis that resulted in significant increases in housing costs which had a severe negative impact on housing affordability. (sub. 53, p. 13)

Local plans, zoning and overlays

As discussed in chapter 3, council level statutory plans exist at a level below the strategic land use plans of the capital cities. These 'local plans' detail the zoning that applies to different areas within council boundaries. Submissions to this study provided some examples of how the zoning applied to land can affect its availability

for different uses (box 4.5). More generally the effect of zoning on possible land uses operates on a number of levels:

- the wider the definition of allowable uses encompassed in a given zone, the less likely it is that land with that zoning will require rezoning to be put to a different use (rezoning is discussed in section 4.3)[18]
- wider zoning definitions also provide greater scope for the market to allocate land to its best use, albeit within the uses allowed by the zone
- a small number of narrowly defined zones for a local council area increases the likelihood that certain activities will be effectively precluded from that local area.

However, given the peculiarities of individual jurisdictions a 'one size fits all' approach to zoning across the jurisdictions is not necessary, or even desirable.

Box 4.5 Impact of zoning on land uses — issues raised in submissions

Some businesses do not readily fall within the land use definitions in local planning schemes and unless there is some flexibility and discretion available to officers, a use can be unnecessarily prohibited or curtailed. (Council of Capital City Lord Mayors, sub. 31, p.12)

The preclusion of new industries and the continued existence of particular industries in some locations can arise from a Local Government authority's failure or delay to review its town planning scheme in a timely manner…The failure or delay to review a town planning scheme can often result in a scheme being out of date and not reflecting the needs of a community. The overly prescriptive nature of older town planning schemes in operation within some Local Government authorities can also preclude innovation, new development and technology and preclude Local Governments from being able to respond to market changes. (Western Australian Local Government Association, sub. 41, p. 15)

Current zoning requirements restrict the location of tourism related enterprises to areas in which they are competing with other commercial uses or prevent them from competing with alternative uses such as residential. (Department of Resources, Energy and Tourism, sub. 22)

An alternative to broader zoning definitions is to allow planners to consider (and approve) development applications that do not comply with scheduled zone (so-called 'non-complying developments'). Such applications could be considered on a merits basis against principles outlined in land use policies (as can occur in the ACT

[18] Widening the zoning definitions can come at a cost of decreased planning precision.

under the National Capital Plan). However, such an approach can be costly — for example, non-complying developments often require more documentation and supporting studies to justify their approval on a merits basis, thereby adding to the cost of the process for developers. These costs are, in many ways, simply a transfer of the cost that governments incur in completing the investigations and studies necessary to rezone land. However, these costs can reoccur each time that there is an alteration to a property with a non-complying use and a new development application required.[19] More broadly, defined zones would avoid the costs of non-complying development (and rezoning) and would not be to the detriment of planning outcomes if the zones reflected all the land uses conceivable as being permitted under the prevailing planning policies. They would also reduce restrictions on competition as discussed in chapter 7.

The size of local council areas, the nature of commerce and industry within local council areas and the level of detail underpinning the local plans (including the definitions applied to zones) all vary both across and within jurisdictions. The number of zones employed in the local council plans also varies across jurisdictions and within jurisdictions (table 4.8). These variations occur even where the jurisdictions have a 'common set of zones' to be applied in all local plans. For example:

- prior to 2006, there were over 3100 zones in effect across New South Wales. The introduction of a Standard Instrument Local Environment Plan (LEP) to be used by local councils was to reduce the number of zones to 34. However, as at 30 June 2010, the Standard Instrument LEPs had been 'notified'[20] for only 16 of the 152 local government areas (LGAs) in New South Wales (New South Wales Government, pers. comm., 17 January 2011).[21] Accordingly, there remains considerable variation in the number of zones in the plans of New South Wales' local councils (table 4.8)
- while there are 33 standard zones defined in the *Victorian Planning Provisions*, each local council includes only those zones in its plan that are required to implement its strategy.[22]

19 The Commission's consultations in South Australia indicated this can be a major issue in the use of non-complying development assessments.

20 An LEP only comes into effect once it has been notified in the Electronic Government Gazette.

21 As at 30 November, the number of Standard Instrument LEPs notified has increased to 26.

22 Local councils cannot vary the standard zones or introduce local zones into their plans. Some of the standard zones allow for local circumstances/requirements to be detailed in schedules to the plans. The Victorian Government has committed to undertake a full review of its zoning system to ensure it is 'functioning correctly' and remains 'relevant' (Victorian Government, pers. comm., 19 January 2011).

Table 4.8 **Number of zones employed by local councils: 2009-10**

Capital city and SEQ planning areas

	Average number of zones within a council area	*Council with most zones*	*Number of zones*	*Council with fewest zones*	*Number of zones*
Syd[a]	20	Camden	48	Leichhardt	5
Mel	17	Casey	25	Stonnington	10
SEQ[b]	40	Logan	105	Somerset	10
Perth	12	Perth and Swan	22	Peppermint Grove	4
Adel	25	Onkaparinga	51	Walkerville	7
Hob	17	Glenorchy	31	Kingborough	6
Can	There are 23 zones in the *Territory Plan* (which applies to Canberra)[c]				
Dar	There are 32 zones in the *Northern Territory Planning Scheme* (which applies to Darwin) [c]				

[a] The Warringah Council plan defines 74 geographical areas (localities) in which different activities are permitted and different DA requirements apply. These areas have not strictly been defined as zones and so Warringah Council has not been included in this table. [b] Includes zones and 'area classifications'. [c] The *Territory Plan* (ACT) and *Northern Territory Planning Scheme* are the equivalent of the local planning schemes of the local councils and separate to the strategic land use plans detailed in table 4.1 and elsewhere in this chapter.

Source: Productivity Commission estimates derived from review of local council and Territory planning schemes.

Numerous local councils include a single 'residential zone' in their plans, while many others include a number of 'residential zones'. Table 4.9 illustrates some of the differences in how local councils (and different jurisdictions) define their residential uses. These differences can partly be attributed to local circumstances. Nonetheless, the differences show how, for example, the land zoning in Subiaco is more amenable to construction of up to three storeys when compared to Ipswich.

There are also differences akin to those in table 4.9 across local councils in their definitions for commercial and industrial land uses. For example:

> In the Perth metropolitan and Peel regions, there is significant variance in the manner in which general and light industries are defined and managed. Industry classifications also include special, cottage, service, noxious and hazardous land uses. Many local governments also include research and development, showroom, warehouse and mixed business development in the definition of industry. These uses are traditionally located in commercial areas, but increasingly they are occupying industrial land. This lack of consistency in planning for and the protection of industrial land has resulted in the gradual erosion of some key industrial sites because of the encroachment of non-industrial land uses such as retail and commercial. (Department of Planning (WA) (2009a, p. 1)

The Department of Planning (WA) (2009a, p. 1) has noted these differing zoning definitions makes it 'increasingly difficult to manage and regulate the development and preservation of industrial land to optimise its use'.

Table 4.9 **Comparison of residential zones**

Subiaco (WA) v Ipswich (Qld) case study

Subiaco (WA)		*Ipswich (Qld)*	
Zone	Conditions	Zone	Conditions
R15	• ~15 dwellings per hectare[a] • up to 9 metre high with council permission, 6.5 metres otherwise	Rural C (Rural Living)	• no new lots will be created unless the Council is satisfied there will be no net increase in the number of rural lots within the area
R20	• ~20 dwellings per hectare[a] • up to 9 metre high with council permission, 6.5 metres otherwise	Large Lot Residential	• 1.5–2.5 dwellings per hectare • non-residential uses where they fulfil a community need and do not detract from amenity
R30	• ~30 dwellings per hectare[a] • up to 9 metre high • frontage of over 25 metres	Township Residential	• new lots to have an overall dwelling density of 2.5 dwellings per hectare, minimum lot size of 4000m² and frontage of 40 metres • non-residential uses where they fulfil a community need and do not detract from amenity
R40	• ~40 dwellings per hectare[a] • up to 9 metre high • frontage of over 25 metres	Residential Low Density	• ~10–15 dwellings per hectare • precludes multi-storey dwellings in most instances • non-residential uses where they fulfil a community need and do not detract from amenity
R50	• ~50 dwellings per hectare[a] • up to 9 metre high • frontage of over 25 metres	Township Character Housing	• conserve pre-1946 dwellings • depending on the area, density is not to exceed 15–50 dwellings per hectare
R60	• ~60 dwellings per hectare[a] • up to 9 metre high • frontage of over 25 metres	Residential Medium Density	• depending on the area, density is not to exceed 50–75 dwellings per hectare • generally precludes buildings of over 2–3 storeys • 6 metre set back for buildings • non-residential uses where they fulfil a community need and do not detract from amenity
R80	• ~80 dwellings per hectare[a] • up to 12 metre high with council permission, 9 metres otherwise • frontage of over 25 metres	CBD Residential High Density	• generally precludes buildings of over 3 storeys • provides for a range of non-residential uses

[a] Approximate figure.

Source: *Ipswich Planning Scheme*; *City of Subiaco Town Planning Scheme No. 4*.

Chapter 7 provides some comparisons across the jurisdictions for the zonings that can accommodate small supermarkets, large retailers and bulky goods retail premises. That analysis demonstrates further variation in the zoning definitions of the jurisdictions, for example, bulky goods retailers can operate in areas zoned 'industrial' in some local council areas, whereas in others they are limited to sites zoned for 'business' or 'commercial' uses.

Given these potential impacts of zoning on the availability of land for different uses, and the difficulty associated with anticipating future land use needs, zones should be broadly framed and more functionally oriented to limit that the extent of future rezoning required to accommodate unforeseen demand for different land uses.

Overlays

Overlays can be (and are) employed in the plans of New South Wales, Victorian, Queensland, South Australian and Tasmanian local councils, as well as the ACT. Overlays show the areas of land possessing special features such as remnant vegetation, heritage traits and environmental sensitivities. Overlays serve to protect the special features of these areas by placing controls on development. For example, development may be curtailed or even prohibited on land with a remnant vegetation overlay so as to protect the remaining vegetation — these restrictions apply regardless of zoning.

Land management / supply programs

The jurisdictions use land management/supply programs to obtain up to date information on the availability of land for residential, commercial and industrial uses (KPMG 2010). In turn, these programs facilitate the informed implementation and review of the jurisdictions' land supply strategies. In the case of New South Wales' Metropolitan Development Program (MDP) the scope extends to processes for considering new sites; the timing and sequencing of development; benchmarks for key stages in the land supply process (including benchmarks for the stock of land at those stages in the process);[23] processes for land supply assessment and infrastructure coordination (Department of Planning (NSW) 2010c).

All land management/supply programs include consideration of land for residential uses, with industrial land uses receiving less attention and commercial land uses the least attention (table 4.10). While not a land management program as such, Western Australia conducts a census of its commercial and industrial land every five years and has a longitudinal dataset for these land uses that goes back around 20 years (Western Australian Government, pers. comm., 9 February 2011).

South Australia is the only jurisdiction to have performance indicators that trigger a policy review where evidence suggests land supply may be falling short of

[23] In July 2006 these were adopted by the New South Wales Cabinet and, in November 2006, the benchmark for 'zoned and serviced' land (table 4.6) was included as a target in the State Plan (and has been retained in subsequent revisions of that plan). The measures add an additional layer of oversight to that of the Metropolitan Development Program.

requirements — although these triggers are included in the 30 Year Plan for Greater Adelaide, not in the Housing and Employment Land Supply Program (HELSP). Victoria's Growth Areas Authority (GAA) monitors the adequacy of land supply in Melbourne's designated Growth Areas against internally defined trigger points.

Table 4.10 **Land management/supply programs**[a]

	Syd		*Mel*	*SEQ*	*Per*	*Adel*	*Can*
	MDP[b]	ELDP[c]	UDP[d]	GMP[e]	UDP[f]	HELSP[g]	ILRP[h]
Year commenced	1981[i]	Yet to start[j]	2003	Yet to start[k]	2009[l] 2008[m]	2010	2009
Frequency of updates	Annual	n.a	Annual	Will be annual	Annual[l] Quarterly[m]	Will be annual	Annual
Covers:							
Residential land	✓	×	✓	✓	✓	✓	✓
Commercial land	×	✓	×	×	×	✓[n]	✓
Industrial land	×	✓	✓	×	×	✓	✓
Monitors progress of major projects	✓	n.a	✓	n.a	✓	✓	✓[n]
Monitors past supply	✓	n.a	✓	n.a	✓	✓[o]	✓[n]
Considers current and future supply	✓	n.a	✓	n.a	✓	✓[o]	✓[n]
Monitors past demand / consumption	✓[n]	n.a	✓	n.a	✓	✓[o]	✓[n]
Considers current and future demand / consumption	✓[n]	n.a	✓	n.a	✓	✓[o]	✓[n]
Trigger points for minimum supply	×	n.a	✓[p]	n.a	×	✓[q]	×

n.a not available (no reports have been released under the program). [a] Hobart and Darwin have been excluded from the table as they do not have a current land management/supply program nor do they have one under consideration. [b] Metropolitan Development Program. [c] Employment Land Development Program. [d] Urban Development Program —includes the 'Urban Growth Monitor' and 'Land Supply and Housing Activity' report. [e] Growth Management Program. [f] Urban Development Program. [g] Housing and Employment Land Supply Program. [h] Indicative Land Release Program. [i] Program has existed in different guises since the early 1970s. [j] Was to have commenced in 2007. [k] Program was announced in May 2010. [l] Urban Growth Monitor. [m] Land Supply and Housing Activity report. [n] Limited and generalised analysis. [o] Limited analysis for commercial land uses (including retail). [p] Part of the GAA's role is to continually monitor the adequacy of land supply in designated Growth Areas against defined trigger points. [q] Contained in the 30 Year Plan for Greater Adelaide, not the HELSP.

Source: Department of Land and Property Services (ACT) (2010); Department of Planning (WA) (2010b); Department of Planning (NSW) (2007); Department of Planning (NSW) (2010c); Department of Planning and Community Development (Vic) (2010a); Department of Premier and Cabinet (Qld) (2010); Department of Planning and Local Government (SA) (2010b); Western Australian Planning Commission (2010).

The jurisdictions may also undertake *ad hoc* land supply reviews. For example, Western Australia prepared the *Industrial Land Strategy 2009* (Department of

Planning (WA) 2009a) as 'part of the State Government's response to a recognised shortfall in industrial land supply'. The *Industrial Land Strategy 2009* provides the framework for the strategic planning considered necessary to address the shortfall in Western Australia and, in doing so, includes a considered analysis of the demand and supply factors contributing to the shortfall and how they might be addressed.

4.3 Delivering adequate supplies of land

Just as the planning and monitoring processes outlined in section 4.2 are important factors in the supply of land, so too are the jurisdictions' planning approval processes and planning and planning-related requirements and decisions. Government land organisations (GLOs) also play an important role in the land supply process, while issues such as fragmented land holdings and land banking can detract from land supply.

This section considers the nature and effect of these processes, decisions, organisations and issues. However it does not address the appeals processes available to those seeking redress for a planning decision — the availability, nature and effect of appeals within the planning system more generally are considered in chapter 3.

Planning approval processes

To better understand how the planning approval processes affect the land supply process, the Commission sought information from state/territory government planning departments and developers via questionnaires (further details on these questionnaires are contained in appendix B). The Commission developed the framework in figure 4.3 to underpin those questionnaires and provide the basis for its analysis of the land supply process. The Commission arrived at this framework after considering how the jurisdictions characterise the land supply process in their land management/supply programs (table 4.10), as well as how it was characterised by the National Housing Supply Council (NHSC 2010) and Urbis (2010) and after consulting with developers.

The planning approval processes for land supply vary significantly across the jurisdictions. Furthermore, they can be very complex; this is illustrated by the flow diagrams for each jurisdiction's key approval processes provided in appendix D.

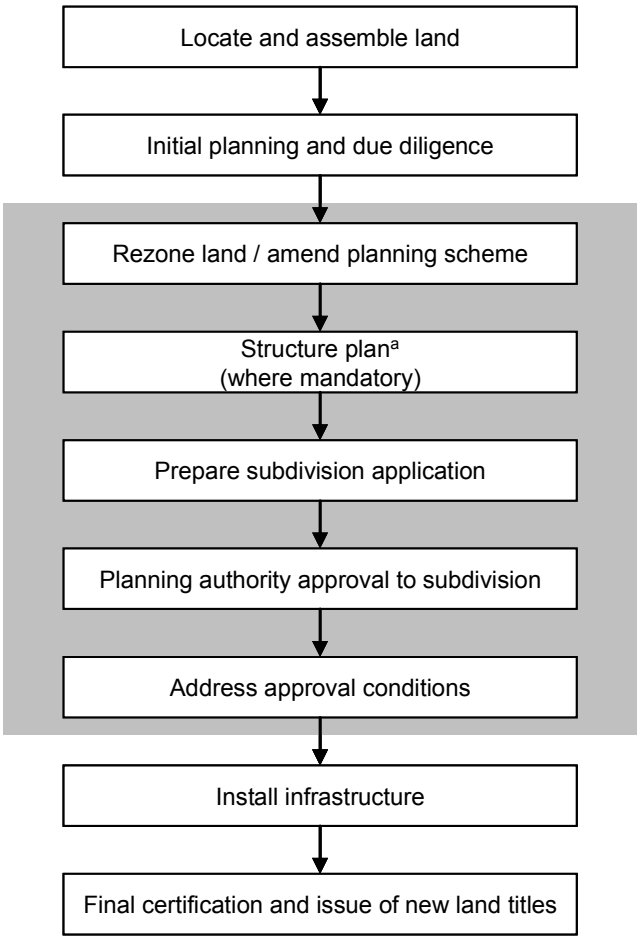
While these flow charts are intended to represent the 'standard' land supply processes that apply in each jurisdiction (as distinct from potential 'fast track'

approaches that might be available for state significant projects for example), some of the alternative processes available in designated growth areas are also depicted.

Unlike an application for a subdivision approval which is initiated by the developer, the rezoning of land and structure planning processes can only be initiated by local or state/territory government planning authorities in most jurisdictions. While planning authorities may be approached by developers to consider rezoning proposals, the decision on whether to initiate the rezoning and attendant plan amendment process rests with the planning authority. Moreover, planning authorities can generally initiate a rezoning or structure plan without the request of affected land holders.

Figure 4.3 **Stylised land supply process**

Grey shading denotes primary impact and influence of planning systems



a For simplification, includes the step of master planning which applies in SEQ.

All jurisdictions have statutory timeframes for the subdivision approvals process. These timeframes range from 20–90 days (table 4.11). Where the statutory timeframe triggers a deemed refusal (as it does in New South Wales), the timeframe

only becomes effective when an applicant decides to appeal a deemed refusal through the channels for appeal outlined in chapter 3). Otherwise, where an applicant chooses not to exercise appeal rights once the statutory timeframe is passed (and an application deemed to be refused), there is no impediment to decision makers taking as much time as they choose to assess and determine an application.

Table 4.11 **Statutory timeframes for land supply approval processes**

Calendar days (unless otherwise noted)

Approval process	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Rezone land / plan amendment	-	-	-	-	-	-	-	-
Structure planning (box 4.6)	n.a	-	-	n.a	n.a	n.a	n.a	n.a
Master planning	n.a	n.a	-	n.a	n.a	n.a	n.a	n.a
Subdivision approval	60[a]	28–49[b]	20–40[c]	90	56	42	30–45[d]	84

- denotes no statutory timeframe. **n.a** not applicable (is not a mandatory process within planning legislation). [a] The statutory timeframe reduces to 40 days if no referrals are required. [b] The decision should be made as soon as possible after receiving a response from referral authorities. Response from referral authorities have a statutory timeframe of 28-49 days (see chapter 10). [c] Commences from the time a complete application has been received, a public notification period of at least 30 days completed and any necessary referrals processes completed (see chapter 10). [d] Decision to be made within 30 business days of lodgement if no representations are made or 45 business days after the lodgement date if representations are made.

Source: Environmental Planning and Assessment Regulation 2000 (NSW); *Planning and Environment Regulations 2005* (Vic); *Sustainable Planning Act 2009* (Qld); *Development Regulations 2008* (SA); *Planning and Development Act 2005* (WA); *Land Use Planning and Approvals Act 1993* (Tas); *Planning ACT 2009* (NT); *Planning and Development Act 2007* (ACT).

No jurisdiction has an enforceable timeframe in which rezoning proposals must be decided Similarly, there are no statutory timeframes for the finalisation of structure plans and master plans where those requirements apply.[24]

In New South Wales, the typical subdivision consent period granted by councils is two years, with planning legislation providing for a maximum of five years after which the consent lapses unless there has been 'substantial commencement' on the subdivision. Western Australian subdivision approvals lapse after:

- four years for a plan of subdivision creating more than five lots
- three years for a plan of subdivision creating five or fewer lots.

The time limitation on Western Australia's subdivision approvals has been a long standing requirement and over the past 20 years, for all land subdivision (residential, industrial and commercial) across Western Australia, approximately 45

[24] Some jurisdictions, such as Victoria and South Australia, have committed to timeframes for these activities in their strategic land use plans and other planning documents, but these commitments do not have statutory backing.

per cent of all subdivision approvals have lapsed without the approved subdivision being completed. Within Perth, approximately one-third of residential subdivision approvals have lapsed without the approved subdivision being completed (Productivity Commission survey of state planning departments and agencies 2010 (unpublished)).

Box 4.6 **Structure plans**

A structure plan demonstrates the proposed layout of a development area. Structure plans address the land use, environmental, heritage, and infrastructure considerations relevant to that area. In doing so, they can go into considerable detail on matters such as: the location and configuration of roads; the nature and location of social infrastructure (such as schools); the infrastructure charges applying in that area; the extent, nature and location of open space areas; and the types of housing that will be permitted in given locations. A structure plan provides the framework against which developers prepare their development applications.

As discussed in chapter 5, structure plans are an important tool for facilitating the coordinated provision of infrastructure. Accordingly, while structure planning make take some time at the 'front end' of the land supply process, it can reduce the complexity of, and time taken to complete the 'back end' processes such as installing infrastructure.

Structure plans broadly similar to Australian requirements were in place in the United Kingdom (UK) until their abolition in 2004 when they were replaced with Regional Spatial Strategies (RSS) which were similar in nature, but more prescriptive and included additional matters such as housing targets to be achieved. In May 2010, the UK abolished RSS citing concerns that the RSS were an 'unnecessary bureaucracy', 'expensive and time-consuming' and 'they alienated people'.

In Australia, structure plans have also been subject to some scrutiny. For example, in Western Australia structure plans generally require the approval of the relevant local government and the endorsement of the Western Australian Planning Commission. To avoid duplication inherent in this process reforms are being considered that provide for the joint, rather than sequential, assessment of structure plans by the Western Australian Planning Commission and local council.

Source: Department for Communities and Local Government (UK) (2010); Department for Planning and Infrastructure (WA) (2009).

Even though structure planning (box 4.6) is not a mandatory process outside of Victoria (in Melbourne's designated growth areas) and Queensland, most jurisdictions will require a structure plan for at least some projects. For example, most developments in the ACT will need to be in compliance with an approved structure plan and developments in Sydney's North West Growth Centre and the South West Growth Centre will also need to be in compliance with an approved structure plan. A structure plan may require that a location specific **master plan** (or

plans) to be prepared — master plans generally entail even more detailed planning of a specific area within a proposed development.

Time taken to complete greenfield developments

The Commission sought information from the planning departments on the timeframes for the rezoning/plan amendment process, the structure plan process (where it is mandatory) and deciding subdivision applications. The Commission sought information from developers on all aspects of figure 4.3 except for the structure planning process and the process of final certification and issue of new titles — the former being predominantly undertaken by planning authorities rather than developers and the latter primarily involving interactions with land titles offices/land registries rather than the planning system.[25] The responses from planning departments and developers were combined to generate the land supply timeframes shown in table 4.12.

Table 4.12 reflects a wide range of timeframes for the completion of land subdivision projects. Across Australia's five largest cities as many as 10 years (120 months) can elapse from the time a developable parcel of land is assembled and a subdivision is approved and completed (they grey shaded areas in table 4.12 plus the time taken to install infrastructure) — all this must occur before the construction of houses or commercial buildings can begin. Urbis (2010) also reported a wide range of possible timeframes for best and worst case scenarios in Melbourne (84–109 months) and SEQ (30–129 months),[26] as did the National Housing Supply Council (NHSC 2010) in their estimates of the time it will take for land entering the 'land supply pipeline' in 2009 to pass through the required planning processes — 50–156 months. The NHSC (2010) also sourced data from the jurisdictions on the time taken for land to complete different stages of the land supply process.[27] For those jurisdictions providing a complete data set to the NHSC, the equivalent estimates of the total times in table 4.12 were:

- Victoria — 24 to 60 months
- Queensland — 91 months

[25] Further details on these questionnaires are contained in appendix B.

[26] Urbis estimates included a 20 month timeframe for 'project realisation', which included building approvals, construction, building certificates and selling the property. This 20 month period has been excluded from these estimates as it relates to activities undertaken after the completion of the land supply process.

[27] In the methodology of the NHSC, this relates to passing from the beginning of 'stage 2' (zoning/rezoning) to the completion of 'stage 5' (construction of subdivision infrastructure and issue of new titles).

- South Australia — 21 to 84 months
- ACT — 84 months.

Table 4.12 **Elapsed time to complete land supply processes for capital city planning areas[a,b]**

Calendar months

	Syd	*Mel*	*SEQ*	*Adel*	*Per*	*Dar*	*Can*
Locate site and assemble land	n.e	2–12	3–91	1–24	12	n.e	n.e
Initial planning and due diligence	3–8	6–47	2–24	1–55	n.e	n.e	n.e
Rezone land / amend planning scheme[c]	16–78	18	13–38	24–30	9–48	1–6	24
Structure plan[d]	36	26–78[e]	n.e	n.e	12–72	n.e	n.e
Prepare subdivision application	4–10	3–22	2–11	2–6	3	n.e	n.e
Decision on subdivision[c]	4–6	3–6	3–24	5–24	2–36[f]	2–4	n.e
Address approval conditions	3–12	1	2	6	12	n.e	n.e
Install infrastructure	12	n.e	10	36+	n.e	n.e	n.e
TOTAL[g]	**n.e–119**	**30–60+**	**14–172**	**24–133+**	**36–120+**	**n.e**	**n.e**

n.e no estimate supplied. **+** denotes project is ongoing and timeframes represent the time spent to date and the expectation that further time will elapse before the completion of the stage or project. [a] Table excludes Hobart as the Commission was unable to obtain any estimates from either planning departments or developers. The majority of timeframes in this table relate to residential/housing developments. Appendix B contains details of the number of developers (and the number of projects) that provided the data for this table. [b] Grey shading denotes primary impact and influence of planning systems. [c] Data is based on responses from planning departments and developers. [d] For simplification, has been considered to include the step of master planning which applies in SEQ. [e] 78 month timeframe was provided by the Growth Areas Authority and so is not reflected in the total timeframes. The structure plans on which the GAA estimates are based were commenced many years ago and under a different system to that which applies in 2011. The GAA estimates completion times of between 2-3 years for structure plans commenced in 2011. [f] Developers reported a maximum timeframe of 18 months. The WAPC advised that under-prepared applications may remain 'in the system' for some years until all issues with the application are resolved. [g] Total timeframes are based on developer responses for individual projects.

Source: Productivity Commission survey of greenfield developers (2010, unpublished); Productivity Commission survey of state planning departments and agencies (2010, unpublished).

The NHSC estimates of total time taken to complete the land supply process are based on the jurisdictions' estimates of the ***average*** time taken to complete each stage of land supply process as at 30 June 2009, where as the timeframes in table 4.12 reflect the experience of particular developers (usually for projects completed between 1 July 2008 and 30 June 2010). The estimate for Queensland

sits in the mid-range of the times supplied by South East Queensland developers in table 4.12 and so would seem to be a reasonable estimate of the average (not withstanding the comparatively small data sample underlying table 4.12). Similarly, the range of times for Victoria and South Australia align reasonably well the range of times supplied by developers from Melbourne and Adelaide (although Adelaide developers provided a wider range of times that the planning department's estimated averages).

Despite the wide range in the overall time taken to complete the process, there is some consistency in the timeframes for individual processes:

- most developers take 6 months or less to prepare their subdivision application
- outside of Darwin, the rezoning/plan amendment process did not take less than 12 months, with timeframes of 18–24 months being most common — planning departments and developers broadly agree on these timeframes
- the structure planning process is typically lengthy, with timeframes in excess of 24 months being commonplace and timeframes as long as 72–78 months being reported in Melbourne and Perth[28]
  - where it applies, the structure planning process is often undertaken in parallel with, and informs, the rezoning process. As such, not all of the time taken to rezone land is additional to the time taken to complete the structure planning
  - Victorian and Tasmanian planning laws allow planning authorities to consider rezonings concurrently with subdivision applications.

The rezoning and structure planning processes were also significant factors in the NHSC (2010) estimates of the time taken to complete the land supply process.

Despite the extent of conditions attached to subdivision approvals (one response to the Commission's questionnaire noted their subdivision approval included over 100 conditions), developers can usually address the conditions within 6 months of receiving the approval. The notable areas of variation between projects and across jurisdictions were:

- the amount of time taken to locate and assemble a site and complete initial planning and due diligence. These steps are often undertaken in parallel and so the total time taken to complete both steps is often less than the sum of the timeframes to complete each individual step

[28] The structure plans on which Victorian estimates are based were commenced many years ago and under a different system to that which applies in 2011. The GAA estimates completion times of between 2-3 years for structure plans commenced in 2011.

- the time taken to decide the subdivision application. Developers' responses to the Commission's questionnaire showed that applications were either decided within 3–6 months, or they took 18–24 months.[29] There is no apparent reason for this dichotomy
- the rate at which infrastructure is installed. For example, based on the questionnaire responses:
  - developers in Victoria were able to install infrastructure for between 50–100 lots per year in each of their subdivision developments (while not captured in the survey results, GAA data shows that some Victorian developers have installed infrastructure at a rate of between 300-500 lots per annum in recent times (Victorian Government, pers. comm., 19 January 2011))
  - developers in Queensland were able to install infrastructure at a rate of around 200 lots per year in their subdivision developments
  - developers in Perth were able to install infrastructure for between 150–500 lots per year in each of their subdivision developments.[30]

Cause of delays in the land supply planning process

Some developers responding to the Commission's questionnaire provided details of projects outside of the capital cities (these responses were excluded from table 4.12 to maintain comparability across capital city planning areas). Also, while some developers did not provide time estimates for different steps in the land supply process, they were able to provide information on the source of delays for their projects. Table 4.13, which is based on all questionnaire responses, summarises the source of the delays and extended timeframes experienced in the land supply processes of the jurisdictions.

In addition to the matters listed in table 4.13, there were a number of impasses between developers and councils (over what might have been expected to be minor matters — such as disagreements over the naming of streets or development precincts) that delayed projects for one to two months.

[29] Data from the planning departments showed that rezonings in greenfield areas can take between one month and three years, depending upon the nature of the rezoning and the jurisdiction.

[30] Unfortunately, the Commission was unable to obtain sufficiently detailed data to determine whether structure planning was completed for any of these projects and whether it influenced the time taken to install infrastructure.

Table 4.13 **Matters that delay or extend the land supply process**

	Number of projects (n=29)	*Jurisdictions where the delay was reported*				
		NSW	*Vic*	*Qld*	*WA*	*SA*
Planning-related matters:						
Rezoning / amend planning scheme	10	✓	✓[a]	✓	✓	✓
Structure planning[b]	8	✓	✓	✓	✓	✓
Overcoming community concern / addressing objections	6		✓	✓	✓	✓
Addressing unclear or inconsistent planning instruments	5		✓			✓
Waiting for major state provided transport infrastructure (eg transport terminal)	4			✓	✓	
Council request for more information / studies required to support application	3	✓	✓			
Lack of council resources	3	✓		✓		
Appealing planning decision	2		✓			✓
Division within council over project	2			✓		
Increasing capacity of infrastructure	2	✓			✓	
Lack of inter-agency cooperation / delays in referral decisions	2		✓			✓
No statutory time limits for decisions (incl. plan amendments)	2		✓			
Authorities sequencing planning processes that could run concurrently	1		✓			
Coordinating infrastructure providers	1	✓				
Council challenged by innovation	1			✓		
Non-planning related matters						
State environmental laws	5	✓	✓	✓	✓	✓
Environment Protection and Biodiversity Conservation Act (Cwlth)	2				✓	
Site characteristics	1				✓	
Time for titles office to issue new titles	1	✓				

[a] Only noted as an issue for land outside Melbourne's Urban Growth Boundary. [b] Including master planning in SEQ.

Source: Productivity Commission survey of greenfield developers (2010, unpublished).

The most common causes of delays and extended timeframes in the land supply process were the rezoning/planning scheme amendment process, structure planning process and overcoming community concerns/addressing objections raised in respect to subdivision applications (the community's involvement in the planning process is discussed further in chapter 9). The extended amount of time taken to complete the rezoning and structure planning processes is not surprising given the complexity of each process (as reflected in the flow diagrams in appendix D) and

the absence of any statutory time limits for these processes in any jurisdiction (table 4.11).[31]

Many of the issues raised by developers in relation to the land supply process are echoed in the submission of local councils to Western Australia's *Reducing the Burden* report (Government of Western Australia 2009), wherein several local councils:

- raised concerns regarding the complexity and time consuming nature of the plan amendment process
- noted that their workload exceeded their resources
- cited slow response times for referrals.

Complying with state environmental laws and the EPBC Act (discussed further in chapters 10 and 11) were also noted by developers as being lengthy processes. However, an examination of the time taken to comply with these laws and the total time taken to complete the development indicates that actions required to comply with environmental laws are often carried out in parallel to the planning process. In fact, in New South Wales and Queensland, environmental requirements are integrated into their planning systems.

Rezoning

Not all projects require rezoning; for example, most land falling within Melbourne's Urban Growth Boundary is automatically zoned for urban use. Also, developments on sites in Queensland and South Australia that are not consistent with the use described in the zones (or local plans) can still proceed as 'noncomplying developments' but are subject to greater planning scrutiny and discretionary decision making and so face a less certain path to approval.

Rezoning can be a time consuming, costly and uncertain process — especially for infill development where the potential for delays due to community objections is much greater. Rezoning can also take an extended amount of time in greenfield areas when developers 'push the boundaries' in seeking to have land rezoned — for example, Buxton and Taylor (2009) provide examples of three developers who, between 2005 and 2008, lobbied the Victorian Government to amend the zoning on their rural land holdings around Melbourne to an urban use, even though the relevant land lay outside the Urban Growth Boundary.

[31] Reforms to Victoria's structure planning process are anticipated to reduce the time to complete structure plans to around 2–3 years. Previously, it took five years or more.

Where the outcome for a particular site is uncertain, most developers will seek an alternative site that does not require rezoning. However, the potential windfall gains from having land rezoned from a rural use to an urban designation will see some developers persevere with rezoning proposals in greenfield areas. The small number of rezonings in each capital city for 2009-10 provides some support to the notion that developers (both infill and greenfield) seek to avoid having to rezone a site wherever possible (table 4.14).[32] That the most common rezonings are for changes to housing and residential uses, where the uplift in land value is likely to be the greatest (the uplift in value can be up to 10 times (OECD 2010)), provides some indication that rezonings are usually pursued where the potential rewards are greatest, the excess demand for land is the greatest or a combination of both.

Table 4.14 **Rezoned land: 2009-10**

	Number of rezonings	*3 most common rezonings*		
Syd[a]	5	From a variety of uses to Housing/Residential	From a variety of uses to Commercial/business	
Mel	80	Rural to Housing/Residential	Industrial to Housing/Residential	Industrial to Commercial
SEQ[b]	n.e	n.e	n.e	n.e
Per[c]	108	Between Housing/Residential uses	Rural to Housing/Residential	Commercial to Housing/Residential
Adel	9	Between commercial uses[d]		
Hob	22	Rural to Housing/Residential	Public Purposes/ Open Space to Housing/Residential	Between Housing/Residential uses
Dar	16	'Future development' to Housing/Residential	Between Housing/Residential uses	
ACT	1	Between Housing/Residential uses		

n.e no estimate supplied. [a] Relates only to applications initiated and approved since the introduction of the Gateway process on 1 July 2009. [b] In Queensland, planning scheme amendments play a similar role to rezoning in other jurisdictions. [c] Based on data for planning scheme amendments for the Mandurah and Murray councils only. [d] There were four rezonings between commercial uses. The remaining rezonings were one each of: industrial to housing/residential; commercial to housing/residential; commercial to industrial; housing/residential to commercial; and between housing/residential uses.

Source: New South Wales Local Plan Making Tracking System (database), Department of Planning (NSW), Sydney, daily updating; Productivity Commission survey of state planning departments and agencies (2010, unpublished).

The flowcharts for the rezoning processes applying in Sydney, Melbourne, Perth (only in limited cases), Adelaide and Hobart (appendix D) all reflect requirements for local councils to gain intermediate approvals from Ministers and/or planning

[32] Although it may also reflect a reluctance on the part of planning authorities to rezone. This in itself would also deter developers from engaging in a project that requires rezoning.

departments/agencies. It is unclear what net benefit (if any) some of these intermediate approvals bring to the rezoning process — particularly those approvals required to prepare an initial plan amendment and those to allow the public notification of a potential rezoning. Removing or redesigning these potentially redundant steps in the rezoning process is one way in which completion timeframes might be shortened without comprising the overall integrity of the process.

Structure planning

It could be argued that the structure planning process provides the benefit of reducing the time taken to complete later stages of the land supply process (such as the installation of infrastructure — box 4.6), as well as the benefits that can arise from the careful and considered planning of settlements. But in extreme cases, such as where the structure planning process has taken six years or more to complete (as has occurred in Victoria and Western Australia), the subsequent time savings in the land supply process would need to be significant — especially given the developers who provided the information in table 4.12 are typically taking 12 months or less to install the requisite infrastructure for their development projects.

The Victorian and Queensland Governments have recognised the potential difficulties associated with preparing structure plans and have established agencies to take responsibility for the process in certain areas: the GAA for Melbourne's designated growth areas and the Urban Land Development Authority (ULDA) for declared areas in Queensland. The extent of the GAA's task is apparent in the following statistics:

- based on the Urban Growth Boundary established in 2005, the GAA needs to complete 41 Precinct Structure Plans (PSPs) covering an area of some 19 670 hectares and providing for around 110 000 dwellings
- as at 30 June 2010, 18 of these PSPs had been completed with the remaining 23 currently scheduled for completion by the end of 2012
- following the expansion of the Urban Growth Boundary on 29 July 2010, the GAA has embarked on the process for the Growth Area Framework Plan. This process is expected to take around one year and will inform the additional PSPs that will be required as a result of the expansion of the Urban Growth Boundary.

The nature and dynamics of the property market can change markedly over the course of the many years it can take to complete the land supply process. This can leave developers with a product unsuited to the prevailing market or trying to sell into a less buoyant market than was envisaged at the time of their due diligence. In response, developers might not pursue projects where there is an appreciable risk of

extended delays (fewer projects usually mean less land supply) or else may seek a higher price for their end product so as to compensate for the increased risk (which has implications for affordability).

A smooth path through the land supply planning process

A number of characteristics were also apparent from the Commission's questionnaire to developers in relation to those developments which took a minimum amount of time and which appeared to proceed relatively smoothly:

- the development was clearly consistent with the vision the planning authority had for the area (for example, compliant with an existing structure plan)
- the land was suitably zoned (for example, development on land within Melbourne's Urban Growth Boundary typically did not need rezoning)
- the area in which the development was to proceed already had an approved structure plan
- the area in which the development was to proceed was not 'totally greenfield' (for example, infrastructure connections were nearby and developers had precedent development decisions on which they could base their due diligence)
- the development did not require site assembly or extensive due diligence.

Implications of the time taken to complete the land supply process

Data from AV Jennings (sub. 64) shows how delays in the planning process can negatively impact upon the timing of cashflow for developers. More generally, chapter 6 discusses the costs incurred by developers as a result of delays in the planning system. Aside from these direct costs, delays cause developers to allow for greater contingencies in their development projects and, as a result of this allowance for greater potential costs, some projects may not proceed as they do no generate a sufficient (forecast) return.

Developers have finite resources they can apply to development projects. Regardless of how fluid a developers' organisational structure is, while a project remains incomplete there is a limit on the developer's resources that can be deployed to other projects. As such, planning delays also deny developers the chance to complete the number of projects of which they are capable in any given

time period. This reduction in productive capacity flows onto a reduced supply of land for that time period.[33]

Government land organisations

Each jurisdiction, except Tasmania, has a government-owned land organisation (GLO) operating as a developer (table 4.15). Aside from GLOs, other state, territory and local council bodies play a role in urban development, albeit on more localised and limited scope than most GLOs. For example:

- in Sydney, the Redfern-Waterloo Authority is responsible for revitalising Redfern, Waterloo, Eveleigh and Darlington areas of the city
- Perth is serviced by four redevelopment authorities (the Armadale Redevelopment Authority (ARA), East Perth Redevelopment Authority, Midland Redevelopment Authority and Subiaco Redevelopment Authority) which are responsible for specific urban renewal projects in the city
- in South Australia, the SA Housing Trust undertakes urban renewal projects but acts primarily as a developer (working with the Development Assessment Commission and local councils). Defence SA and the Department of Trade and Economic Development also undertake renewal and development projects in South Australia[34]
- some local councils also undertake some land development operations, though these are typically targeted at specific issues in their local council area.[35]

[33] This static analysis ignores potential second round effects such as a decline in land prices resulting from increased supply and the accompanying incentives for developers to limit their sales of land so that prices do not fall so far as to render their project unprofitable. Financiers also become wary of an oversupplied market and may limit the availability of finance – not only to developers but also to the purchasers of their products (for example, there are concerns that an oversupply of apartments in Melbourne's central business district may deter financiers from lending to potential purchasers of these units due to fears of falling values for the units) (Dobbin 2010).

[34] For example, the Department of Trade and Economic Development is the lead agency managing the Tonsley Park (former Mitsubishi site) redevelopment.

[35] In February 2010, the New South Wales Government committed to establishing a Sydney Metropolitan Development Authority to undertake transit-oriented development and urban renewal projects.

Table 4.15 **Government land organisations**

	GLO	*Legislation*	*Statutory powers*	*Area of operation*
NSW	Landcom	*The Landcom Corporation Act 2001*	• General power to do business	Sydney and regional
Vic	VicUrban	*Victorian Urban Development Authority Act 2003*	• General power to do business • Additional powers relating to declared projects include compulsory land acquisition and the power to impose charges (general and infrastructure recovery) on property owners in declared areas	Declared areas in Melbourne and regional Victoria
Qld	Urban Land Development Authority (ULDA)	*Urban Land Development Authority Act 2007*	• Planning and DA within declared areas • Impose conditions on development • Impose penalties for breach of conditions or planning scheme • Override local council by-laws • Coordinate, provide or pay for infrastructure • Issue directions to a state or local government entity to provide or maintain infrastructure • Impose charges and/or other terms for infrastructure, services and works	Designated areas in Brisbane and regional Queensland
WA	LandCorp	*Western Australian Land Authority Act 1992*	• General power to do business	Across Western Australia
SA	Land Management Corporation (LMC)	*Public Corporations (Land Management Corporation) Regulations 1997*	• General power to do business	Adelaide
Tas	No agency in operation			
ACT	Land Development Agency (LDA)	*Planning and Development Act 2007*	• No special powers under the Act	ACT
NT	Land Development Corporation (LDC)	*Land Development Corporation Act 2009*	• General power to do business • Make by-laws and impose minor penalties for breaches of those by-laws • Make regulations	Darwin and Palmerston

Source: State and territory legislation; LDA (2010a); LDC (2010a); LMC (2010a); Landcom (2010a); LandCorp (2010a); ULDA (2010a); VicUrban (2010a).

Source: The Landcom Corporation Act 2001 (NSW); *Victorian Urban Development Authority Act 2003* (Vic); *Urban Land Development Authority Act 2007* (Qld); *Public Corporations (Land Management Corporation) Regulations 1997* (SA); *Western Australian Land Authority Act 1992* (WA); *Land Development Corporation Act 2009* (NT); *Planning and Development Act 2007*(ACT).

Historically, GLOs were used by governments to ensure competition in greenfields development. However, the roles of GLOs have broadened to include an array of functions, including to:

- provide and/or coordinate the provision of infrastructure into new development areas (this is discussed further in chapter 5)
- lead innovation and demonstrate that innovative approaches can be commercially viable
- provide and promote affordable housing (table 4.16).

Although all of these GLOs have the capacity to complete developments on their own, they often partner with private sector developers to complete projects.

VicUrban is a recent example of the increasing trend for GLO activities to be directed toward infill developments — particularly those where the complexity of the projects and their associated risks are too great to attract private sector interest without at least some of that complexity or risks being reduced or removed. As a result, many GLOs are working to 'derisk' sites — that is, remedy issues such as fragmented land holdings (box 4.7) or contaminated soil — enabling these sites to be sold subsequently to private developers to complete.

Table 4.16 **Government land organisations — non-development functions and objectives**[a]

	Landcom (NSW)	*VicUrban (Vic)*	*ULDA (Qld)*	*LMC (SA)*	*LandCorp (WA)*	*LDC (NT)*	*LDA (ACT)*
Advise government		✓		✓			✓
Assist private sector locate land for development						✓	
Build/promote affordable housing		✓	✓			✓	**b**
Earn a commercial return	✓	✓		✓	✓	✓	✓
Environmental conservation / outcomes	✓	✓	✓	✓			✓
Infrastructure provision		✓	✓		✓		✓
Promote and lead innovative development	✓	✓	✓	✓	✓		✓
Manage state assets				✓			
Promote government objectives	✓**c**	✓		✓	✓		

a Tasmania is excluded from the table as no GLO is in operation. **b** The ACT Government's affordable housing program is run by the Department of Land and Property Services (the 'parent' of the LDA). **c** These objectives are set out in the New South Wales Government's Metropolitan Strategy and the State Plan.

Source: State and territory legislation; LDA (2010a); LDC (2010a); LMC (2010a); Landcom (2010a); LandCorp (2010a); ULDA (2010a); VicUrban (2010a).

Box 4.7 Impacts on the supply of land: fragmented land holdings

Fragmented land holdings (where a potential development site is comprised of a number of land parcels without common ownership) can have an impact on land supply. It can make the negotiations required to assemble the individual land parcels for a developable site complex and costly — this difficulty is compounded where at least one of the landholders is either very attached to their property or engages in opportunistic or strategic behaviour. For example, Gurran, Ruming and Randolph (2009, p. 62) quote an anonymous developer describing this issue:

> Twenty-seven landowners came to us and said, we can get top dollar [be]cause we're banded together...they could get top dollar because they had a parcel of land that was a developable size.

The problems posed by fragmented land holdings are the result of planning decisions made many years ago and, as such, are an issue planners should be very mindful of in their present day decisions given the impact those decisions can have on the future.

Zoning regulations can exacerbate the issue of fragmented land holdings by reducing the number of possible blocks which can be combined into larger sites, thereby giving landholders increased leverage in their negotiations with developers. Some of the other issues raised in submissions and other studies include:

- Adelaide City Council claims that fragmented ownership is a barrier to coordinated development of city land. As a consequence, the Council has '…been intervening in the market by land banking strategic sites in the CBD for many years in order to create viable sites with increased development potential. This assists achieving long term strategic outcomes as well as to remove problematic/non-complying land uses.' (sub. no. 23, p.8) Furthermore, the development plan for Adelaide city centre encourages site amalgamation for medium and high rise forms of residential development. (sub. no. 23, p.9).
- the Urban Taskforce (2009, p.26-27) has reported that '…it is very difficult, if not impossible, to attract equity capital to a proposed development site where the ownership has not been unified.'

If infill targets are to be achieved without changes to the current planning regimes there is likely to be a greater need for the involvement of GLOs. The ULDA's powers arguably see it as the best placed of all the GLOs to deliver infill outcomes by controlling most of the relevant planning and approval processes. However, the use of these powers has not come without some criticism — particularly from local councils (Heger and Hall 2010, MacDonald 2010 and Vogler and Heger 2010). The decision making processes for balancing community preferences and planning imperatives are considered further in chapter 9.

All GLOs can engage in a wide variety of developments, including residential, commercial and industrial developments in both greenfield and infill areas. For example ULDA is involved with residential and commercial projects in both

greenfield and infill locations in areas such as metropolitan Brisbane, the Sunshine Coast, Roma and Gladstone. In contrast, despite the potentially wide scope of their operations, some GLOs activities have been focused on specific types of development. For example:

- Landcom (New South Wales) is principally involved in residential projects
- since March 2010, VicUrban's primary focus has been on residential developments (particularly in middle and inner metropolitan Melbourne and in large regional centres). Prior to this VicUrban had a greater role in greenfield residential development
- the majority of South Australia's LMC operations involve the sale of its landholdings to the private sector, rather than completing residential developments itself
- Landcorp's (Western Australia) work program for Perth has an emphasis on industrial and commercial developments, as well as residential infill projects
- the Northern Territory's LDC has very few projects underway, although it is working on both residential and industrial projects.

Just as the scope of the GLOs' activities vary, so to does the extent of their development operations (table 4.17).

Landcom (New South Wales), VicUrban and LandCorp (Western Australia) have extensive land holdings (around $500 million or more in value each).[36] While these inventories each exceed the value of the 'development inventory' (including work in progress) held by major private sector developers (such as Peet Limited[37] — $418 million (Peet Limited 2010); and Leighton Holdings Limited — $381 million (Leighton Holdings Limited 2010)), they are appreciably less than the inventories of Lend Lease Corporation Limited and Stockland Corporation Limited — which both had development inventories of over $1100 million each (including work in progress) as at 30 June 2010 (Lend Lease Corporation Limited 2010 and Stockland Corporation Limited 2010).[38]

While acknowledging that comparable data is lacking for Western Australia, the ACT and the Northern Territory, the comparison of dwellings produced with the value of the landholdings raises some questions for jurisdictions. For example, for

[36] The comparatively lower land holdings of the ULDA (Queensland) reflect its comparative infancy and ability to only work in designated areas.

[37] Peet Limited is said to have the 3rd largest land bank (34 000 lots) of any private sector residential developer (Donkin 2010).

[38] The inventory of Stockland Corporation Limited includes some property held in the United Kingdom.

such significant land holdings, the output of VicUrban in terms of completed dwellings seems very modest, especially when compared to that of the ULDA which completed around a third of VicUrban's dwelling output (by number) using one fifth of its inventory (by value).

Table 4.17 **Housing production outcomes by GLOs for 2009-10**

	Residential lots produced	*Residential dwellings produced*	*Value of landholdings (as disclosed in annual report)*
	Number	Number	$'000
Landcom (NSW)	1 885[a]		498 696[b]
VicUrban (Vic)	n.d	~750[c,j]	535 508
ULDA (Qld)	n.d	~268[d,j]	99 263[b]
LandCorp (WA)	n.d	n.d	647 224
LMC (SA)[e]	40	~240[f,j]	234 763[g]
LDA (ACT)	4 729	n.d	31 861[h]
LDC (NT)	n.d	n.d	-[i]

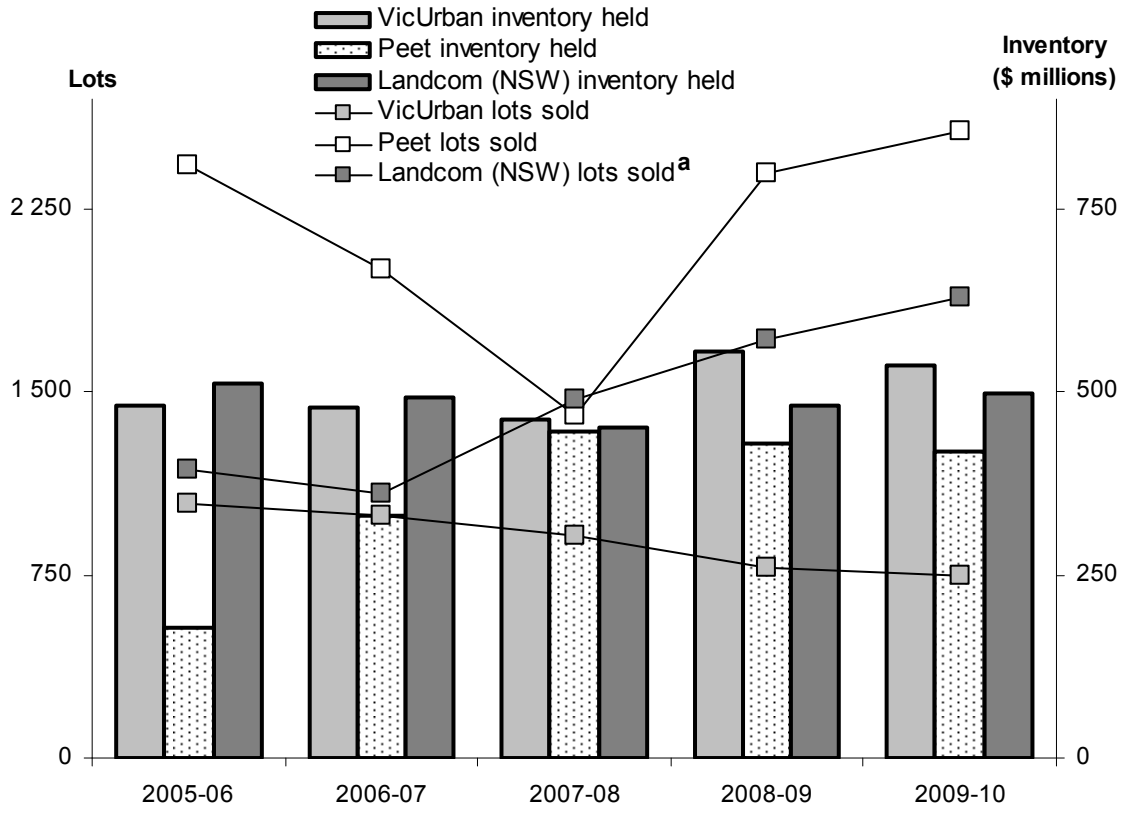
n.d not disclosed. [a] In total, Landcom delivered 1885 'dwelling equivalents' to the market in 2009-10. [b] Includes capitalised development costs. [c] This is an approximate figure compiled from details of completed and sold projects detailed in Annual Report — it also includes apartments and covers metropolitan and regional areas. [d] Based on the number of homes approved for stages 1–4 of the Fitzgibbon Chase development — stages 1-4 were completed during 2009-10. [e] The majority of LMC's operations involve the sale of its landholdings to the private sector, rather than completing residential developments itself. [f] 242 dwellings were sold in 2009-10. [g] This figure represents the book value of inventory as at 30 June 2010. The South Australian Government advise the fair value of inventory as at 30 June 2009 (as determined by a qualified valuer) was $835 million. [h] LDA share of joint venture property developments. [i] The LDC has $96 916 000 in property and development assets, some of which are properties managed by the LDC rather than development stock. [j] Approximate figure.

Source: Landcom (2010b), LandCorp (2010b); LDA (2010b); LDC (2010b); LMC (2010b); ULDA (2010b); VicUrban (2010b); South Australian Government, pers. comm., 28 January 2011

In comparison, private sector developer Peet Limited sold over 2500 lots in 2009-10 (over three times the number of VicUrban and around 30 per cent more than Landcom (NSW)) from a smaller development inventory (Peet Limited 2010).

Figure 4.4 presents the comparison for the two agencies over a longer period — five years. It suggests that both GLOs achieve lower outcomes than their private sector counterpart.

Figure 4.4 **Case study comparison: GLO v private sector developer[a]**
Comparison of LandCom (NSW), VicUrban and Peet Limited



a In some cases approximate figures have been used — for example, where the Annual Reports indicate 'sales of over 2000 lots', a figure of 2000 has been used in the figure.

Data source: Landcom (2006, 2007, 2008, 2009 and 2010b); Peet Limited (2006, 2007, 2008, 2009 and 2010); VicUrban (2006, 2007, 2008, 2009 and 2010b).

Part of the reason for the differences may be:

- the comparatively more risky and complex sites on which LandCom (NSW) and VicUrban worked extended the time taken to complete development and so slowed the production of lots and dwelling. The time taken to complete these projects contributes to a lower rate of inventory turn-over and, in turn, a comparatively higher level of inventory when compared to other developers who do not undertake such projects. Also, such sites may include fragmented land holdings and so contribute to larger inventories as the sites are assembled
- the different objectives of GLOs compared to private sector developers (although included among the objectives of both LandCom (NSW) and VicUrban is the objective of earning a commercial return — table 4.16)
- differing characteristics of the Sydney, Melbourne and Perth property markets (Peet Limited operates in both Melbourne and Perth)

- differences in inventory composition (for example, VicUrban's inventory may include some commercial and industrial land holdings) as well as differing accounting treatments for valuing inventory
- the nature of partnering arrangements GLO's employ in completing their projects and how these affect the recording of inventory on their balance sheets.

Notwithstanding these factors, there appear to be significant differences, in performance. For example, even though VicUrban's inventory has grown by just over 10 per cent between 2005-06 and 2009-10, sales of lots has fallen by over 27 per cent.

Government land holdings

The Commonwealth, state and territory governments are landholders in their own right and control significant amounts of land suitable for development (table 4.18). The potential importance of these landholdings is apparent in the claims of a South Australian residents group (Save our Suburbs) that:

… by restricting the greenfields site availability, even in areas zoned for residential development, the [SA] Government owned "Land Management Corporation" maximises the dollar value of every allotment by creating a "shortage premium", where potential land purchasers are forced to outbid other interested purchasers… (sub. no. 5, p.5)

Table 4.18 **Land at different stages of the land supply processes owned or controlled by the state/territory government[a]**
30 June 2010

		Land designated for future development	*Zoned land*	*Land approved for subdivision*
		%	%	%
Syd(NSW)	Residential	10.0[b]	17.0[b]	n.e
Adel(SA)	Residential	n.e	23.0[c]	n.e
	Industrial	n.e	43.0[d]	n.e
Dar (NT)	Residential	n.e	87.0	51.0
	Commercial	n.e	0.5	0.0
	Industrial	n.e	51.0	94.0

n.e no estimates available. [a] Melbourne, South East Queensland, Hobart and Canberra have been excluded from this table as their state/territory planning departments were unable to provide responses to this survey question. [b] Approximate figure. [c] As at June 2009. Relates to ownership of broad hectare greenfield land zoned residential. [d] As at October 2010. Excludes from consideration 59 hectares of privately owned land zoned for extractive and home industry.

Source: Productivity Commission survey of state planning departments and agencies (2010, unpublished); Department of Planning and Local Government (SA) (2010b).

While some state and territory governments own and/or control up to 94 per cent of the land at any given stage of the land supply process (table 4.18), far lower levels of ownership/control are more common. The lower the level of ownership, the less scope governments have to act in the manner described by the Save our Suburbs residents group (sub. 5).

Since February 2009, the Commonwealth Government has undertaken a process of identifying its surplus land holdings that are suitable for advancing housing and/or community outcomes. Table 4.19 summarises the register of this surplus land which will be disposed of with a view to:

- increasing the housing supply
- improving community amenity
- creating jobs.

Table 4.19 **Register of surplus Commonwealth land potentially suitable for housing and community outcomes**

	Property	*Owner Agency*	*Site Area (approximate hectares)*	*Target Time for Release*
NSW	Former Naval Stores Depot, Spurway Street, Ermington	Department of Defence	16	2010-11
NSW	Ingleburn Army Camp, Old Campbelltown Road, Ingleburn	Department of Defence	309	2011-12
NSW	North Penrith, 'Thornton Park'	Department of Defence	44	2010-11
NSW	Nirimba Drive, Quakers Hill, Schofields	Department of Defence	146	2010-11
Vic	Corner Colac and Henry Road, Belmont (Geelong)	CSIRO	6	2011-12
Vic	Graham Road, Highett	CSIRO	9	2011-12
Qld	120 to 140 Meiers Road, Indooroopilly	CSIRO	7	2010-11
Qld	Ibis Avenue (Bruce Highway) Rockhampton	CSIRO	32	2010-11
Qld	233 and 240 Middle Street, Cleveland	CSIRO	3	2010-11
Qld	University Drive, Douglas (Townsville)	CSIRO	17	2010-11
SA	Elizabeth North Training Depot, Broadmeadows Road, Smithfield	Department of Defence	33	2013-14
WA	Part of the Artillery Barracks site, corner of Burt and Tuckfield Streets, Fremantle	Department of Defence	2	2011-12
ACT	Belconnen Communications Station, Baldwin Drive, Lawson	Department of Defence	149	2010-11
ACT	Banks Street, Yarralumla	CSIRO	2	2010-11

Source: Department of Finance and Deregulation (2010).

A number of jurisdictions have undertaken a similar process. For example, in August 2010, the Premier of Western Australia wrote to all metropolitan councils requesting details of all Crown land and freehold land that might have development potential. The information garnered from the councils' responses is being incorporated in Western Australia's Urban Development Program (table 4.10).

Matters detracting from land supply

Fragmented land holdings and land banking are two issues that can detract from the supply of land. Fragmented land holdings are considered in the discussion of GLOs and box 4.7 (above). Land banking is considered below.

Land banking

Land banking is undertaken by both private and government agents and involves acquiring land well in advance of its intended development and holding that land until it is developed (Evans 2004). Land banking is most often said to be motivated by developers' desire to increase the price of land by 'drip feeding' land onto the market and thereby restricting its supply. While this may well be the case in some instances, land banking is undertaken in response to a number of different situations and for a variety of reasons:

- where an intended development site is comprised of fragmented land holdings, developers (including government developers) may progressively acquire the individual land holdings as they become available (see Adelaide City Council example in box 4.7)
- changing market conditions can result in a development being unviable in the near term. So, rather than incur the costs of undertaking the development and selling into such a market, developers wait for the market to recover
- land may have been acquired on the understanding that core infrastructure, such as main roads, would be provided by a given date. If that infrastructure is not provided on time, developers often have little choice but to 'sit on the land' until the core infrastructure arrives (issues relating to the provision of infrastructure are discussed in chapter 5)
- developers have imperfect information about what land is for sale (or which landholders would be receptive to an offer). They also incur search costs in trying to locate sites for potential development and compete against other developers for those sites. Accordingly, there is an incentive to acquire land, where it is suitable for development, when it becomes available — even if that land will not be developed for some time. Especially, given land is not always

available in the market at the time (and location) it is required by developers for a new project

- as planning processes can be lengthy and uncertain, developers assemble land banks to ensure they always have some sites which are approved for development and on which they can commence work (these planning processes are discussed in section 4.3).

Aside from the outright purchase of land, developers can address some of the above situations by acquiring options over land. This is a less transparent form of land banking that can have cost advantages for developers.

Factors outside the planning system can either encourage or deter land banking. For example, land taxes and rising interest rates increase the holding costs of land and so deter land banking. On the other hand, income tax concessions (such as those that may be achieved by using land banks to produce income via stock agistment pending their development) and concessional rating (such as rating land zoned 'residential' according to rural rates given its unimproved nature) can offset some of the costs associated with land banking.

While speculative land banking represents a limitation on supply without any compensating benefit, both the Productivity Commission (PC 2004) and Urbis (2008) found (more generally) there is insufficient evidence to establish that land banking represents a material limitation on the supply of land.

4.4 Land supply outcomes

Sourcing comparable data on land supply outcomes is not an easy task. In reflecting on its first *State of Supply Report* (NHSC 2009), the National Housing Supply Council (NHSC 2010) conceded that there were a number of major gaps and inconsistencies in land supply data of the jurisdictions. Many of these data deficiencies were not resolved for the *2nd State of Supply Report* (NSHC 2010), with the NHSC noting:

> The work of the Council continues to be constrained by a lack of comprehensive, consistent and independent information available to it for detailed analysis of residential development in metropolitan areas. (p. 39)

The Commission encountered similar difficulties in preparing this section. As a consequence, all of the information presented in this section is subject to caveats around:

- the comparability of the information across jurisdictions

- the extent to which inferences on land supply outcomes can be drawn from the information
- possible bias and other limitations in the methodology used to generated the information.

Despite its limitations, the information presented in this section provides a useful context for the analysis of land supply systems (above). The Commission has made comment on the data where it can, but limitations in most of the information render it unsuitable for detailed analysis — particularly with a view to attributing outcomes back to the underlying planning systems.

Information request 4.1: Ideally, the Commission would prefer to report in more detail on the matters included in this section as well as other measures such as the take-up and development of industrial land and comparisons of 'potential land stocks' to forecast demand. The Commission would welcome any information stakeholders can supply that would facilitate this reporting.

Data sources used

As outlined in appendix B, as part of the questionnaire completed by the state and territory planning departments and agencies, the Commission sought data from the jurisdictions on their land supply outcomes. In many instances, the data sought by the Commission was not available in, or not supplied by, many jurisdictions. This was particularly the case in relation to data on commercial and industrial land. As a consequence, the Commission has supplemented the information supplied by the jurisdictions with data obtained from the jurisdictions' land management programs, the reports of the NHSC and real estate information services. Even with these additional sources of data, there are many instances where the Commission has only been able to obtain data for a subset of the jurisdictions. The Commission has used this limited data to make comparisons where it can, even though those comparisons may not apply across all jurisdictions.

Outcomes for residential land

Overall adequacy of supply

The Commission sought information on the supply of residential land from the jurisdictions as part of its survey of the state and territory planning departments and agencies (appendix B). However, while the Commission received responses from

every jurisdiction, the information provided was incomplete in some cases and, more generally, did not facilitate comparison across jurisdictions.

As noted above, the NHSC has attempted a similar task and, while there may be some limitations in its methodology and its data subject to a number of caveats, its *State of Supply Reports* are some of the few studies (if not the only studies) where land supply data on **all** jurisdictions is compared side-by-side. Further, the NHSC takes its analysis further by seeking to determine the adequacy of supply against a theoretical construct of 'underlying demand' (box 4.8).

Box 4.8 Underlying demand and effective demand for housing

At the national level, the NHSC characterised underlying demand and effective demand as follows:

- **underlying demand** is driven mostly by migration and other demographic factors, including (but not limited to) the number and type of households. Table 4.20 provides a break down of the change in the jurisdictions' populations from 1 July 2008 to 30 June 2010
- **effective demand** is the demand actually expressed in the housing market. It is the quantity of housing that people are able and willing to buy or rent in the housing market. In addition to the factors affecting underlying demand, effective demand is affected by a range of market forces, including (but not limited to): incomes; prices; risk adjusted returns on other investments; the availability of finance; and government policy settings and assistance (such as the first home owner's grant).

At a jurisdictional level, underlying demand will be affected mainly by the net change in the population of the jurisdiction.

Source: NHSC (2010).

As with any modelling, the underlying demand modelling is dependent upon its underlying assumptions — the assumptions of population growth and household size, in particular. Underlying demand does not account for factors such as consumer preferences and budget constraints. As a consequence, it is possible that the NHSC modelling will show a shortfall in housing for a city but, at the same time, that city will have (for example) a glut of unsold units and high rental vacancy rates.[39]

[39] For example, the NHSC's underlying demand model indicates there is a housing shortfall in Western Australia but the evidence from the housing market (falling house prices, high numbers of properties listed for sale, high rental vacancy rates and low rates of land sales) suggests that there not and undersupply of housing relative to (effective) demand (Western Australian Government, pers. comm., 9 February 2011).

Table 4.20 **Population change: 1 July 2008 to 30 June 2009**
By jurisdiction

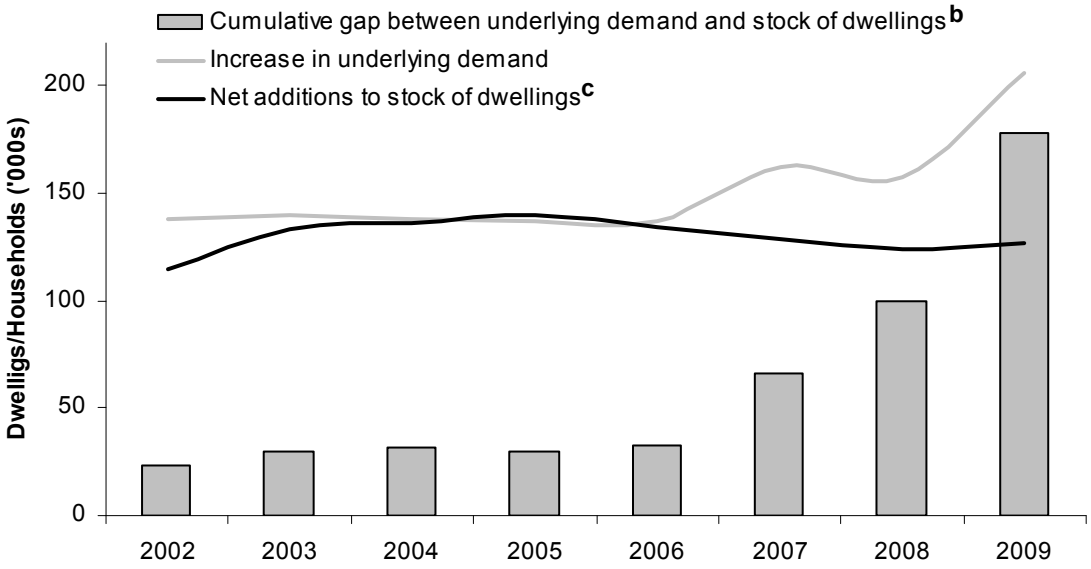
	Natural increase	*Net overseas migration*	*Net interstate migration*	***Net change in population***	***Percentage change in population***
	Number of people	Number of people	Number of people	**Number of people**	**%**
NSW	45 401	92 941	-19 831	**118 511**	**1.69**
Vic	35 408	85 123	698	**121 229**	**2.28**
Qld	38 436	61 884	18 388	**118 708**	**2.76**
WA	18 270	47 262	4 825	**70 357**	**3.23**
SA	7 219	18 044	-4 676	**20 587**	**1.28**
Tas	2 528	2 153	672	**5 353**	**1.08**
ACT	3 174	3 962	-822	**6 314**	**1.82**
NT	2 883	2 039	746	**5 668**	**2.57**

Source: ABS (Australian Demographic Statistics, Jun 2010, Cat. No. 3101.0).

The NHSC (2010) estimates there has been a shortfall in the supply of housing (a net gap between 'underlying demand' (box 4.8) and the stock of dwellings) across Australia for the period 2002 to 2009. After remaining relatively static from 2002 to 2006, the extent of this shortfall is estimated to have grown significantly from 2007 onward (figure 4.5). An increase in the underlying demand for housing has driven much of the increase in the gap since 2007 — the growth in underlying demand has largely been driven by the growth in the population from 2007 to 2009.

The extent and permanency of this gap is subject to change. For example, in March 2009, the Commonwealth reduced Australia's planned skilled migration intake for 2008-09 from 133 500 to 115 000 people (the final intake was 114 777 people) (DIC 2010). Changes in the level of net overseas migration translate directly and immediately into underlying (and effective) demand for housing — sometimes in complex and unanticipated ways. In contrast, changes to the population through changes in the rate of natural increase take time to affect underlying demand (that is, the birth of a new child generally does not increase the number of households in Australia). Accordingly, a fall in the rate of net overseas migration would result in a deceleration in the growth of the gap (if not a decline in its size), assuming that dwelling production remained at the current levels of around 110 000 to 140 000 dwellings per year.

Figure 4.5 **Estimates the cumulative gap between underlying demand and the stock of dwellings in Australia[a]**



a Using 2001 as a base year. **b** Based on the difference between the change in underlying demand and supply (adjusted for demolitions and unoccupied (and unavailable) dwellings — the NHSC allow for 5.9 per cent of the total stock of dwellings being unoccupied. This allowance is for those dwellings being renovated or demolished and dwellings held as second homes and holiday homes). **c** Net of demolitions and with allowances made for unoccupied (and unavailable) dwellings — the NHSC allow for 5.9 per cent of the total stock of dwellings being unoccupied. This allowance is for those dwellings being renovated or demolished and dwellings held as second homes and holiday homes.

Data source: NHSC (2010).

Table 4.21 shows that, over 2008-09, the extent of the dwelling supply gap grew in every jurisdiction, while figure 4.6 shows that on a 'per person' basis,[40] the shortfall was particularly severe in Queensland, Western Australia and the Northern Territory. As outlined in chapter 2 (table 2.2), cities in Queensland (Gold Coast, Sunshine Coast, Cairns, Brisbane, Toowoomba), Western Australia (Perth and Geraldton-Greenough), Victoria (Melbourne) and the Northern Territory (Darwin) have experienced the strongest growth in population between 2001 and 2009 of all Australian cities (table 4.20 provides a break down of the change in the jurisdictions' populations from 1 July 2008 to 30 June 2010).[41] In comparison to Queensland, Western Australia and the Northern Territory, population growth in the states and territories with smaller dwelling shortfalls per person (South Australia, Tasmania and the ACT) was more modest over the 2001-09 period. Other factors affecting underlying demand in table 4.21 include:

[40] This is a simple way of normalising the supply gap to take account of the different city sizes.

[41] The cities in parenthesis account for eight of the top ten fastest growing Australian cities over 2001 to 2009.

- changing household structures — as outlined in table 4.1, the capital cities are subject to different (and changing) household structures. For example, in 2009 South East Queensland (SEQ) had an average of 2.51 people per household, while (in 2010) Adelaide had an average household size of 2.38 people
- a reduction in the availability of finance in some of these areas (such as the Gold Coast) has suppressed the supply side response to the increase in underlying demand.

Table 4.21 **Gap between underlying demand and the stock of dwellings by jurisdiction: as at June 2009**

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*	***Australia***
Dwellings	'000	'000	'000	'000	'000	'000	'000	'000	'000
Estimated gap as at July 2008	**27.0**	**6.3**	**41.7**	**17.9**	**-2.3**	**0.1**	**-0.2**	**8.9**	**99.5**
In 2008-09:									
Increase in underlying demand[a]	54.2	52.3	50.1	30.1	10.8	3.2	3.0	2.2	**205.9**
Adjusted net additions to stock of dwellings[b]	23.6	35.9	35.7	17.8	8.4	2.3	2.3	1.0	**127.0**
Increase in gap for the year to June 2009	30.6	16.4	14.4	12.3	2.4	0.9	0.7	1.2	**78.9**
Estimated gap as at June 2009	**57.6**	**22.7**	**56.1**	**30.2**	**0.1**	**1**	**0.5**	**10.1**	**178.4**

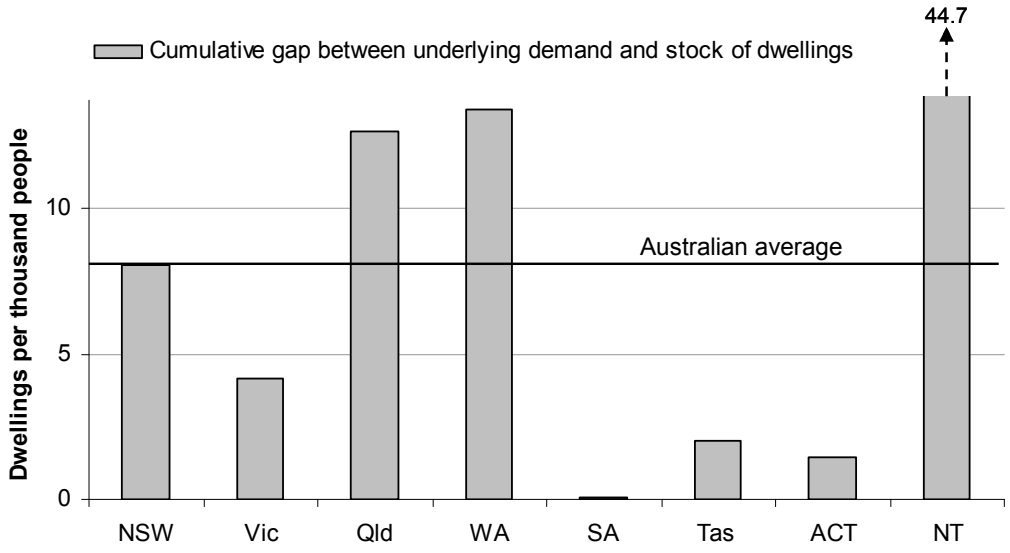
[a] Number of households. [b] Net of demolitions and with allowances made for unoccupied (and unavailable) dwellings (the NHSC allow for 5.9 per cent of the total stock of dwellings being unoccupied. This allowance is for those dwellings being renovated or demolished and dwellings held as second homes and holiday homes).

Source: NHSC (2010).

The lack of a supply side response to the increase in demand for housing can, to some degree, be explained by the timeframes for the land supply process. As discussed in section 4.3, it can take over 10 years to complete the greenfield land supply process. By itself, the process of identifying land suitable for development, completing due diligence and acquiring the land can take years — confronting issues such as fragmented land holdings (box 4.7) can further extend these timeframes. These initial investigative activities are not costless and developers would be looking for some evidence of sustained demand before looking to expand production. This would further delay any supply side response. The supply side response has also been hampered by the effects of the global financial crisis and the

accompanying reduction in finance available to developers to complete development projects.[42]

Figure 4.6 **Cumulative gap between underlying demand and the stock of dwellings by jurisdiction (standardised by population): as at June 2009**



Data source: Commission estimates derived from NHSC (2010) and ABS (Regional Population Growth, Australia, 2008-09, C (cat. no. 3218.0).

While supply side constraints (some of which are discussed above) have limited the supply side response to the shortfalls illustrated in figures 4.5 and 4.6 and table 4.21, (the resultant) higher prices appear to have reduced 'effective demand' — house prices (and rent) have risen relative to incomes in most cities (see table 2.7 in chapter 2. Less discernable have been the changes in people's decisions on household formation — for example, children choosing to stay in the family home longer into their adult lives, higher incidence of share-house living and greater use of accommodation, such as caravans, as permanent residencies.

As increased housing can be sourced via greenfield or infill development, a shortfall in the supply of housing can be due to obstacles arising in one or both forms of development. The outcomes for each form are considered in turn below. Appendix D section D.2 contains maps of the capital cities as at 2001 to 2006. These maps depict the dwelling density of the constitute local councils and provide

[42] For example, the Commonwealth Bank said in December 2010 that it would not be financing any new development projects on Queensland's Gold Coast (Cranston 2010).

some indication of where development has occurred in the cities over this period — that is, what the balance of greenfield and infill development has been.[43]

Greenfield development

Some jurisdictions are more reliant on greenfield development for their housing outcomes than others — as discussed in section 4.2, the jurisdictions have different targets for infill development. For example, Sydney (which is targeting 70 per cent of its development to be infill) will have a lesser (relative) reliance on greenfield land compared to Melbourne, SEQ and Canberra (who have infill targets of around 50 per cent).

While figure 4.7 relates only to the capital city planning areas (as distinct from the state and territory level data presented in figure 4.6 and table 4.21), it shows that both SEQ and Perth were among the better performing cities in terms of supplies of greenfield land (relative to population) zoned for residential use and with subdivision approval.[44] Queensland also performed strongly in relation to the number of new lots created (the results in figure 4.7 only reflect the outcomes for the 6 months to December 2009, yet these are on par with the better performing jurisdictions' outcomes for a full year).

In 2008-09, Queensland and Western Australia also made significant increases to their housing supply (table 4.21). This suggests that, setting aside consideration of infill outcomes (discussed below), the rate of population growth in Queensland and Western Australia has been a major factor in the modelled shortfall in housing. While Sydney and Victoria have large zoned stocks of land in absolute terms, their stocks are not as large (relative to their populations) as other cities.

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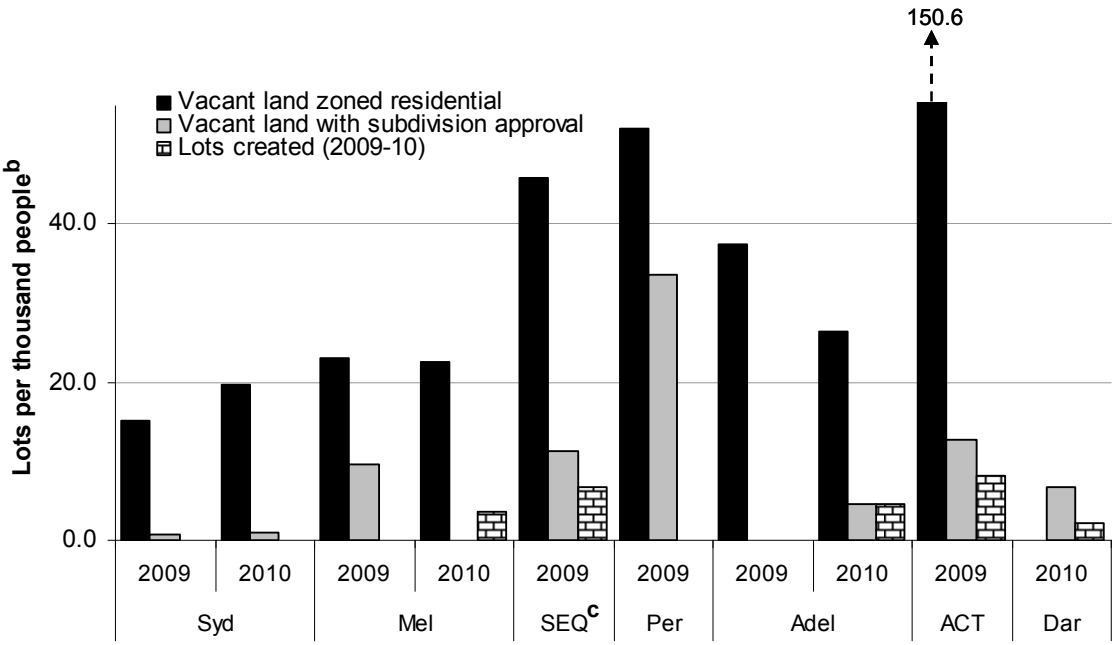
[43] These maps do not capture the range of densities within local councils areas. For example, they do not reflect the success (or otherwise) of the jurisdictions seeking to implement transit orientated development strategy. Similarly, the average density in greenfield council areas may overstate the actual dwelling density for much of the council given the comparatively localised nature of development.

[44] While important, the supply of greenfield land will not in itself contribute to the supply of housing. It is only once a dwelling(s) is constructed on the subdivided blocks and available for sale to the public that a contribution to the housing stock is made from greenfield development. Chapter 6 considers the timeframes and costs associated with obtaining the necessary approvals to construct a dwelling.

Figure 4.7 **Standardised stock of zoned land and land with subdivision approval: residential land (2009 and 2010)[a]**

Lots per thousand people in capital city planning areas



[a] Data relates to the cities and years for which it was available and/or supplied to the Commission. There are no zero values in the figure and the absence of a data column reflects that data was not supplied by the jurisdiction and/or was otherwise unavailable. [b] In some instances, the number of 'lots' has been inferred from the estimated dwelling yields of the subject land. [c] This figure is reflects the number of 'conventional lots' (140–2500m^2) and community title lots produced for the 6 months to December 2009 (there were 11 359 conventional lots and 9370 community title lots produced in the 6 months to December 2009). As such it understates the total production in Queensland for the full year of 2009.

Data source: Productivity Commission survey of state planning departments and agencies (2010, unpublished); Department of Planning and Community Development (Vic) (2010a); Department of Planning and Local Government (SA) (2010b); Department of Planning (NSW) (2010c); NHSC (2010).

Subdivisions typically take over 12 months to complete (for example, it generally takes 12 months or more to meet approval conditions and install infrastructure — table 4.12). As a consequence, most of the land approved for subdivision in any given year will not be completed in that year and should remain in 'inventory' at the close of that year. This means that in any given year, there should be a reasonable stock of land with subdivision approval for which the subdivision has not been completed. The low levels of land with subdivision approval (relative to zoned land) in Sydney and, to a lesser extent, Adelaide suggests that developers are not taking projects forward for subdivision approval. Some of the factors identified in box 4.9 are likely to have contributed to this result. It may also be that, in some instances,

developers are only commencing (and completing) sufficient projects to meet the (effective) demand they are perceive in the market.[45]

Some of the factors in box 4.9, such as fragmented land ownership and natural constraints, as well as the outlook and motivations of developers will impact the translation of zoned land to 'developed land' in all jurisdictions. As a consequence, having large amounts of zoned land is no guarantee of land supply outcomes to meet (effective) demand.

Box 4.9 Causes of low levels of development in Sydney

In a report prepared for the New South Wales Treasury, Applied Economics found the low levels of residential development in Sydney had many causes, including:

- fractured land ownership (discussed in box 4.7)
- high englobo land[46] prices that deter development — landholders' price expectations in excess of the prevailing market and attachment to their land were two significant factors identified as driving englobo land prices
- a lack of public infrastructure (principally for transport but, in some cases, for water)
- natural geographical constraints evidenced by a shortage of suitable development sites available in the areas where most people most want to live.

Source: Applied Economics (2010).

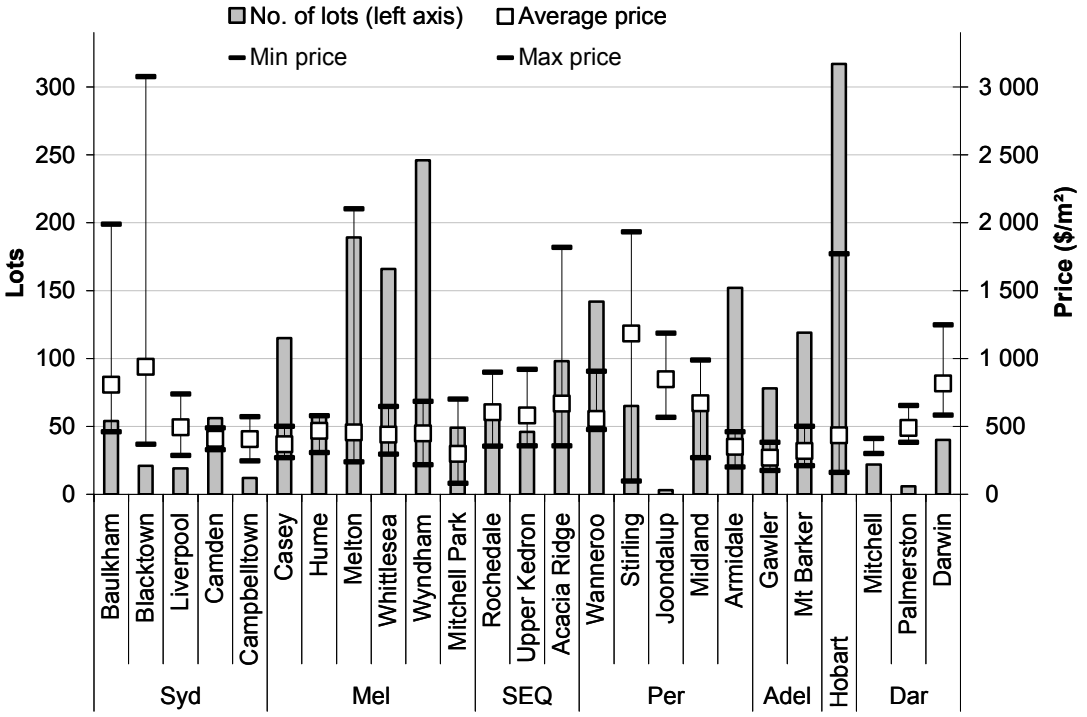
The relative amount of land with subdivision approval in each capital city planning area (figure 4.7) appears to have been translated to the relative amounts of land available for sale (figure 4.8). There were comparatively few lots of vacant residential land available for sale in Sydney's greenfield areas in November 2010 — especially when compared to Melbourne, Perth and Hobart. The higher median prices in Perth suggest that some of that land comes at a premium — no doubt, in part, due to elevated levels of demand driven by the increasing population. Figure 4.8 only represents a segment of the market for vacant residential land and does not include land for sale directly from developers; land for sale but not listed through realestate.com.au; and land for sale as part of house and land packages.

[45] Producing above the level of demand could see developers exposed to a surplus of unsold stock, the price of which is falling in the faces of excess supply. On the other hand, holding back supply may see an increase in the price of land to the advantage of the developer.

[46] Englobo land is undeveloped land with potential for subdivision.

Nonetheless, figure 4.8 provides some insights into the availability of land in different parts of the capital cities.[47]

Figure 4.8 **Vacant residential land listed for sale: November 2010[a]**
Number of properties and asking price by suburb



a Results were obtained for suburb (including surrounding suburbs) between 8 and 19 November 2010 from www.realestate.com.au. Price data is based on those properties with listed prices (that is, the price ranges exclude properties for sale via auction and with price available on application' (although these properties have been included in the count of properties available for sale). No average prices were calculated for Mitchell (Darwin) given the narrow range of minimum and maximum prices. No data is reported for Canberra as much of the land is sold directly by the ACT Government.

Data source: www.realestate.com.au.

Infill development

Infill development does not add to the supply of land but rather results in the more intensive (and hopefully more efficient) use of land. Examining the growth of dwelling density across local councils is one way to analyse the extent and location of infill development.

47 Other data sources were available to the Commission, however these sources were typically based on completed land sales. While useful, these sources provide no information about the land available for sale but not necessarily sold.

All of the major increases in dwelling densities in the capital cities have occurred in areas that have already been developed and, in particular, in and around the central business districts of the cities. Of the 11 councils with an increase in dwelling density of over 100 dwellings per square kilometre for the period 2001 to 2006, five were Sydney councils (table 4.22).[48] With the exception of Campbelltown City Council in Adelaide, all of the local councils areas in table 4.22 have experienced some of the highest population growth rates (aside from greenfield areas) within their respective cities (population growth rates are discussed in chapter 2).

Table 4.22 **Local councils with dwelling density growth over 100 dwellings per square kilometre (2001 to 2006)[a]**

Sydney	*Melbourne*	*Perth*	*Adelaide*
Sydney City	Melbourne City	Perth City	Adelaide City
Auburn	Port Phillip	Subiaco	Campbelltown
Canada Bay			
Strathfield			
Willoughby			

a SEQ, Hobart and Darwin have been excluded as there were no local councils in those cities with an increase in dwelling density of over 100 dwellings per square kilometre over the period 2001 to 2006. Canberra does not have local councils.

Source: ABS (2001 Census of Population and Housing — unpublished); ABS (2006 Census of Population and Housing — unpublished).

Outcomes for commercial land

The Commission sought information on the supply of commercial land from the jurisdictions as part of its survey of the state and territory planning departments and agencies (appendix B).[49] However, the Commission received very little data from the jurisdictions on commercial land (tables D.3 and D.5 in appendix D) and, as reported in section 4.2, most (though not all) of the land supply management programs of the jurisdictions give little regard (if any) to commercial land uses. It is

48 Further, of the 22 councils with an increase in dwelling density of over 50 dwellings per square kilometre for the period 2001 to 2006, 11 are Sydney councils (5 are from Melbourne and 3 each are from Adelaide and Perth).

49 Just as important as the amount of commercial land (if not more so) is the amount of commercial space available. The amount of commercial space available depends, in part, upon what developers do with the land zoned for commercial uses. As the focus of this chapter is land supply, the amount of commercial space available, while discussed, is not the primary focus of this section.

unclear how most jurisdictions monitor the adequacy of commercial land supplies without this information.[50]

While figures D.29 and D.30 in appendix D provide some indication as to the availability and location of commercial land across the capital city planning areas for the period 2004-05 to 2009-10, they are not definitive. For example, they do not capture the commercial properties available for lease. Notwithstanding, some inferences can be drawn from the data. Figure D.30 shows that sales of commercial properties were widely dispersed across the cities and suggests that at least one or two commercial properties were available for sale in most suburbs each year. Perth had the highest number of sales (by a large margin) of any capital city and median prices that sat in the midrange of the jurisdictions. A low volume of sales and rising prices indicates the adequacy of supply may be an emerging issue for SEQ.

Figure 4.9 reflects that significantly more vacant commercial land was sold in Perth compared to Sydney over the period 2004-05 to 2009-10.[51] The significantly higher price (per square metre) of commercial land in Sydney when compared to Perth may be indicative of a shortfall in the supply of land in Sydney. That Sydney only had the same amount of vacant land zoned for commercial uses as Darwin as at June 2010 (table D.3 in appendix D) provides further evidence of a likely under-supply of commercial land in Sydney.

Land for retail uses forms an important subset of commercial land uses. One commonly used measure for determining the adequacy of the stock of retail land is the amount of retail floorspace per head of population serviced by that floorspace. Ratios of 2–2.5m^2 per person have been suggested to the Commission as benchmarks for determining the adequacy of retail land in an area. Based on the data available to the Commission, Melbourne, Perth, Adelaide and Canberra all meet or exceed those benchmarks (table 4.23). In contrast, Hobart lies well below these benchmarks. However, while the data for Melbourne, Perth, Adelaide and Canberra encompass a wide range of retails activities across the city,[52] the Hobart measure is based on retail space in shopping centres only.

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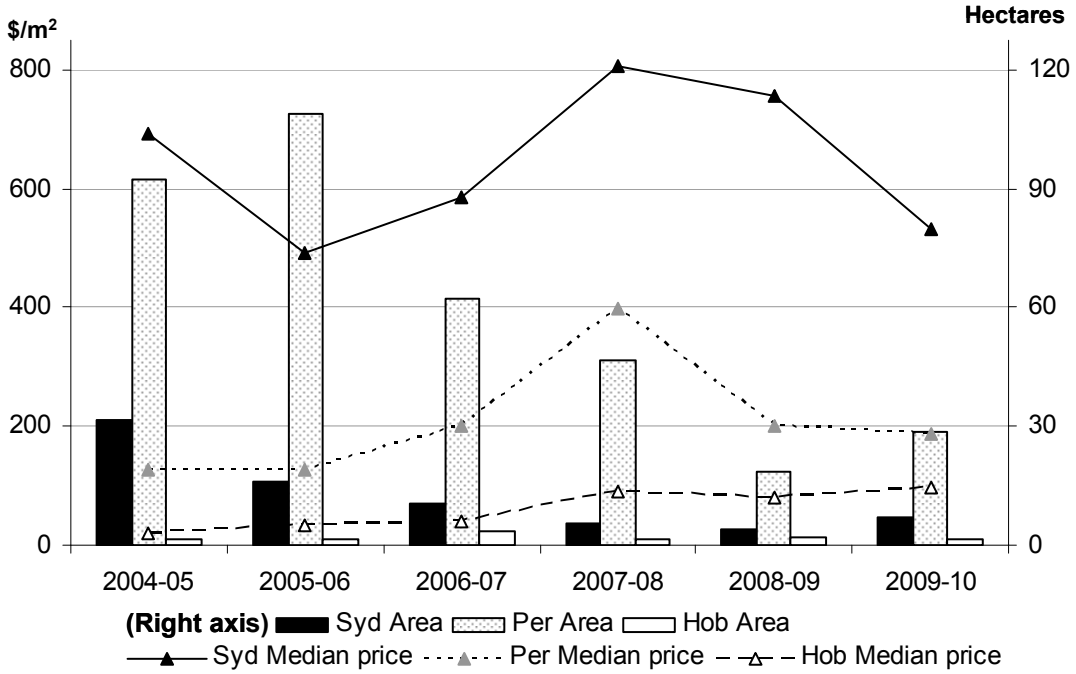
50 Jurisdictions such as Western Australia and South Australia undertake frequent audits of how much commercial land there is and/or maintain databases on how commercial land is being used.

51 Data was only available for Sydney, Perth and Hobart.

52 The measures for Melbourne, Perth, Adelaide and Canberra include a common basis of floorspace available for food, groceries, clothing, footwear, bulky goods, café's and restaurants. Some cities also have included additional uses in their definition of 'retail' — for example, liquor retailing and the sale of second hand goods.

Figure 4.9 **Sales of vacant commercial land[a]: 2004-05 to 2009-10**



[a] No data was available from RP Data for Melbourne, SEQ, Adelaide, Darwin and Canberra on a comparable basis to that report in the table. As a result, those cities are excluded from the table.

Data source: RP Data / Rismark (2010, unpublished).

Table 4.23 **Retail floorspace per head of population[a]**

Capital city planning areas

	Mel	*Per*	*Adel*	*Hob*	*Can*
Year determined	2007	2008	2010	2010	2009
Total area per head of population (m^2/person)	2.16	2.74	2.34	1.03[b]	2.70

[a] While the Commission sought to ensure the data in this table is comparable across cities, some measures may not be strictly comparable. This is due to differences in the jurisdictions' definitions of 'retail' and the completeness of the data collection in the respective studies. The Commission was unable to obtain city-wide data for Sydney, SEQ, and Darwin. As a result, these cities have been excluded from this table. [b] The Hobart measure is based on retail space in shopping centres only.

Source: ACTPLA (2009); Department for Planning and Infrastructure (2008); Essential Economics Pty Limited (2007); Southern Tasmanian Councils Authority (2010b); Department of Planning and Local Government (SA) (2010b).

From 1997 to 2007, floorspace for bulky goods retailing has accounted for around 38 per cent of total supply of new retail floor space in major Australian markets

(Jones Lang LaSalle 2008).[53] The growth in the floorspace dedicated to bulky goods retailing is reflected in table 4.24. Most cities have a comparable level of floorspace (per head of population) dedicated to bulky goods retail with SEQ standing out as the city with the highest ratio of floorspace per head of population.

Table 4.24 **Bulky goods retail floorspace per head of population**
Capital city planning areas

	Syd	*Mel*	*SEQ*	*Per*	*Adel*
	m^2 per person	m^2 per person	m^2 per person	m^2 per person	m^2 per person
1997	0.319	0.366	0.340	0.343	0.335
2002	0.374	0.422	0.462	0.423	0.364
2007	0.457	0.480	0.548	0.451	0.424

Source: Jones Lang LaSalle (2008).

Data on the floorspace available for grocery retail shows large variations between individual retail catchments both within and across the capital cities (figure 4.10). However, no jurisdiction stands out as having consistently higher or lower allocations of floorspace within the individual catchments of its capital cities.[54] A consistent trend across the jurisdictions is that catchments with lower populations tend to be better supplied with floorspace for grocery retailing when compared to catchments with higher populations (figure 4.10).[55]

Information request 4.2: Based on the Commission's knowledge of the capital cities, the catchments and data set out in submission 62 and used to inform figure 4.10 do not seem unreasonable. However, the Commission acknowledges the catchments depicted are skewed toward smaller areas and this may bias the underlying data. The Commission would welcome any evidence providing further support to the definitions of these catchments and findings, or any evidence that contradicts them.

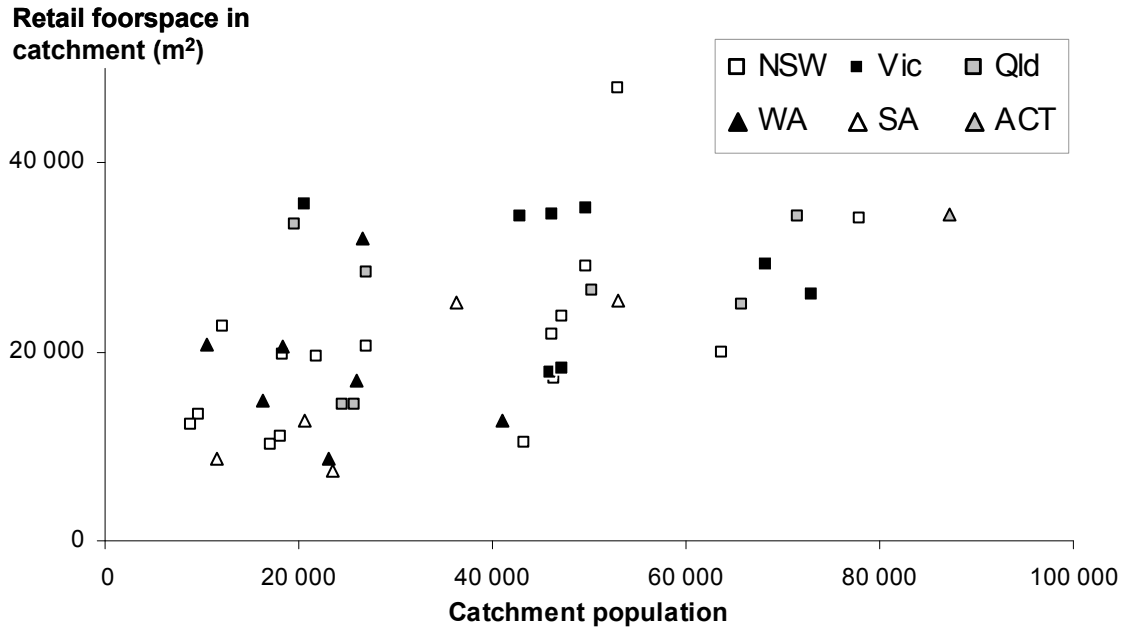
[53] Bulky goods retailing in this context is defined as the sale of high-bulk goods such as furniture, electrical goods, hardware items and garden supplies. It includes both 'free-standing super stores' and 'homemaker centres'.

[54] On average, however, Woolworths (sub. 65) asserts that Sydney is undersupplied for grocery retail floorspace with 0.25m^2 per person compared to other capital cities (0.37–0.39m^2 per person).

[55] This is not to cast a judgement on the adequacy of retail floorspace in these catchments. Such judgements require a more detailed consideration of issues such as the retail spend per person and retail turn-over per square metre of floorspace (among other issues).

Figure 4.10 **Grocery retail floorspace per head of population**

Individual retail catchments within capital city planning areas



Data source: Independent Retailers of NSW and the ACT Inc (sub. 62).

Outcomes for industrial land

The Commission sought information on the supply of industrial land from the jurisdictions as part of its survey of the state and territory planning departments and agencies (appendix B). While the Commission received some data from the jurisdictions (tables D.4 and D.6 in appendix D), much of that data was incomplete and not comparable. Further, information on the stock of industrial land is available from some jurisdictions' land management programs, but this information is not directly comparable due to differences in composition. The Southern Tasmanian Councils Authority (2010a, p. 24) has noted that the current stock/supply of industrial land for Hobart is 'clearly inadequate'.

More generally, while figures D.31 and D.32 in appendix D, provide some indication as to the availability and location of industrial land across the capital city planning areas for the period 2004-05 to 2009-10, they are not definitive. For example, they do not capture the industrial properties available for lease. Notwithstanding, some inferences can be drawn from the data. Figure D.32 in appendix D shows the sales were widely dispersed across the cities, but were more concentrated than for commercial property sales. This reflects the narrower range of suburbs in which industrial land uses are located. Table 4.25 shows the three

suburbs with the most sales of industrial land for each capital city planning area. It reflects that most sales have occurred in established industrial centres, such as Wetherill Park (Sydney); Wingfield (Adelaide); Canning Vale, Wangara and Bibra Lake (Perth); and Fyshwick and Mitchell (Canberra), rather than in greenfield areas.

Table 4.25 **Suburbs with the most industrial sales[a]: 2005-06 to 2009-10**

	2005-06	*2006-07*	*2007-08*	*2008-09*	*2009-10*
Syd	Wetherill Park	St Marys	Prestons	Wetherill Park	Wetherill Park
	St Marys	Wetherill Park	Smithfield	Smithfield	Campbelltown
	Ingleburn	Ingleburn	St Marys	Campbelltown	Ingleburn
Mel	Derrimut	Derrimut	Pakenham	Derrimut	Campbellfield
	Campbellfield	Campbellfield	Campbellfield	Melton	Derrimut
	Sunshine West	Sunshine West	Laverton North	Broadmeadows	Sunshine North
SEQ	Acacia Ridge	Slacks Creek	Burleigh Heads	Burleigh Heads	Slacks Creek
	Slacks Creek	Burleigh Heads	Sumner	Sumner	Seventeen Mile Rocks
	Molendinar	Clontarf	Slacks Creek	Slacks Creek	Brendale
Per	Malaga	Canning Vale	Landsdale	Landsdale	Canning Vale
	Bibra Lake	Bibra Lake	Wangara	Wangara	Wangara
	Canning Vale	Wangara	Bibra Lake	Canning Vale	Welshpool
Adel	Lonsdale	Lonsdale	Lonsdale	Lonsdale	Lonsdale
	Wingfield	Edwardstown	Wingfield	Cavan	Wingfield
	Athol Park	Salisbury South	Burton	Mile End South	Burton
Hob	Bridgewater	Cambridge	Bridgewater	Cambridge	Bridgewater
	Cambridge	Bridgewater	Cambridge	Huntingfield	Cambridge
	Mornington	Derwent Park	Derwent Park	Bridgewater	Huntingfield
Can	Fyshwick	Fyshwick	Fyshwick	Fyshwick	Mitchell
	Hume	Mitchell	Mitchell	Mitchell	Griffith
	Mitchell	Hume	Hume	Hume	Symonston
Dar	Winnellie	Winnellie	Winnellie	Winnellie	Winnellie
	Woolner	Pinelands	Pinelands	Pinelands	Pinelands
	Pinelands	Coconut Grove	Humpty Doo	Coconut Grove	Holtze

a Shading denotes the suburb as being one of the top three suburbs for industrial sales in three or more years.

Source: RP Data / Rismark (2010, unpublished).

It is important that the jurisdictions' industrial land supplies include a range of lot sizes to meet the different needs of industry. This is recognised by the Department of Planning (WA) (2009, p. 11) which have noted that:

> the challenge facing [Western Australia] is to strike a balance between having a ready supply of smaller lots for the majority of small to medium sized firms, and keeping sufficient large lots for the major players.

As there is greater diversity in industry needs than in accommodation and retail needs across cities, there is likely to be greater variation in the lot sizes required. Given that most industrial estates are segregated from other land uses, there is no reason why, once land has been zoned for industrial development, the actual definition of blocks within sections cannot be left until the nature of the demand becomes evident.

Based on the sales of industrial land across the capital cities between 2005-06 and 2009-10, most of the industrial lots available for sale are less than one hectare in size (figure 4.11). Of all the capital cities, Sydney had the most industrial lots of over one hectare sold between 2005-06 and 2009-10. South Australia is unique among the jurisdictions in reporting on the extent of government owned developable industrial land by lot size (figure 4.12).

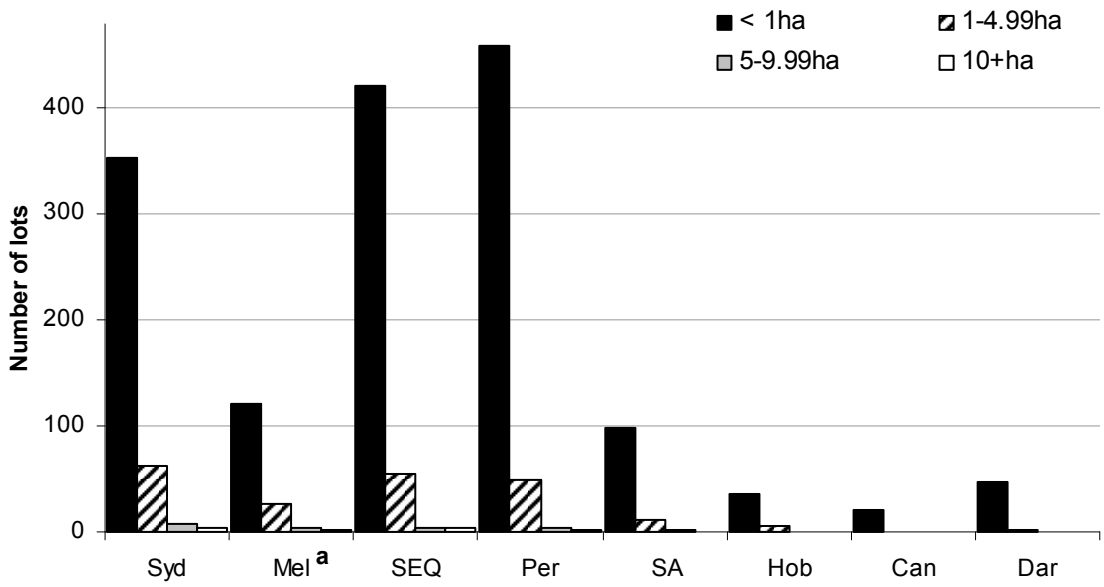
Figure 4.13 reflects that significantly more vacant industrial land was sold in Perth compared to Sydney over the period 2004-05 to 2009-10.[56] However, in contrast to the trend in vacant commercial land sales, prices (per square metre) were higher in Perth compared to Sydney. This perhaps reflects heightened demand for industrial land in Perth flowing on from the level of mining activity in Western Australia and the manufacturing activities required to support that mining.[57]

[56] Data was only available for Sydney, Perth and Hobart.

[57] During consultations, the Commission was advised that industrial land had been in great demand in Perth due to the 'resources boom' and that inventories of available industrial land were being run down.

Figure 4.11 **Industrial lot sizes**

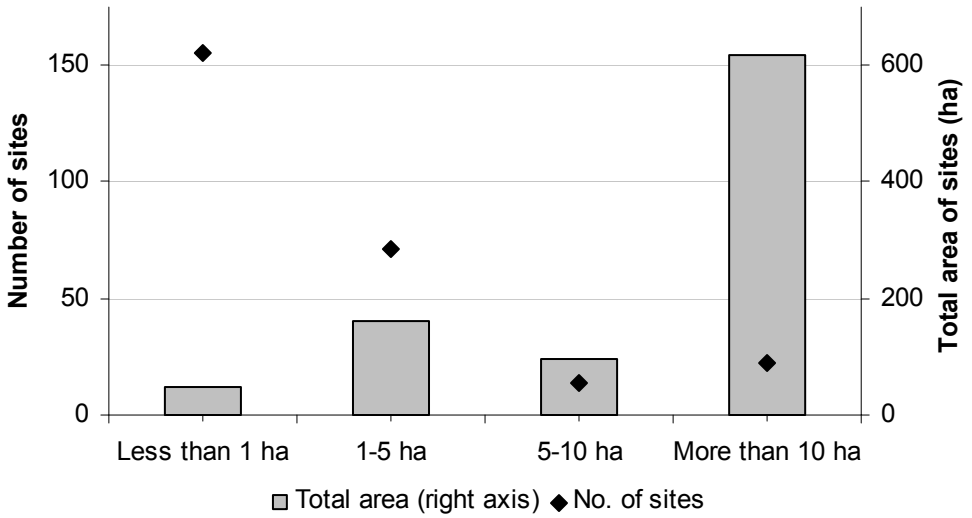
Lots sold annually — 5 year average (2005-06 to 2009-10)



a The underlying data set for this figure contained details of both commercial and industrial property sales. However, the data did not permit the classification of a large number of records for Melbourne and these records were excluded from the data set. This is a major part of the reason for the comparatively low number of annual sales reported for Melbourne reported in this figure.

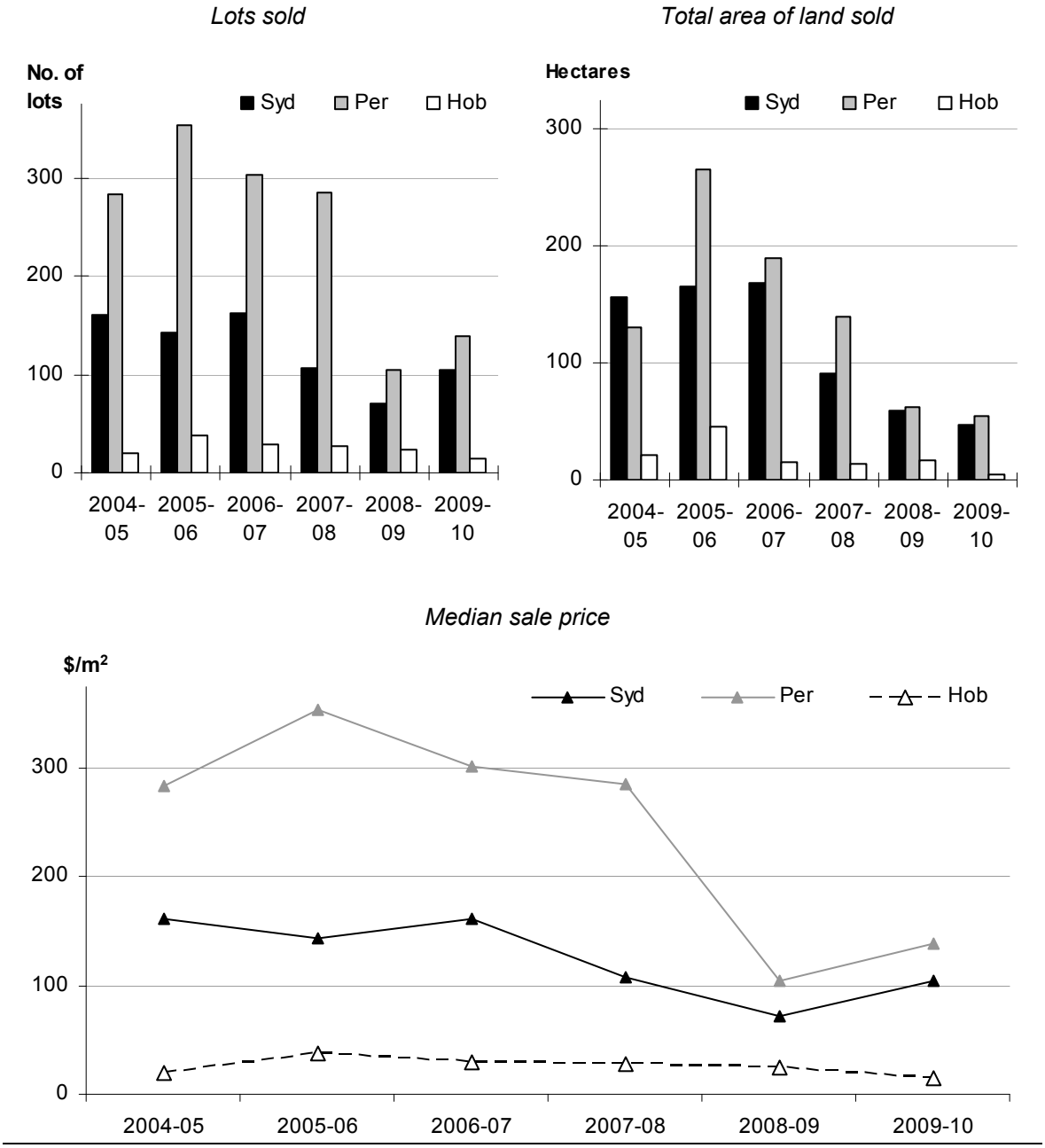
Data source: RP Data / Rismark (2010, unpublished).

Figure 4.12 **Government-owned developable industrial land: Adelaide**



Data source: Department of Planning and Local Government (SA) (2010b).

Figure 4.13 **Sales of vacant industrial land[a]: 2004-05 to 2009-10**



a No data was available in, or supplied for Melbourne, SEQ, Adelaide, Darwin and Canberra. As a result, those cities are excluded from the table.

Data source: RP Data / Rismark (2010, unpublished).

4.5 Leading practices and areas for improvement in land supply

Comparing the jurisdictions on their approaches to planning and delivering land, then considering their land supply outcomes, it is apparent that there are some leading practices and areas for improvement. These include:

- the implementation of Melbourne's Urban Growth Boundary, in particular the automatic zoning of land within the boundary for 'urban use', has been cited by developers as a potentially major time saving in the land supply process
- fixed requirements for green space in residential subdivisions, such as the 12.5 per cent requirement in South Australia and the 10 per cent requirement in Western Australia, seem overly prescriptive. For example, it would not seem necessary to set aside 10–12.5 per cent of a subdivision for green space where that subdivision comprises lots no smaller than one hectare. On the other hand, such green space ratios may be appropriate for a subdivision that is to become high density residential units
- in general, zones should be defined in terms of broad uses rather than prescriptive definitions and the broadest possible definitions should be applied in zones. The wider the definition of allowable uses encompassed in a given zone:
  - the less likely it is that land will require rezoning to be put to a different use. This presents a significant time saving opportunity in the land supply process
  - the greater scope for the market to allocate land to its best use
- preserving and enforcing buffer regions around active industrial areas, such as ports, helps ensure the industrial activities in those areas are not curtailed by the encroachment of other, incompatible land uses. More generally, the leading practices in planning for industrial land include:
  - enabling a wide range of industrial activities to be undertaken in locations that do not adversely affect other land uses
  - having easy access to transport infrastructure and adequate electricity and water infrastructure for the industrial uses on the land
  - allowing for changing industrial activities on the land over time
- the land management/supply programs for Sydney, Melbourne, Adelaide and Canberra all provide good information that developers can use to plan and sequence their future developments and that planners can use to determine whether the supplies of land are adequate. The triggers included in South Australia's strategic plan when coupled with its Housing and Employment Land Supply Program (HELSP) provide a strong policy setting for monitoring land

supply outcomes and addressing any issues in a timely manner (should any arise). More generally, however, most jurisdictions can improve on the data they make available on land supply outcomes — particularly for commercial and industrial land

- statutory timeframes exist for the approval of subdivisions, however no such timeframes exist for rezoning and structure planning.[58] Timeframes for these activities would provide some discipline to the regulatory processes and also provide developers with a better idea of the timeframes they should allow for in their planning and due diligence
- greenfield subdivision developments seem to proceed more 'smoothly' in areas where some development has already occurred. As such, there may be a role for GLOs as the first developer into new settlement areas. This would provide precedent planning decisions on which other developers could base their due diligence and ensure major 'lead in' infrastructure was in place. Powers similar to those of the ULDA, would be useful for GLOs undertaking such a role
- there is a role for GLOs to de-risk potential development sites where, due to factors such as contaminated soil and fragmented land holdings, the risks associated with those sites are too great to attract private sector interest, though some of these risks may also be too high to be carried by the public sector
- when compared to their private sector counterparts, it appears GLOs have the potential to be more efficient and effective in translating their land inventories into land supply outcomes unless they are taking on the more challenging assignments
- where possible, structure plans for a new development area should be completed in advance of any development in that area. This is generally the case in Sydney, the ACT, in Melbourne's designated growth areas where development cannot proceed until the Precinct Structure Plan is completed and in Queensland for projects undertaken by the ULDA
- community concerns and objections can be a source of delay to land supply projects. Taking on the leading practices raised in chapter 9 may go some way to addressing these delays.

While the planning system can undoubtedly be improved, those improvements alone will not address all land supply issues. Because many of the issues affecting the supply of land originate from outside the planning system and/or beyond the control of planners, a review of the broader issues affecting land supply could bring

[58] Some jurisdictions, such as Victoria and South Australia, have committed to timeframes for these activities in their strategic land use plans and other planning documents, but these commitments do not have statutory backing.

about better insights into reforms that would improve land supply. Some of the broader issues that could be considered as part of such a review include:

- availability (and cost) of finance for developers
- reforms to tax and rating concessions that encourage speculative land banking to the detriment of land supply outcomes
- developers' use of options to secure landholdings
- timing, extent and funding of the provision of social and economic infrastructure.

5 Infrastructure

Key points

- Victoria, Queensland and South Australia have a number of characteristics that should see them as the best placed jurisdictions for the delivery of infrastructure, including:
  - detailed infrastructure plans with a level of committed funding from the state budget and committed delivery timeframes
  - scope to apply alternative planning processes to infrastructure projects.
- Recovering the cost of infrastructure from developers is most appropriate where that infrastructure is used to service a specific development (rather than a situation where that infrastructure will be shared among the broader community).
- It is difficult to discern the basis of jurisdictions' policies for determining what infrastructure developers should contribute to their developments, what level of charges should be borne by the private sector and what infrastructure government should provide. Thus, there is little consistency across jurisdictions in either the type or the quantum of contribution that developers may be called on to fund:
  - in 2009-10, New South Wales had the highest residential infrastructure charges and covered the broadest range of infrastructure items. Queensland charges have risen significantly in the last five years to be the second highest in 2009-2010. South Australia charged for the narrowest range of infrastructure items and had the lowest charges in 2009-10.
  - in 2009-10, New South Wales ($550 000 per hectare) and Queensland ($340 000 per hectare) had the highest infrastructure charges applying to commercial and industrial land. Victoria had the lowest charges at $175 000 per hectare.
- The jurisdictions employ an array of different measures to coordinate the provision of infrastructure into greenfield areas. A number of 'leading practice' characteristics suggest themselves from these different approaches. Those characteristics are:
  - detailed land use planning and supplemented by infrastructure specific planning
  - a designated body responsible for the coordination of infrastructure in new development areas. That body should:
    - … have as wide a remit as possible (that is, the body's operations should not be limited to just a few areas within a city)
    - … be responsible for engaging all infrastructure providers — both public and private — as part of the planning process
    - … have sufficient power to direct or otherwise bind infrastructure providers to the delivery of the immediate and near term infrastructure needs of settlements (as agreed through a structure planning process)
    - … have the ability to elevate significant strategic issues and/or decision making to the level of Cabinet when and where it is relevant to do so.

Infrastructure plays an important role in the planning of cities and the delivery of development outcomes. This has been recognised by the Council of Australian Governments (COAG) which has included the integration and coordination of infrastructure planning with land-use planning in the assessment criteria for the COAG Reform Council's Review of Capital City Strategy Planning Systems.

Infrastructure is an important factor in the effective and efficient functioning of Australian cities. For example, the extent and quality of transport infrastructure is important for firms needing to transfer their goods from ports or warehouses to customers or retail stores, while workers rely on some of that same infrastructure on a daily basis to get to their jobs, and families to get to schools, shopping and recreation. More generally, the extent and quality of infrastructure affects the living standards of all Australians with services such as telecommunications, electricity, transport and water regarded by the community as essential to the basic quality of life (Allen Consulting Group 2003).

In general terms, infrastructure comprises the physical and organisational structures that support the operation and functioning of an enterprise or community. Within a community, infrastructure can be separated into categories of economic infrastructure (including water and sewerage, transport, energy distribution and information and communication networks) and social infrastructure (including matters such as schools, police, hospitals and recreation facilities) (New South Wales Parliament Public Accounts Committee 1993). By value, around 70 per cent of Australia's infrastructure stock is economic infrastructure (Allen Consulting Group 2003).

This chapter focuses on how different aspects of infrastructure provision interact with the planning, zoning and development systems of the states and territories. Specifically, it outlines some of the trends and emerging issues in the provision of infrastructure (section 5.1) and then compares the state and territory frameworks for providing infrastructure (section 5.2), developer contributions toward the provision of local infrastructure (section 5.3) and coordination of infrastructure delivery to greenfield sites (section 5.4).

5.1 Trends and emerging issues in infrastructure

Infrastructure provided by government

The majority of economic and social infrastructure in Australia is provided, owned, operated and maintained by either the Commonwealth, state/territory or local

governments — responsibility for different aspects of government owned economic infrastructure are outlined in table 5.1. Historically, the main reason for government involvement in infrastructure has been the potential for the market failures posed by the natural monopolies, public good characteristics and/or the externalities associated with many forms of infrastructure. However, since the early 1990s, there has been an increase in the role of the private sector in providing, owning, operating and maintaining infrastructure, particularly economic infrastructure. In considering the extent of private sector provision of infrastructure, Chan et al (2009, p. 11) noted that while there is probably scope for increased private sector involvement in some areas, 'strong public good features make it difficult, even undesirable, to privatise some infrastructure services including, for example, the bulk of the (non-trunk) road networks and many services which benefit the broad community'. Because of this, wherever the private sector is involved it is generally regulated extensively to ensure the public interest is served.

Table 5.1 **Responsibility for government owned economic infrastructure in Australia**[a]

By level of government

	Commonwealth	*State/territory*	*Local government*
Airports			
Local			✓
Regional		✓	
Major	✓[b]		
Aviation services	✓		
Dams		✓	
Electricity supply		✓	✓
Ports		✓	
Public transport		✓	✓[c]
Railways	✓	✓	
Roads			
Local		✓	✓
Rural		✓	✓
Urban		✓	
National	✓		
Sewerage		✓	✓
Storm water management		✓	✓
Telecommunications	✓		
Water supply		✓	✓

[a] In individual jurisdictions, some of these types of infrastructure may be predominantly under private ownership and/or management — for example, a great deal of South Australia's infrastructure is privately owned and controlled. [b] Australia's 22 major airports are currently under long term leases to private sector operators. [c] Buses only.

Source: Infrastructure Australia (2008); South Australian Government, pers. comm., 20 January 2011.

A number of comparatively recent reviews, reports and studies have considered the trends in the nature and extent of the infrastructure provided by government. Dollery, Byrnes and Crase (2007) compiled a number of these reviews and reports to demonstrate a broad trend of underinvestment in infrastructure replacement and renewal across most jurisdictions.

An overall trend of declining government infrastructure provision was evident in the analysis of Allen Consulting Group (2003) and Chan et al (2009). Allen Consulting Group (2003) showed the decline in terms of government capital formation as a percentage of gross domestic product in Australia from 1984 to 2002, while Chan et al (2009) noted a decline in the relative share of government infrastructure investment of total infrastructure investment.[1] Chan et al (2009) attributed much of this decline in the government share of infrastructure investment to:

- previously government-owned infrastructure providers being privatised (with the expectation that private ownership would make them more efficient)
- fiscal policy constraints encouraging governments to seek greater private sector participation in the provision of infrastructure.

Other factors observed by Chan et al as contributing to the trends in the provision of infrastructure included population density and distribution, geographic factors, the regulatory environment, and changes in the structural composition of economies.

In real terms, infrastructure spending has been increasing since 1998-99[2] for the Commonwealth and most states and territories (including local councils on an aggregated basis for each state and territory) — figure 5.1 illustrates the level of infrastructure spending for 1998-99, 2007-08 and 2008-09. In all jurisdictions, except Western Australia, growth in local council infrastructure spending has outstripped that of the corresponding state/territory government. This growth in local government spending has been funded, in part, through increases in the developer contributions levied by local councils — for example, Urbis JHD (2006) found an increase of over 100 per cent (in real terms) of the infrastructure contributions applying to single residential lots in Sydney and Brisbane between 1995 and 2006.

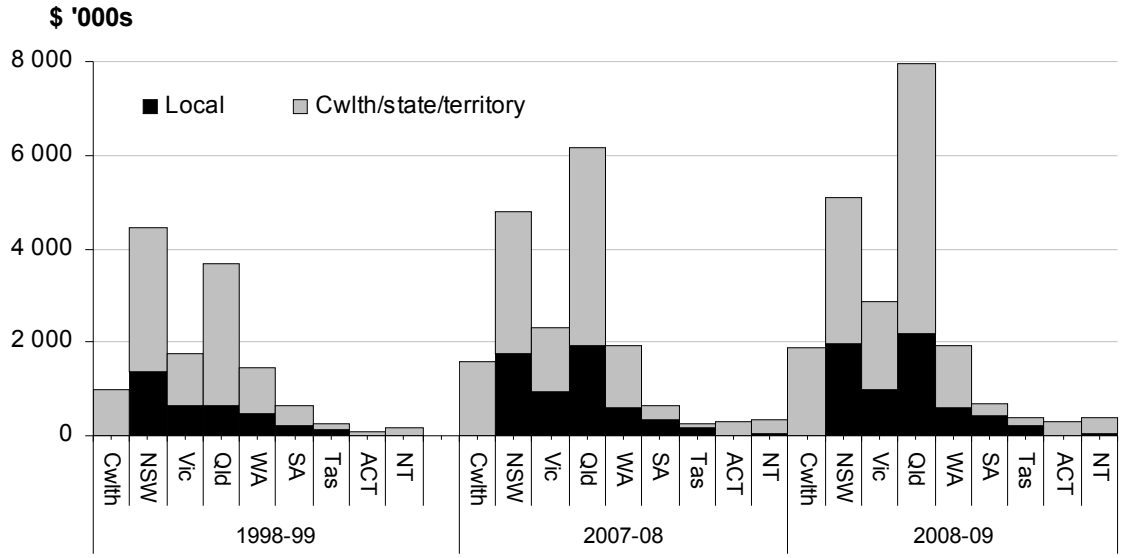
1 Chan et al (2009) noted that the overall level of infrastructure investment had remained relatively stable.

2 While the overall trend for infrastructure spending has been one of growth over the period 1998-99 to 2008-09, most jurisdictions have experienced brief periods of declining infrastructure spending (both at the state/territory and local council levels) over this period — particularly between 2000-01 and 2004-05.

A number of reasons for this upward pressure on developer contributions have been advanced to the Commission and are discussed in section 5.3.

Figure 5.1 **Commonwealth, state/territory and local government — non-residential building and infrastructure construction[a]: 1998-99, 2007-08 and 2008-09**

2008-09 dollars[b]



[a] Consists of: 1) non-residential buildings (including all their fixtures, facilities and equipment) — for example, medical centres and schools; and 2) structures other than buildings, such as roads; railways; airfield runways; bridges; tunnels and subways; waterways and harbours; long distance pipelines, communication and power lines. It excludes major improvements to land such as dams and dykes for flood control. [b] Deflated on a state by state basis using the non-residential building construction producer price index for the relevant state/territory (ABS *Producer Price Indexes*, Cat. no. 6427.0, 2010).

Data source: Based on ABS (2010, unpublished data).

5.2 State and territory frameworks for infrastructure provision

As part of their responsibility for aspects of economic infrastructure (table 5.1) and social infrastructure (such as schools, hospitals and police services), the state and territory governments also undertake much of the infrastructure planning for their respective jurisdictions (including their capital cities). While infrastructure planning receives some coverage in the strategic land use plans of the capital cities, it is generally only considered at a very high level. For example, the plans specify broad actions or aspirations such as 'improving roads', 'increasing the number of homes with broadband connections' and 'preparing an infrastructure plan'. However, the Adelaide (*The 30 Year Plan for Greater Adelaide*) and Sydney (*City of Cities: A*

Plan for Sydney's Future)[3] plans are exceptions and provide more detail on infrastructure planning — including details of specific projects. The Adelaide plan outlines details of specific energy, education, health, road, rail and water projects, as well as planned community facilities. The Sydney plan provides details of specific road and rail projects.

Most of the dedicated infrastructure planning documents prepared by the jurisdictions focus on matters of economic infrastructure (transport and water, in particular — table 5.2. The Northern Territory is the only jurisdiction not to have a plan for any form of infrastructure, while Western Australian's publicly documented infrastructure planning appears very limited.[4] Queensland has a comprehensive infrastructure plan for South East Queensland (*South-East Queensland Infrastructure Plan and Program*) and its local councils are required to prepare Priority Infrastructure Plans (PIPs — box 5.1) for their local areas. Local councils in New South Wales are also required to prepare infrastructure plans (Section 94 Contribution Plans), but those plans are more localised in nature and apply only to 'incoming communities' rather than the broader local council area. Similarly, the Precinct Structure Plans prepared by Victoria's Growth Areas Authority (GAA) for government designated growth areas include detailed infrastructure plans for individual precincts.

Infrastructure plans are influenced by past land use choices and will themselves influence future land uses and alternatives for infrastructure. For example:

> … because of previous land use choices, the option of preserving transport corridors no longer exists in some populated areas, leading to the development of infrastructure such as tunnels. (Australian Logistics Council, sub. 46, p. 4)

New South Wales, Victoria, Queensland, Western Australia (box 5.2), South Australia and the ACT,[5] where land is reserved and held by the government for transport corridors as a result of past planning decisions and processes, have advantages over Tasmania and the Northern Territory in this aspect of the infrastructure planning process.

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3 In December 2010, the New South Wales Government released the Metropolitan Plan for Sydney 2036. This document supercedes the Metropolitan Strategy for Sydney to 2031 (including City of Cities: A Plan for Sydney's Future). However, the City of Cities: A Plan for Sydney's Future remains the relevant planning document for the benchmarking period of 2009-10.

4 In addition to the *Roads 2025 Regional Road Development Strategy* a draft 'Freight Network Master Plan' (MacTiernan 2002) was released in 2002. However, the document does not appear to have progressed since that time.

5 The ACT has an advantage over other jurisdictions in this regard as the land reserved for transport corridors has, by nature of the ACT's land tenure system, always been government owned.

Table 5.2 Infrastructure planning documents

Excluding budget papers, corporate planning documents and the strategic land use plans of the capital cities

	Infrastructure planning documents
NSW	• Metropolitan Transport Plan (2010) • State Infrastructure Strategy (2008)[a]
Vic	• The Victorian Transport Plan (2008) • Our Water Our Future: Next Stage of the Government's Plan (2007)
Qld	• South-East Queensland Infrastructure Plan and Program (2010)[b]
WA	• Roads 2025 Regional Road Development Strategy (2007)
SA	• Water for Good Plan (2009) • Strategic Infrastructure Plan (2005)
Tas	• Tasmanian Infrastructure Strategy (2010) • Southern Integrated Transport Plan (2009 – Draft) • Tasmanian Transport Infrastructure Investment Strategy (2006) • Cradle Coast Integrated Transport Strategy (2006) • Northern Tasmania Integrated Transport Plan (2003)
ACT	• ACT Government Infrastructure Plan (2010)[c]
NT	-

[a] First released in 2006 and updated biennially. [b] First released in 2005 and updated annually. [c] Updated annually.

Source: Infrastructure Australia (2010a); KPMG (2010); Productivity Commission survey of state planning departments and agencies (2010, unpublished).

Box 5.1 Priority Infrastructure Plans — Queensland

Each local council in Queensland is required to prepare a Priority Infrastructure Plan (PIP). PIPs must align with the land use planning reflected in the strategic framework. PIPs are central to the planning framework for providing infrastructure to new developments in a timely manner. In doing so, they seek to ensure that all new developments are supplied with essential infrastructure such as water supply, sewerage, stormwater, roads and public parks.

PIPs are intended to provide a transparent basis for local council decisions about infrastructure funding — including the derivation and application of infrastructure charges. However, there is no requirement on local councils to levy infrastructure charges on development through their PIPs.

PIPs are in the early stages of implementation in Queensland and, up to October 2010, only one local council had a PIP in place.

Source: Department of Infrastructure and Planning (Qld) (2010c).

Box 5.2 **Case Study: Long-term planning and acquisition of strategic corridors and sites in Western Australia**

The Western Australian Planning Commission (WAPC) has the power to plan and reserve land for major infrastructure corridors and interchange sites (such as freight terminals and rail lines). It does this through local and regional planning schemes, by providing statutory protection for land reserved under those plans and finally by acquiring the land.

The WAPC takes a long-term approach to its acquisition of reserved land and seeks to obtain that land well in advance of its intended use for infrastructure projects. Most of the land is acquired from voluntary sellers, but any land affected by a reservation in a regional scheme can generally remain in private ownership (or at least under private management) until the Government needs it for a public purpose.

In 2009–10, the WAPC acquired 46 properties totalling 195.7 hectares at a cost of approximately $68 million. The purchases of reserved land are funded by the Metropolitan Region Improvement Tax — a land tax received annually by the WAPC.

Source: Department of Infrastructure and Transport (2010).

Funding planned infrastructure

The delivery of planned infrastructure is dependent upon committed funding. Table 5.3 reflects KPMG's (2010) assessment of the alignment of the capital city land use and infrastructure plans with the relevant 2009-10 state/territory budget. Brisbane/South-East Queensland and Adelaide were found to have the strongest links between budget funded initiatives and priorities outlined in their metropolitan and infrastructure plans. As such, these cities have better prospects than other cities for the delivery of the infrastructure contained in their plans. While Sydney's *Metropolitan Transport Plan* contains a '10-year funding guarantee' for certain projects, Sydney was rated poorly by KPMG due to changes in decisions relating to major public transport infrastructure initiatives such as the North West Rail Link.[6] The absence of a comprehensive strategic planning framework in Darwin and Hobart contributed to the low ratings for these cities.

6 The North West Rail Link was originally considered in 1998 (as the North West Heavy Rail Link) and in 2005 was scheduled for completion by 2017. Since that time the project has: been changed to the North West Metro; had its scope curtailed due to budget constraints; been deferred due to budget cuts; and been re-established in 2010 with construction to start in 2017.

Table 5.3 **Alignment of infrastructure planning with 2009-10 state/territory budget**

	Alignment of metropolitan and infrastructure plans with the 2009-10 state/territory Budget	*Score (out of 10)*
Sydney	Low	5
Melbourne	Moderate	7
Brisbane (SEQ)	High	8
Perth	Moderate	4
Adelaide	Moderate	6
Hobart	Very low	3
Canberra	Moderate	7
Darwin	Very low	2

Source: KPMG (2010).

Planned timing of infrastructure delivery

The timeframes established for the delivery of planned infrastructure are important to the effectiveness of land use planning. For example, the creation of a new suburb may be dependent on the extension of a trunk road. Uncertainty around the timing of the delivery of that infrastructure can see the creation of that suburb delayed as planners fear leaving the suburb disconnected from the rest of the city to the disadvantage of those who move there. Conversely, certainty around the timing of infrastructure delivery allows planners to proceed with a new suburb with some confidence.

For those state and territory infrastructure plans containing delivery timeframes, the timeframes for 'committed' projects do not extend beyond 2017 (table 5.4). While this provides some certainty for town planners in those jurisdictions making near term planning decisions, only Queensland's longer term indicative infrastructure delivery timeframes provide insights for town planners looking to make longer term planning decisions.

Table 5.4 **Delivery timeframes for infrastructure contained in plans**

	Plan	*Year plan prepared*	*Forward horizon for delivery of projects*
NSW	Metropolitan Transport Plan	2010	2014. Other projects are scheduled for funding between 2010-2020.
Vic	Victorian Transport Plan	2008	2017
Qld	South-East Queensland Infrastructure Plan and Program	2010[a]	2013-14 for projects with committed funding 2031 indicative delivery timeframes for projects where funding has not been committed
SA	Strategic Infrastructure Plan	2005[b]	2014-15
Tas	Tasmanian Infrastructure Strategy	2010	2012[c]
ACT	ACT Government Infrastructure Plan	2010	Projects are scheduled for funding to 2013-14[d]

[a] First released in 2005 and updated annually. [b] The South Australian Government has commenced the process to update this plan, which is due for delivery in 2011. [c] Delivery dates extend to 2020 for proposed (rather than committed) projects. [d] The ACT also has a 10 year Capital Works Programme and long, medium and short term programmes for major infrastructure.

Source: Department of Infrastructure, Energy and Resources (Tas) (2010b); Department of Infrastructure and Planning (Qld) (2010b); Government of South Australia (2005); State of Victoria (2008); South Australian Government, pers. comm., 20 January 2011.

Planning processes for infrastructure projects

The systems and processes used by the jurisdictions for progressing infrastructure projects through the planning system can have a significant impact on the timely delivery of infrastructure. The ACT and the Northern Territory are the only jurisdictions where a major infrastructure project goes through the planning system in the same manner as any other development (table 5.5), although there are separate approval processes that apply to infrastructure projects in 'Designated Areas' of the ACT where the National Capital Authority has a works approval role. In all other jurisdictions, such projects receive a (potentially) different treatment to the 'normal' planning process. Table 5.6 illustrates some of the unique features within the jurisdictions' planning and infrastructure frameworks with the potential to contribute to the timely delivery of planning approvals for infrastructure.

Table 5.5 **Alternative planning processes for major infrastructure projects**

	Infrastructure specific provisions	*Major/significant projects provisions*[a]	*Standard assessments provisions*	*Dedicated 'infrastructure projects' legislation*	*State planning policy*
NSW		✓[b]	✓		✓[c]
Vic			✓[d]	✓[e]	
Qld	✓	✓	✓	✓[f]	
WA			✓[g]		
SA	✓	✓	✓		
Tas		✓	✓	✓[h]	
ACT			✓[i]		
NT			✓		

[a] Excluding provisions applying to projects 'called in' by the relevant Minister. [b] The *State Environmental Planning Policy (Major Development) 2005* established classes of transport, communications, energy and water infrastructure projects that can progress as 'Part 3A' projects under the *Environmental Planning and Assessment Act 1979* (NSW). Project can also proceed under Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW). [c] *State Environmental Planning Policy (Infrastructure) 2007* which is aimed at simplifying the process for providing essential infrastructure such as education, hospitals, roads and railways, emergency services, water supply and electricity delivery. [d] An integrated process can be pursued for projects requiring an Environmental Effects Statement (EES). [e] *Major Transport Projects Facilitation Act 2009* (Vic). [f] *State Development & Public Works Organisation Act 1971* (Qld). [g] There is a 'coordinated pathway' available to applicants which involves assistance from the Department of State Development. [h] *Major Infrastructure Development Approvals Act 1999* (Tas). [i] Major infrastructure projects would likely be assessed under the 'Impact Track' — the most detailed assessment process. Separate approval processes will apply to infrastructure projects in 'Designated Areas' of the ACT where the National Capital Authority has a works approval role.

Source: *Development Act 1993* (SA); *Environmental Planning and Assessment Act 1979* (NSW); *Land Use Planning Act 2009* (NT); *Planning and Approvals Act 1993* (Tas); *Planning and Development Act 2005* (WA); *Planning and Development Act 2007* (ACT); *Planning and Environment Act 1987* (Vic); *Sustainable Planning Act 2009* (Qld); *Major Infrastructure Development Approvals Act 1999* (Tas), *State Development & Public Works Organisation Act 1971* (Qld).

Table 5.6 **Unique planning provisions for infrastructure projects**[a]

	Details of planning provision
NSW[b]	• Infrastructure projects progressed under Part 5 of the *Environmental Planning and Assessment Act 1979* do not require the completion of a development application and are often determined by the proponent agency (after that agency has completed the environmental assessments and any other assessments required under the Act).
Vic	• The *Major Transport Projects Facilitation Act 2009* provides a streamlined assessment process for declared major transport projects. The Act allows the Planning Minister to grant planning, environmental and heritage approvals for declared projects and provides for a curtailed assessment process where the subject land is already government owned and no heritage approvals, planning scheme amendments or planning permits are required.
Qld	• The *State Development & Public Works Organisation Act 1971* allows the Environment Impact Statement component of the approval process to be managed by the Coordinator-General for declared projects.[c] It is also allows for development applications in declared State Development Areas to be determined by the Coordinator-General of the Department of Infrastructure and Planning. • The *Sustainable Planning Act 2009* provides that certain designated community infrastructure does not require approval under a planning scheme, nor need meet any scheme requirements.
WA	• The Lead Agency Framework provides a 'coordinated pathway' through the approvals process. For major infrastructure projects the Department of State Development is the 'Lead Agency' and, in this capacity, provides proponents with a primary contact and case manager for Government approval processes.
SA	• Under the *Development Act 1993*, Crown development processes apply to public infrastructure projects — this process applies to private sector providers if they are government endorsed or licensed. The Crown development process entails a curtailed public consultation process (15 days where it applies) and limits the powers of the referral agencies in deciding the application. The application is decided by the Planning Minister and once that approval is granted, no other approvals are required.
Tas	• A dedicated planning panel is formed under the *Major Infrastructure Development Approvals Act 1999* to assess and decide each declared infrastructure project.

[a] This table excludes the ACT and the Northern Territory as there are no unique planning provisions that apply to infrastructure projects — that is, only the standard planning provisions apply in these jurisdictions (see table 5.5). Separate approval processes will apply to infrastructure projects in 'Designated Areas' of the ACT where the National Capital Authority has a works approval role. [b] Larger projects (including those likely to significantly affect the environment) are more often dealt with by the Minister for Planning under Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW) than under Part 5. [c] The Coordinator-General operates under the *State Development and Public Works Organisation Act 1971* (Qld) and is a separate legal entity to government. The Coordinator-General has the power to purchase land and other assets, as well as the power to enter into contracts. A key part of the Coordinator-General's role is the coordination of major development projects in Queensland.

Source: Department of State Development (WA) (2010); *Development Act 1993*(SA); *Environmental Planning and Assessment Act 1979 (NSW); Major Infrastructure Development Approvals Act 1999* (Tas); *Major Transport Projects Facilitation Act 2009* (Vic); *State Development & Public Works Organisation Act 1971* (Qld); *State Environmental Planning Policy (Infrastructure) 2007* (NSW); *Sustainable Planning Act 2009* (Qld).

Building Australia Fund

Under the *Nation-building Funds Act 2008* (Cwlth), Infrastructure Australia provides advice to the Commonwealth Government on requests for funding from

the Building Australia Fund (BAF). Such requests typically relate to infrastructure projects in the transport, communications, energy and water sectors. Infrastructure Australia is required to assess the proposed projects against the Building Australia Fund Evaluation Criteria which, in summary, require a consideration of:

- the extent to which projects address national infrastructure priorities
- the extent to which proposals are justified by evidence and data
- the extent of 'efficiency and co-investment'
- the extent to which efficient planning and implementation has occurred (BAF Evaluation Criteria Legislative Instrument - F2008L04764).

Even where a project does not meet all the criteria in full, Infrastructure Australia can determine the project to be 'conditionally meeting the criteria' if it considers the criteria will be met prior to the commencement of funding. Allocations from the Building Australia Fund in 2009-10 (table 5.7) suggest that most jurisdictions have some projects, if not entire infrastructure plans, that meet the Building Australia Fund Evaluation Criteria.

Table 5.7 **Building Australia Fund projects**
2009-10 Commonwealth Budget

	Projects	*Funding*
		$ millions
NSW	• Hunter Expressway • Pacific Highway — Kempsey Bypass	2 069
Vic	• Regional Rail Express • East West Rail Tunnel — preconstruction work	3 265
Qld	• Gold Coast light rail • Ipswich Motorway — additional works	1 249
WA	• Oakajee Port common user facilities	339
SA	• Gawler rail line modernisation • Noarlunga to Seaford rail extension	585
Tas	–	–
ACT	–	–
NT	• Darwin Port expansion[a]	50

[a] Project still being developed and funding has not yet been provided by the Commonwealth.

Source: Commonwealth of Australia (2009); Department of Infrastructure, Transport, Regional Development and Local Government (2010).

Overall assessment of state and territory frameworks

Victoria, Queensland and South Australia have a number of characteristics that should see them as the best placed jurisdictions for the delivery of infrastructure, including:

- detailed infrastructure plans with a level of committed funding from the state budget and a committed delivery timeframe that provides some certainty to stakeholders
- scope to apply alternative planning processes to infrastructure projects. This recognises both the unique nature of infrastructure projects and the need to decide them in a timely manner.

5.3 Developer contributions for local infrastructure

Background to developer contributions for local infrastructure

Developer contributions for local infrastructure in Australia are typically designed to recover from developers the cost of infrastructure provided by government for new developments. They are distinct from the 'development charges' levied in some countries which are premised on having developers internalise the marginal external cost imposed by development and which, as a result, influence the location and nature of development (Clinch and O'Neill 2010).[7]

New developments require economic and social infrastructure. For greenfield projects, major economic and social infrastructure items (such as major roads, energy infrastructure, schools and hospitals) are typically located 'off-site' while basic economic infrastructure such as local reticulation infrastructure and assets to connect new developments to the existing infrastructure network are located within the subdivision (with benefits accruing overwhelmingly to the subdivision residents). Infill developments (where major infrastructure is already in place), on the other hand, may require enhancements to the capacity of the existing infrastructure network to accommodate the additional demand associated with higher density development such as wider roads, upgraded (or new) main water pipes, treatment plants, storage facilities or pumps.

In most jurisdictions, the supply of major economic infrastructure items are the separate responsibilities of state/territory governments, state/territory government

7 'Development charges' can also generate funds that are applied to the funding of infrastructure, but that is a secondary function

business enterprises and private sector infrastructure providers (table 5.8). The cost of this major economic infrastructure is typically recovered from developers via 'headworks' or similar charges.[8] Outside of Western Australia, developers are typically responsible for the minor works connecting the subdivision and individual lots to the main infrastructure networks (table 5.8).

Table 5.8 Body providing infrastructure (in practice) in greenfield areas[a]

	Syd	*Mel*	*SEQ*	*Per*	*Adel*	*Hob*	*Can*	*Dar*
Roads[b]								
Trunk/arterial roads	State	State or Council	State or Dev	State	GBE	State	State or Dev[h]	State
Local roads	Council or Dev	Council or Dev	Council or Dev	Priv or Council	Dev	Council or Dev	Dev	Council or Dev
Water								
Headworks	GBE[d]	GBE	GBE	GBE	GBE	Other[g]	GBE	GBE
Minor works[c]	GBE or Dev[d]	Dev	GBE	Priv	Dev	Dev	Dev	Dev
Sewerage								
Headworks	GBE or Dev[d]	GBE	Council or Dev	GBE	GBE	Other[g]	GBE	GBE
Minor works[c]	Dev	Dev	Council or Dev	Priv	Dev	Dev	Dev	Dev
Storm water	Council or Dev	GBE or Dev	Council or Dev	GBE or Council	Council or Dev[e]	Council or Dev	State or Dev	Dev
Electricity	GBE	Priv or Dev	GBE	GBE or Priv	Priv or Dev[f]	GBE	GBE	GBE or Dev
Gas	Priv	Priv or Dev	Priv	Priv	Dev	Priv	GBE	State

Dev Developer. **State** State government agency or department. **GBE** State government business enterprise. **Priv** Private sector provider. [a] This table describes who provides selected infrastructure in greenfield areas in practice, as distinct from who ultimately owns the infrastructure and is responsible for its maintenance. [b] Roads and associated infrastructure such as bridges. [c] For example, the reticulation pipe works that connect properties to the headworks. [d] Relates to the greater Sydney Metropolitan area. [e] Local council for headworks and developer for works within the subdivision. [f] Private sector provider for headworks and developer for works within the subdivision. [g] Southern Water Corporation which is owned by local councils. [h] Sometimes the work is completed by the developer and the costs incurred reimbursed by the ACT Government.

Source: Productivity Commission survey of state planning departments and agencies (2010, unpublished).

8 Headworks charges are up-front payments by developers for part or all of the costs incurred to provide the infrastructure required for new developments (both greenfield and infill).

Box 5.3 Legislative frameworks for development contributions

Legislative authority to charge for local, regional and community infrastructure varies across jurisdictions. Frameworks generally embody principles and objectives, types of contributions required and scope of infrastructure for which contributions can be levied.

- **New South Wales** — s. 94 of the *Environmental Planning and Assessment Act 1979* and s. 64 of the *Local Government Act 1993* enable councils to levy development charges through development contribution plans. Councils may alternatively apply a flat levy as a percentage (1–3 per cent) of proposed cost of development (s. 94A). There is also provision for planning agreements between developers and consent authorities for developer contributions instead of, or in addition to, s. 94 contributions. State infrastructure contributions for regional infrastructure may be levied in designated growth centres. Water (including recycled water) and sewerage treatment infrastructure charges can be levied separately under section 73 of the Sydney Water Act 1994 for Sydney Water's area of operations and the provisions of the Water Management Act 2000 for other water supply authorities.
- **Victoria** — Part 3B of the *Planning and Environment Act 1987*, amended by the *Planning and Environment (Development Contributions) Act 1995* and the *Planning and Environment (Development Contributions) Act 2004*, provides councils with the power to specify contributions based on development contribution plans, conditions on planning permits, or voluntary agreements between councils and developers.
- **Queensland** — *Integrated Planning Act 1997* and *Sustainable Planning Act 2009* (overlapping operation during 2009-10) enable councils to require development contributions based on Priority Infrastructure Plans which identify infrastructure charges for eligible contributions. Also outlines anticipated infrastructure needs for the community as a whole.
- **Western Australia** — The Planning and Development Act 2005 allows government to require contributions for on-site physical infrastructure and the ceding of land for primary schools and open space. The scope of contributions is guided by the Western Australian Planning Commission State Planning Policy 3.6: Development Contributions for Infrastructure.
- **South Australia** — Development contributions in South Australia are dictated by the *Development Act 1993, Local Government Act 1999, South Australian Water Works Act 1932 and the Sewerage Act 1929*. The *Development Act 1993* allows councils to require basic subdivision infrastructure (access roads, hydraulic connections) and the dedication of open space (s. 50A). s. 146 of the *Local Government Act 1999* allows the levying of separate rates, service rates and service charges which can be used as indirect development charges. Capital contributions for water and sewerage infrastructure are provided for in the regulations under the Water Works Act 1932 and Sewerage Act 1929.
- **Tasmania** — Part 5 of the Land Use and Approvals Act 1993 allows planning authorities (the local council) to 'negotiate' agreements with developers that specify development contributions for infrastructure as a condition of a permit, a planning scheme provision or a special planning order (s. 73A). s. 70 of the Act defines infrastructure as the '… services, facilities, works and other uses and developments which provide the basis for meeting economic, social and environmental needs'.
- **ACT** — No statutory power for development contributions exists but s. 184A of the *Land (Planning and Environment) Act 1991* provides for a 'change of use charge' (the equivalent of betterment in other jurisdictions) for variations of Crown Leases that increase the lease value. Developer contributions in addition to change of use charges can also be imposed with a lease variation. Developers can also provide infrastructure as a condition of the initial release of land under a Crown Lease with the cost offset against the amount paid for lease.
- **Northern Territory** — Part 6 of the *Planning Act 2009* allows local service authorities to make contribution plans mandating contributions toward infrastructure external to the development as a condition of development. Car parking, roads and drainage are the only infrastructure for which authorities could demand contributions.

Source: PC (2009); AHURI (2008).

In some cases, infrastructure that would otherwise be funded by a utility authority will be paid for by developers where the developers have requested the infrastructure be installed ahead of the time originally planned by the utility authority. This is known as 'out of sequence' development and is discussed further in section 5.4.

The legal basis for collecting developer contributions is prescribed in legislation in all jurisdictions and is described in box 5.3.

Principles for levying developer contributions for local infrastructure

Most jurisdictions refer to specific principles or criteria that must be followed before development contributions can be charged for a particular proposal. For example, development/infrastructure plans must demonstrate a *nexus* between the contribution, the need for the service and the development itself. In addition, issues of equity, transparency, accountability and consistency feature prominently in policy guidance related to developer contributions (box 5.4). However, such tests are less relevant where voluntary agreements between consent authorities and developers or when a system of flat levies is used (these are discussed below).

As noted by Australia's Future Tax System Review Panel:

> In principle, efficient provision of infrastructure would be encouraged where its users pay for the construction of infrastructure that would be avoidable (that is, not needed) if the development did not proceed. By levying infrastructure charges that reflect these costs, State and local governments provide signals to develop housing in ways and places of greatest value. The cost of infrastructure increases directly with distance from essential headworks and inversely with the density of development (Slack 2002). To the extent that a developer can respond to these costs, for example, by choosing to build closer to an existing development or by increasing the density of housing, charging the developer can improve housing supply. (2009, E4–5: Infrastructure charges)

Efficient (and equitable) charging regimes for different types of infrastructure were discussed at length in the Commission's 2004 inquiry into *First Home Ownership* (box 5.5). Key findings from that inquiry included that up front developer charges were most appropriate where the associated (social and economic) infrastructure was used to service a specific development or location rather than being shared among the broader community.

Box 5.4 Principles underlying the application of development contributions

1. Need and nexus
The need for the infrastructure included in the development contribution plan must be clearly demonstrated (need) and the connection between the development and the demand created should be clearly established (nexus).

2. Transparency
Both the method for calculating the development contribution and the manner in which it is applied should be clear, transparent and simple to understand and administer.

3. Equity
Development contributions should be levied from all developments within a development contribution area based on their relative contribution to need.

4. Certainty
All development contributions should be clearly identified and methods of accounting for escalation agreed upon at the commencement of a development.

5. Efficiency
Development contributions should be justified on a whole of life capital cost basis consistent with maintaining financial discipline on service providers by precluding over recovery of costs.

6. Consistency
Development contributions should be applied uniformly across a 'Development Contribution Area' and the methodology for applying contributions should be consistent.

7. Right of consultation and arbitration
Land owners and developers have the right to be consulted on the manner in which development contributions are determined. They also have the opportunity to seek a review by an independent third party if they believe that the calculation of the contributions is not reasonable in accordance with set procedures.

8. Accountability
There must be accountability in the manner in which development contributions are determined and expended.

Source: Adapted from Western Australian Government (2009).

In contrast to the principles outlined in box 5.5, developers in the ACT pay a levy which reflects the increase in the value of a development proposal associated with rezoning or to permit a change of use of a particular parcel of land.[9] Additionally, impact fees are levied in certain localities (primarily New South Wales) with reference to the external costs associated with development. These can include the need to increase infrastructure capacity, build new schools, libraries, sporting fields, transport or affordable housing (Gurran, Ruming and Randolph 2009).

9 These charges are traditionally described as 'betterment taxes'.

Box 5.5 Infrastructure pricing

Infrastructure charges were a major theme of the Commission's 2004 inquiry into First Home Ownership (PC 2004) with a number of conclusions drawn regarding the most efficient and equitable allocation of costs among users and at what point in time those costs should be paid. Broadly, the appropriate allocation of capital costs hinges on the extent to which infrastructure items provide services to those in a particular location rather than across the community.

Basic economic infrastructure

The practice of developers constructing local roads, paving and drainage up-front, contributing these assets to local government and passing the full costs on to residents (through higher land purchase prices) is both efficient and equitable as the assets are predominantly used by or for the benefit of local residents (the principle of user or beneficiary pays).

Major (shared) economic infrastructure

The application of a user pays approach to shared infrastructure is less straightforward as the extent to which any investment will be used by those in the development relative to others needs to be established. The Commission saw merit in upfront charging to finance major infrastructure where the incremental costs associated with a new development can be well established and, in particular, where such increments are likely to vary across developments. This suggest that the costs of trunk infrastructure provision should be attributed in line with incremental costs which would also accommodate 'out of sequence' development where adjoining land is not developed sequentially along networks of major infrastructure.

The Commission also commented that investment for infill development, where it is required to upgrade or augment system-wide components that provide comparable benefits to users in well-established areas, would, in principle, be better funded out of borrowings and recovered through rates or taxes (or the fixed element in periodic utility charges). It also endorsed the use of debt financing for infrastructure that provided benefits that are widely distributed across the community, provided adequate disciplines for cost recovery and debt repayment over the life of the assets existed.

Social (community) infrastructure

Similarly, where social infrastructure satisfies an identifiable demand related to a particular development (such as a neighbourhood park) the costs should be allocated to that development with upfront developer charges an appropriate financing mechanism. In most cases, however, beneficiaries of these services are likely to be dispersed throughout the community and such investment has traditionally been funded from general revenue sources drawn from the wider community. Accurate cost allocation of infrastructure that provides broadly-based benefits would be difficult if not impossible. Hence, requiring developers to contribute upfront to finance the costs of provision will likely be inefficient and inequitable with general revenue being the only realistic option unless direct user charges (such as for an excludable service like a community swimming pool) are possible.

As per box 5.5, social infrastructure items are generally most appropriately funded through general revenue measures and certain shared economic infrastructure

should be charged at incremental cost. However, as shown below, the jurisdictions varied considerably in their application of these principles in 2009-10 with New South Wales, Victoria and Queensland imposing up front developer charges for the widest range of infrastructure items and South Australia and Tasmania the narrowest.

Jurisdictional infrastructure contribution arrangements

Appendix E contains a detailed description of each jurisdiction's approach to determining developer charges. In summary, in 2009-10, New South Wales (and, increasingly, Queensland) had the most liberal legislation, allowing contributions to be levied for a wide range of economic and social infrastructure such as public transport, child care centres, libraries, community centres, recreation facilities and sports grounds (table 5.9).

Table 5.9 **Public infrastructure eligible for mandatory contributions (excluding basic infrastructure)**

	NSW	*Vic*[a]	*Qld*[b]	*WA*	*SA*[a]	*Tas*[a]	*ACT*	*NT*
Child care centres	✓	✓	×	×	×	×	✓	×
Community centres	✓	✓	✓	×	×	×	✓	×
Education	✓	×	×	✓	×	×	✓	×
Libraries	✓	✓	✓	×	×	×	✓	×
Parks	✓	✓	✓	✓	✓	✓	✓	×
Public transport	✓	✓	✓	×	×	×	✓	×
Recreation facilities[c]	✓	✓	✓	✓	✓	×	✓	×
Sports grounds	✓	✓	✓	×	×	×	✓	×
Trunk roads	✓	✓	✓	✓	✓	✓	✓	✓

[a] Developers can negotiate their contributions in these jurisdictions and so any negotiated contribution may cover a broader or narrower range of matters than those listed in this table. [b] Infrastructure charges for community centres and libraries are limited to cost of land and associated cost of clearing. Infrastructure charges for public transport are limited to dedicated public transport corridors and associated infrastructure). [c] Including areas of open space.

Sources: Adapted from PC (2009) and jurisdictional feedback.

In contrast to New South Wales, South Australia confines its contribution approach to provisions for open space, access roads and hydraulic connections and car parking (where onsite provision is not available). Tasmania uses a flexible arrangement whereby the amount of contribution and uses to which it may be put are negotiated which is also a feature of the South Australian and Victorian systems. Aside from land for schools, social infrastructure is generally not funded (PC 2007). In the ACT, contributions generated by its 'change of use charge' go to consolidated revenue and can be used to finance any infrastructure or objective.

How developer contributions are applied

Development contributions are applied and collected in different ways across Australia and may include levies (calculated either per lot, hectare or dwelling or as a proportion of development value depending on the location and type of development) or, as noted above, impact fees (which recognise the actual impact of the proposal on particular local infrastructure or amenities) — typically for infill developments. Development contributions are set as part of the planning process and their payment effectively becomes a condition of final approval. The payment can be in the form of cash, land, buildings or works in kind.

Table 5.10 **Basis for developer charges in Australia**

	Direct site costs	*Local facilities*	*Regional facilities*	*Approach to developer charges*
NSW	✓	✓	✓	Set fee per site/dwelling Flat levy s. 94A (1-3 per cent) Negotiated agreement
Vic	✓	✓	Potential in growth areas	Set formula (eg. per dwelling charges) Negotiated agreements Based on Developer Contribution Plans as part of Precinct Structure Plans.
Qld	✓	✓	✓	Set fee set by council through PIP or by standard State Government regulation.
WA	✓	✓		Percentage of development site (subdivisions) Constraint applying to land
SA	✓	✓		Set formula Negotiated agreements
Tas	✓	✓		Negotiated agreement
ACT				Assessed at set percentage of the increase in value of the lease resulting from change of use charge.
NT				A service authority or local authority may make a contribution plan under section 68 of the Planning Act. Contribution plan can be for the purposes of repair and maintenance of capital works, works required as a condition of a development plan, or the provision of public car parking. Plan must specify the formula for calculating the contribution and the intended order in which works are to occur.

Sources: Gurran, Ruming and Randolph (2009), Productivity Commission estimates, Jurisdictional planning authorities.

Many jurisdictions allow for voluntary agreements (or negotiated contributions) between consent authorities and developers to extend the range of infrastructure for which contributions can be levied. Advantages associated with negotiated agreements include improved flexibility and certainty but they may also suffer from reduced transparency and accountability and higher transaction costs compared to legislative instruments. The basis for development contribution charges in each Australian jurisdiction is shown in table 5.10.

The impact of developer contributions on the costs of development is likely to vary significantly by jurisdiction and the approach or formula used to levy those charges can bias investment decisions by developers. For example, a fixed charge per lot may distort investment toward larger, low density developments because the developer is liable for a lower overall infrastructure charge. Alternatively, a levy (based on a percentage of construction costs or land value) treats all development types equally and thus avoids such distortions (Evans 2004).

During the consultations for this report, stakeholders in all jurisdictions raised concerns over increases in developer contributions in recent years and/or concern over the potential for future increases. Box 5.6 provides some examples of stakeholders' views on these increases and on developer contributions more generally.

In brief summary, the reasons advanced for the increases in developer contributions include:

- the rise of market instruments, such as user-pay charges, as a method of influencing development decisions
- fiscal constraints on local governments, such as rate capping in New South Wales, have led to a greater reliance on other funding alternatives (including development contributions) to fund infrastructure
- urban expansion pushing development further from existing infrastructure networks and, in turn, increasing the cost of connecting new developments to those networks
- community expectations of a broader range and higher quality of urban infrastructure than previously
- the temptation for the body setting the infrastructure contribution to 'gold plate' or 'over spec' infrastructure requirements — particularly if that body is responsible for the subsequent maintenance of that infrastructure.

Box 5.6 **Stakeholders' views on developer contributions**

Woolworths echoed the views of developers in nominating infrastructure charges as the most significant area of concern, particularly in Queensland:

> … infrastructure charges for a neighbourhood shopping centre in an inner Brisbane suburb have increased from approximately $285 000 in 2005/2006 to $2 790 000 in 2009/2010. Increases of this magnitude have taken Queensland from being, on average, the most economical State from an infrastructure charges/contributions point of view to being the most expensive where it is now significantly more expensive (on average) than all other States. (sub. 65, p. 11)
>
> … Woolworths notes that there is currently little or no clarity as to the how these infrastructure charges/contributions are levied by Councils. This means that similar Woolworths' developments have been subject to somewhat varied infrastructure charges - not just in different states but also within the same local government areas. For example, it is estimated that in the case of supermarket based infrastructure charges/contributions across Australia [these] range from $260/100m2 of gross lettable area (GLA) to $75 000/100m2 of GLA. (sub.65, p. 11)

The Housing Industry Association (HIA) summarised the situation where the jurisdictions charge for a wider range of developer contributions in the following terms:

> Although state and local governments have sought to justify development charges as 'user charges', increasingly new residential development has been called upon to carry the cost of community infrastructure the benefits of which are consumed across the broader community and may not accrue to the same individuals who bear the cost of the development charges. In such circumstances, the development charges are more akin to a tax on development as distinct from a user charge. (sub. 42, p. 35)

Some participants commented on the use of developer contributions as a means to boost financial resources. In that regard, the Western Australian Government recently observed:

> The capacity of local governments to provide the additional infrastructure and facilities to accommodate future growth and change is limited by the available resources. As a result, local governments are increasingly seeking to apply development contributions for the construction of infrastructure and facilities beyond the standard requirements, such as car parking, community centres, recreation centres, sporting facilities, libraries, child care centres and other such facilities. (Western Australian Government Gazette, 20 November 2009, p. 4689)

Similarly, the Urban Taskforce Australia focused on the situation in New South Wales and the incentives created by regulated council rates in that jurisdiction:

> Local councils are being asked to do more with less funding, and councils across the state are being forced to make some very hard decisions when it comes to service and infrastructure provision. Without appropriate funding, local councils are either forced to leave existing infrastructure to deteriorate, not provide additional services and/or facilities or seek an alternative source of revenue.
>
> Finding an alternative source of funding has been the preferred option of local councils and unfortunately, the preferred vehicle has been development levies. (sub. 59, p. 94)

Box 5.6 **continued**

The South Australian branch of the Urban Development Institute of Australia noted that:

> [South Australia's] [l]ocal planning authorities typically negotiate additional developer contributions during the development assessment process. This means a high level of uncertainty is experienced by both parties to these negotiations. (sub. 53, p. 11)

The Australian Property Institute and the Spatial Industries Business Association noted that:

> In actuality, councils are still not collecting 100% of the costs for infrastructure leaving the remainder to be covered through general rates. Whilst the level to which councils are willing to discount the cost of infrastructure is an internal policy decision, industry often sees the differing rates as simply inconsistent charging between council jurisdictions. In many instances, cost recovery from infrastructure charges is only in the order of 50-70%. There is a great degree of variation across Queensland's high growth Councils in the infrastructure charges levied on new developments. Those at the higher end of the charging range generally cover more infrastructure networks in their calculation methodology and are more advanced in meeting current State Government infrastructure planning requirements. (sub. 20, p.14)

Table 5.11 provides some aggregate measures of the developer contributions collected by a selection of local councils over the period 2009-10. The councils included in table 5.11 come from a sample of greenfield/growth area councils within capital city planning areas.

Table 5.11 Developer contributions received by councils with greenfield development areas[a]: 2009-10

Capital city planning areas

		Total infrastructure contributions[b]		*Total contributions as a share of council revenue*		*Aggregate developer contributions remaining unspent as at 30 June 2010*	
	Councils in sample	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
	Number	$ million	$ million	%	%	$ million	$ million
Syd	9	0.5	65.1	1	36	0.0	46.2
Mel	6	27.9	203.1	16	57	3.6	62.1
SEQ	7	1.8	180.0	8	12	11.5[c]	
Per	6	0.7	9.8	1	20	2.4	12.6
Adel	4	0.0	6.3	0	18	0.2	7.2
Hob	2	0.6	2.1	5	10	2.4[c]	
Dar[d]	n.a	No infrastructure charges collected in the Northern Territory in 2009-10					

n.a not applicable. [a] Data is based on a sample of councils known to have greenfield development areas. Canberra has been excluded as infrastructure charges did not apply in 2009-19 (box 5.3). Data was primarily sourced from the annual reports of the councils. .[b] Infrastructure contributions in this context includes all infrastructure received by the council from developers, including: cash payments made for infrastructure charges and/or lieu of infrastructure requirements (such as green space), assets (such as land for community facilities) dedicated to local councils under an infrastructure charging regime and subdivision assets (such as roads and drainage) that developers hand over to local councils once they have been constructed. [c] Data was only available for one SEQ and one Hobart council. [d] Data relates to the entire Northern Territory as data on Darwin was not sought.

Source: Productivity Commission survey of state and territory planning departments and agencies (2010, unpublished); Productivity Commission survey of local councils (2010, unpublished); local council general purpose financial statements for 2009-10.

Infrastructure contributions[10] were a higher share of council revenues in Sydney and Melbourne in 2009-10, when compared to other capital city planning areas (table 5.11). Across all capital city planning areas, land (including land under roads), roads and drainage accounted for the large majority of 'in kind' developer contributions.

Councils in Sydney and Melbourne also retained higher levels of unspent developer contributions than other capital city planning areas. The aggregate level of contributions unspent by Melbourne councils were usually the equivalent of three years collections, at most. In contrast, for two Sydney councils, the aggregate level

[10] Infrastructure contributions in this context includes all infrastructure received by the council, including: cash payments made for infrastructure charges and/or in lieu of infrastructure requirements (such as green space), assets (such as land for community facilities) dedicated to local councils under an infrastructure charging regime and subdivision assets (such as roads and drainage) that developers hand over to local councils once they have been constructed.

of unspent contributions amounted to over 10 years of collections (assuming those annual collections were not dissimilar to the 2009-10 year).

There are a number of possible reasons for the variation across councils evident in table 5.11, including:

- Melbourne, and to a lesser extent, Sydney councils are more transparent in their reporting of subdivision assets (such as roads and drainage) that developers hand over to them. Hence, some of the infrastructure contributions for other cities may be under reported
- the small population (and rating base) of some councils contributes to a higher ratio of development contributions to total council income — this is particularly the case for councils in new development areas.

While councils with higher infrastructure charges might be expected to have higher infrastructure contributions overall, that is not necessarily the case. For example, Pittwater council has among the highest infrastructure charges for residential development at $62 000 per lot, but only collected $547 000 in infrastructure charges in 2009-10 (Pittwater Council 2010).

Infrastructure charges across cities/jurisdictions

Comparisons of infrastructure charges within and across jurisdictions (figures 5.2 and 5.3 and table 5.12) need to be mindful of the unique characteristics of the developments to which such charges are applied. Greenfield developments, for example, have different yield potentials, constraints, potential land uses, environmental attributes and characteristics. Infill developments, on the other hand, vary in terms of the age and capacity of existing infrastructure to cope with the additional demands from new development.

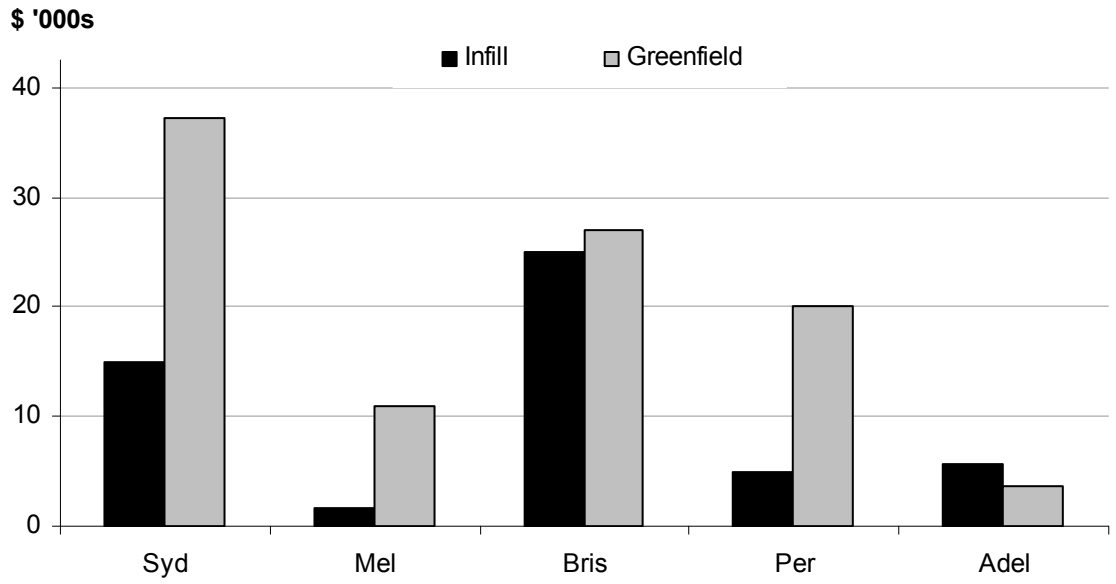
As noted above, differences in the range of infrastructure items covered by legislation and development control plans and the methodology used to apply those charges (including the definition of attributable costs and level of cost-recovery) makes comparisons difficult. Not surprisingly, it is difficult to obtain a consistent set of estimates even within the same council area. Also, the absence of a formal development contribution scheme in South Australia and Tasmania (where developers may negotiate agreements with individual councils — table 5.10) means that collection of data for these jurisdictions is problematic.

That said, infrastructure charges for residential infill developments were highest in Brisbane ($27 000 per dwelling) and Sydney ($15 000) during the benchmarking period. Both Sydney and (more recently) Brisbane City Council have pursued full

cost recovery approaches to infrastructure charges (applied to a wider range of infrastructure items including major roads, rail and social and recreational infrastructure) and this resulted in much higher charges than Adelaide ($5577), Perth ($5000) and, especially Melbourne ($1609). In the case of Brisbane, the shift to a user pays system has seen rapid growth in infrastructure charges over the past few years.

Figure 5.2 **Residential infrastructure charges infill and greenfield: 2009-10**

$' 000s per dwelling



Data source: Urbis 2010.

Greenfield infrastructure charges were generally much more significant than for infill developments, particularly in Sydney, Melbourne and Perth. This is again the result of full cost recovery approaches adopted in these jurisdictions which (with the exception of Brisbane) has been applied more strictly to greenfield as opposed to infill development. Sydney greenfield development charges included water (since removed), major roads, rail, social and recreational infrastructure. Brisbane moved to a similar approach. Melbourne includes state based water infrastructure charges for greenfield development in new growth areas but not for infill development.

Infrastructure charges for both infill and greenfield locations in a selection of LGAs are presented in table 5.12.

Table 5.12 **Council infrastructure charges: June 2010**

Per residential lot

Council	*Charge ($)*	*Council*	*Charge ($)*	*Council*	*Charge ($)*	*Council*	*Charge ($)*
NSW		***Vic*[a]**		***Qld***		***WA***	
Pittwater	62 000	Moreland City	17 900	Redland City	40 319	City of Wanneroo	31 003
Camden	59 000	Cardinia Shire	17 000	Gold Coast City	32 146		
Ku-ring-ai	54 000	Stonnington	12 400	Sunshine Coast Regional	26 089		
The Hills Shire	54 000	City of Whittlesea	12 000	Brisbane City	25 798		
Hawkesbury City	51 000	Yarra City	8 400	Moreton Bay Regional	24 818		
Blacktown City	44 000			Townsville City	24 511		
Campbell-town City	41 000			Cairns Regional	24 158		
Leichardt Municipal	40 000			Toowoomba Regional	23 952		
Wyong Shire	35 000			Ipswich City	22 095		
Tweed Shire	32 585			Logan City	15 271		
Liverpool City	31 000			Scenic Rim Regional	14 983		
Sydney City	27 000						
Manly	20 000						
Sutherland Shire	14 500						
Ashfield Municipal	9 201						
City of Canada Bay	3 000						
Warringah	1% of DC[b]						

[a] Figures for Moreland, Stonnington and Yarra relate to infill developments. [b] DC denotes development cost.

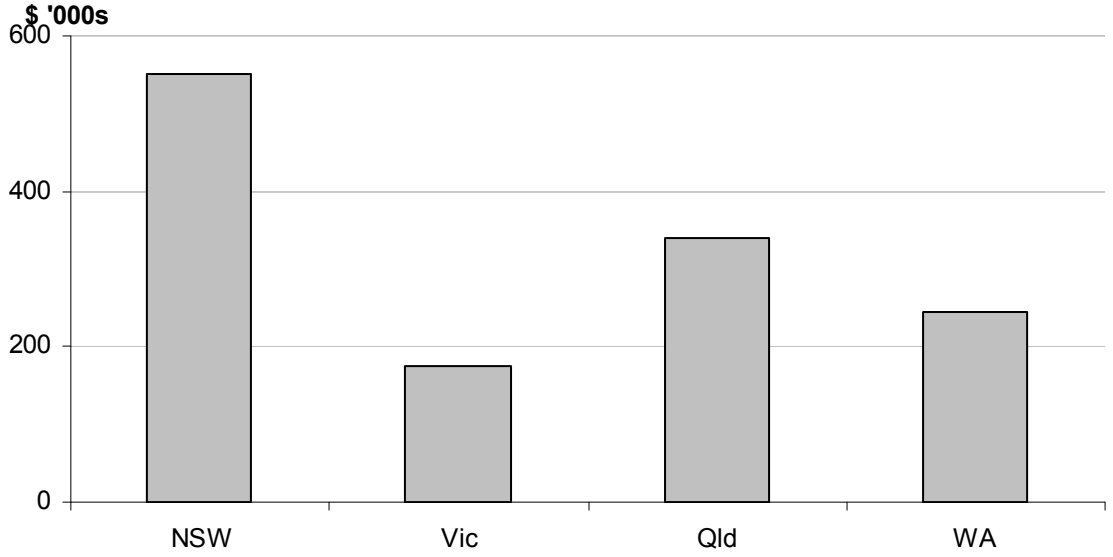
Sources: Urban Taskforce Australia (sub. 59); AEC (2010), PC council survey (2010, unpublished), FaHCSIA (2010).

Comparisons of infrastructure charges for employment lands are even starker with New South Wales towering over other jurisdictions (for which information is available) at $550 000 per hectare.[11] This was around double the figure in

[11] NSW Planning noted that a desktop review by the Growth Centres Commission of infrastructure contribution rates for industrial land within the Penrith, Blacktown and Fairfield LGAs last year found that contributions for industrial land ranged from $150 000 to $450 000 per hectare. In relation to the State contribution, the special infrastructure contribution levy of the Western Sydney Employment Area — land zoned industrial in Western Sydney — is set at $180 130 per hectare of net developable area.

Queensland and more than three times that charged in Victoria in 2009-10 (figure 5.3).

Figure 5.3 **Employment lands infrastructure charges: 2009-10**
$ '000s per hectare



a 'Employment land' is a broad collective descriptive of land applied to industrial and commercial uses.

Data source: APP/Landcorp WA (2010).

Leading practice in levying developer contributions

Broadly, the appropriate allocation of capital costs hinges on the extent to which infrastructure provides services to those in a particular location relative to the community more widely. The Commission has previously enumerated the following principles:

- use upfront charging to finance **major shared infrastructure,** such as trunk infrastructure, for new developments where the incremental costs associated with each development can be well established and where such increments are likely to vary across developments. This would also accommodate 'out of sequence' development
- **infill development** where system-wide components need upgrading or augmentation that provide comparable benefits to incumbents should be funded out of borrowings and recovered through rates or taxes (or the fixed element in periodic utility charges)

- for **local roads, paving and drainage,** it is efficient for developers to construct them, dedicate them to local government and pass the full costs on to residents (through higher land purchase prices) on the principle of beneficiary pays
- for **social infrastructure** which satisfies an identifiable demand **related to a particular development** (such as a neighbourhood park) the costs should be allocated to that development with upfront developer charges an appropriate financing mechanism
- for **social infrastructure where the services are dispersed** more broadly, accurate cost allocation is difficult if not impossible and should be funded with general revenue unless direct user charges (such as for an excludable service like a community swimming pool) are possible.

5.4 Delivering infrastructure

Concerns over the coordination of infrastructure delivery with planning and development processes were frequently raised with the Commission during its consultations for this study — for example, the '[c]oordination of service infrastructure provision often lags behind planning processes' (Western Australian Local Government Association, sub. 41, p. 10). These concerns are not new, having also been raised as a potential issue in *Melbourne 2030* — '[t]oo often the delivery of infrastructure lags behind the development it is meant to serve' (Department of Infrastructure (Vic) 2002, p. 120). Box 5.7 provides some examples of poor coordination from the submissions to this study.

The failure to coordinate the delivery of infrastructure with development can have a number of effects, including:

- isolating residential developments on the city fringe for a considerable amount of time before they are adequately serviced by public transport, schools and health services (City of Marion, sub. 3)
- detracting from the ability of local councils to zone land for future 'release' and limiting their ability to approve land subdivisions or housing developments (Australian Local Government Association, sub. 33)
- creating 'uncertainty and inconsistency', deterrents to business investment, relocation and time costs for developers, and financing difficulties for developers (Adelaide City Council, sub. 23)
- creating significant financial, environmental and social costs where infrastructure agencies are forced to deal with development on a number of

fronts before the capacity in existing areas is 'efficiently utilised' (Department of Infrastructure (Vic) 2002).

Box 5.7 Examples of poor coordination in the delivery of infrastructure

Western Australia

The Western Australian Local Government Association contends:

> Even when land has been earmarked for development for a number of years in strategic documents, the provision of services does not follow in a timely manner and in some instances does not occur at all (due to costs of provision). There have been many attempts in recent years by Local Governments and the Department of Planning (DoP) to engage with service providers to coordinate strategic planning. The Western Australian Planning Commission (WAPC) has an Infrastructure Coordinating Committee (ICC), however, they have no power to ensure coordination occurs. (sub. 41, p.10)

Buckland Park, South Australia

Buckland Park is a proposed development outside the fringe of metropolitan Adelaide. The development will not be serviced by regular public transport in its early stages and so will be largely car dependent. While the developer is said to have funded a community bus to provide some transport services, as at August 2010 there had been no state government commitment to a public transport service for the suburb (Adelaide City Council, sub. 23 and Council of Capital City Lord Mayors, sub. 31).

Hobart, Tasmania

The Council of Capital City Lord Mayors contend that in Hobart, as a result of the absence of any real metropolitan or regional planning, a reactive approach of responding to planning/development/infrastructure needs once they reach a certain threshold has prevailed. The approach has resulted in unfettered growth in the south east beaches area that has placed increasing pressure on the road network (Council of Capital City Lord Mayors, sub. 31).

In contrast, good coordination can lead to '[m]ore quality, higher value projects being delivered; increased willingness to invest/develop; and greater resident knowledge and satisfaction with on-ground developments' (Adelaide City Council, sub. 23, p. 5).

However, given that infrastructure is costly and takes time to build, it is not possible for governments or businesses to deliver infrastructure instantaneously to every potential development across a city. Priorities must be set.

Coordinating infrastructure in the new development areas of capital cities

Coordinating the delivery of infrastructure can be a complex task. For most cities and jurisdictions it will involve a number of government departments and agencies (including those responsible for transport, health and education), as well as private sector infrastructure providers. The planning arrangements within a city can add to this complexity — for example, within in the City of Perth local council area, the Western Australian Planning Commission, the East Perth Redevelopment Authority and the Swan River Trust, as well as the City of Perth Council, are all planning decision making authorities (Western Australian Local Government Association, sub. 41, p. 10). Further, coordination and cooperation in the provision of infrastructure between different councils is also required for matters such as stormwater and bicycle routes (Adelaide City Council, sub. 23).

The coordination of infrastructure delivery was most often raised as an issue in the context of greenfield development areas. Servicing greenfield areas with economic infrastructure involves a mix of government and private sector infrastructure providers, with that mix varying depending upon the city (table 5.13).

Aside from managing the mix of infrastructure providers, the task of coordinating infrastructure provision is made more difficult given each state government 'in many instances needs to fund the delivery of … key infrastructure, but has [its] own separate 'planning' cycle' that may not align with the development cycle (Australian Local Government Association, sub. 33, p.9). Accordingly, there can be delays in delivering key infrastructure such as arterial roads which may then flow onto delays in the completion times for other aspects of infrastructure (including local roads). In this context, the extent of committed budget funding for infrastructure (table 5.3) is an important consideration in the ability to ensure the reasonable coordination of infrastructure provision.

Most jurisdictions use a mix of methods to coordinate infrastructure delivery (table 5.13). As noted in box 5.7, the absence of strategic land use planning in Hobart limits the scope for the coordination of infrastructure provision and has led to a more reactive approach to the provision of infrastructure in that city.[12] The ACT is unique among the jurisdictions in that the vast majority of unserviced greenfield land is controlled by the ACT Government.[13] This gives the ACT

[12] The only formal infrastructure coordination function in Tasmania rests with the Tasmanian Planning Commission which is responsible for coordinated provision of transport and infrastructure for state significant projects.

[13] Unserviced land is land without the infrastructure required for development.

Government the ability to only 'release' land for development that has the requisite infrastructure in place or for which the installation of infrastructure is imminent.

Table 5.13 **Methods applied to coordinate infrastructure provision in greenfield areas: 2009-10**

Capital cities

	Syd	*Melb*	*SEQ*	*Per*	*Adel*	*Hob*	*Can*	*Dar*
Infrastructure coordination considered in the strategic land use plan	Yes	Yes	Yes	Yes	Yes	n.a[a]	✓	No[b]
Methods								
Detailed land use planning	✓	✓	✓	✓	✓		✓	
Dedicated infrastructure planning (including a focus on coordination)		✓	✓[c]		✓[d]			
Alternative process(es)	PAP[e]							
Statutory body		GAA[f]	ULDA[f]					
Coordination committee	✓[g]	✓[h]	RCC	ICC	GPCC		✓[i]	
Engaging with private sector and GBE infrastructure providers	✓	✓	✓	✓	✓	✓	✓	✓

GAA Growth Areas Authority. **GPCC** Government Planning and Coordination Committee. **ICC** Infrastructure Coordination Committee. **PAP** Precinct Acceleration Protocol. **RCC** Regional Coordination Committee. **ULDA** Urban Land Development Authority. [a] Hobart does not have a strategic land use plan, however coordination is recognised as an issue in the *Tasmanian Infrastructure Strategy*. [b] Although the plan does includes a target to 'develop economic infrastructure in Territory Growth Towns'. [c] At both the level of state and local government. [d] This is anticipated in the *30-year Plan for Greater Adelaide*, but is yet to come into full effect. [e] Applies in prescribed areas only. [f] The operation of this body is limited to prescribed areas and the coordination of infrastructure is one part of its broader responsibilities. [g] From 2006-2010, the Infrastructure and Planning Committee of Cabinet and Land Supply CEOs Group served this function. Their role has been subsumed by the Land and Housing Supply Coordination Task Force (LHSCTF) announced in September 2010, although the LHSCTF is more focused on infrastructure funding than coordination. [h] Victorian Department of Planning and Community Development indicated a coordination committee existed but did not name that committee. [i] A Regional Management Framework exists between the ACT and New South Wales Governments.

Source: ACT-NSW Regional Management Framework; Department of Infrastructure and Planning (Qld) (2010d); Department of Planning (WA) (2010); Department of Planning and Local Government (SA) (2010); Productivity Commission survey of state planning departments and agencies (2010, unpublished).

While some jurisdictions have statutory bodies with powers and/or responsibilities for providing infrastructure, such as VicUrban (Victoria), Landcorp (Western Australia) and Land Development Agency (ACT), only the Growth Areas Authority (GAA — Victoria) and Urban Land Development Authority (ULDA — Queensland) have the coordination of infrastructure among their responsibilities: the GAA can only apply these powers in Victoria's government declared 'designated growth areas' and the ULDA can only apply these powers in the few precincts

across Queensland that have been declared 'Urban Development Areas' by the Queensland Government.[14]

Not of all the methods employed by the jurisdictions to coordinate the delivery of infrastructure have been effective. Although New South Wales' Precinct Acceleration Protocol (PAP — box 5.8) was formally announced in 2006, the Business Council of Australia (sub. 38) indicates that the only precinct to be released under the Protocol was rezoned in December 2010 (two years and six months after it was first released).[15] In Western Australia, the Infrastructure Coordination Committee's (ICC's) effectiveness has been limited due to its 'relatively low-level role as an advisor to the WAPC' (Economic Audit Committee 2009, p. 96). The Economic Audit Committee (2009) also noted that the ICC's rejuvenation was essential to delivering robust strategic infrastructure planning in Western Australia.

Box 5.8 **Precinct Acceleration Protocol (PAP) — New South Wales**

In June 2006 the New South Wales Government launched the PAP. Proponents access the PAP by nominating the development to progress under the protocol and paying the $2000 application fee. A key condition for acceptance under the PAP is that there will be no cost to the New South Wales Government.

If accepted into the PAP, the New South Wales Government prepares a detailed 'requirements package' for the development area ('precinct'). The package must be agreed by the proponent before the precinct will be 'released'.

Under the PAP, proponents must be prepared to pay for (or provide equivalent infrastructure to the value of) the infrastructure determined in the 'requirements package'. The Department of Planning (NSW) provides a guide of a total cost of $647 000 per net development hectare for such infrastructure.

Source: Department of Planning (NSW) (2006); Department of Planning (NSW) (2010a); Department of Planning (NSW) (2010b).

South Australia's Government Planning and Coordination Committee (GPCC — box 5.9) seems well placed to contribute to coordination outcomes due to its wide

[14] In September 2010, the New South Wales Government announced the formation of the Sydney Metropolitan Development Authority (SMDA). Among its functions will be the coordination of transport and infrastructure planning.

[15] The project was the 551 hectare Marsden Park Industrial development. A second development (the East Leppington Precinct) was being considered for release under the Precinct Acceleration Protocol during 2010, but that proposal was withdrawn. As at January 2011, developments at Marsden Park and Catherine Fields (Part) were being considered under the PAP.

Box 5.9 Coordination Committees and frameworks

Regional Coordination Committee (RCC) — Queensland

The function of an RCC is to advise the State about the development and implementation of a region's regional plan. The regional planning Minister determines the membership of an RCC and members must include a Minister, mayor, councillor of a local council or an 'appropriately qualified person'. RCCs are also allocated key roles in confirming priorities in, and monitoring implementation of, regional plans — including the delivery of infrastructure.

Infrastructure Coordination Committee (ICC) — Western Australia

ICC members include representatives from departments with responsibility for water, health, education and transport (among other areas). It advises the WAPC on plans for the provision of infrastructure and promotes inter-agency cooperation in decisions related to urban development. It has the power to coordinate the metropolitan development program and the provision of infrastructure for land development.

Government Planning and Coordination Committee (GPCC) — South Australia

The GPCC is made of the chief executives of state government agencies (including those responsible for water, health, education, transport, energy and infrastructure). Part of the GPCC's role is to ensure greater accountability of individual agencies in the delivery of policies and targets contained in the *30-year Plan for Greater Adelaide*. The GPCC is charged with working with local councils on a number of matters, including:

- addressing critical infrastructure issues associated with the development of new growth areas and transit corridors
- securing and coordinating the delivery of infrastructure into areas identified as 'significant' by the GPCC
- overseeing and approving the structure planning priorities for new growth areas and transit corridors.

The GPCC is compelled to elevate strategic issues and/or decision making to the level of Cabinet when and where it is relevant to do so.

Regional Management Framework (RMF) — ACT

The RMF was agreed to by the New South Wales and ACT Governments in 2006. The RMF seeks to ensure the cooperative management of issues across the New South Wales-ACT border, including matters relating to the location, sequencing and timing of urban development and related infrastructure such as roads, communications and water, as well as community infrastructure.

Source: ACT-NSW Regional Management Framework; Department of Infrastructure and Planning (Qld) (2010d); Department of Planning (WA) (2010); Department of Planning and Local Government (SA) (2010).

Box 5.10 Statutory bodies coordinating the provision of infrastructure

Growth Areas Authority (GAA) — Victoria

The GAA was established in September 2006 under the *Planning and Environment (Growth Areas Authority) Act 2006* (Vic). One of its objectives under that Act is to 'ensure that infrastructure, services and facilities are provided in the growth areas in a coordinated and timely manner'. The GAA's scope of operations are limited to the designated growth areas of: Casey-Cardinia; Hume; Melton-Caroline Springs; Whittlesea; Wyndham; and Mitchell.

The Precinct Structure Plan (PSP) process is the primary means used by the GAA to achieve the coordinated and timely delivery of infrastructure — the provision of infrastructure being only part of a broader set of planning matters covered in a PSP. As part of the PSP process the GAA engages with, and provides advance notice of the development to, infrastructure providers (including state agencies and local councils). The PSP is prepared with input from infrastructure providers (among other stakeholders) and includes details of the infrastructure to be provided for a development area, the responsible agencies and funding mechanisms. However, regardless of the contents of a PSP, a finalised PSP does not bind or commit infrastructure providers in any way. PSPs can take some time to prepare — the GAA's indicative timeframes are 6–12 months for preplanning and 18–24 months for PSP preparation and approval. However, as detailed in chapter 4, prior to the reforms giving rise to the GAA's indicative timeframes, some plans took up to six years to complete.

Urban Land Development Authority (ULDA) — Queensland

The broader scope of the ULDA's functions and powers are outlined in chapter 4 (table 4.16). Under the *Urban Land Development Authority Act 2007* (Qld) the ULDA has broad powers, within declared Urban Development Areas, to:

- coordinate or provide infrastructure for urban development areas
- coordinate, provide or pay for, infrastructure on land outside urban development areas to help the performance of the authority's functions relating to urban development areas
- issue directions to a state or local government entity to provide or maintain infrastructure.

As such, not only does the ULDA play a significant role in coordinating the provision of infrastructure in declared Urban Development Areas, it has the power to compel agencies to provide infrastructure where its coordination efforts fail or even to build the infrastructure itself — powers unique to any agency across Australia.

Source: GAA (2009); GAA (2010); Productivity Commission survey of state planning departments and agencies (2010, unpublished); *Urban Land Development Authority Act 2007* (Qld).

engagement of the state bureaucracy, role in promoting accountability and clearly defined responsibilities for infrastructure. Both Victoria's GAA and Queensland's ULDA also have strong models for coordinating the delivery of infrastructure (box 5.10). However, both models have certain limits to their effectiveness:

- the GAA's ability to coordinate infrastructure delivery is curtailed by the inability to either bind infrastructure providers to their commitments to deliver the immediate and near term infrastructure needs of settlements (as determined and agreed through the Precinct Structure Planning (PSP) process) or to direct the provision of infrastructure (using similar powers to those of the ULDA)[16]
- the ULDA has the broadest and most complete powers to ensure the delivery of infrastructure, but these powers can only be applied in the few precincts across Queensland declared as Urban Development Areas by the Queensland Government.

Leading practice in the coordination of infrastructure provision

A number of 'leading practice' characteristics suggest themselves from the different approaches of the jurisdictions. Those characteristics are:

- an approach to the coordination of infrastructure grounded in detailed land use planning and supplemented by infrastructure specific planning
- a designated body responsible for the coordination of infrastructure in new development areas with:
  - a wide remit. If the body is not responsible for an entire metropolitan area, then responsibility for those areas planned to accommodate the majority of the city's growth would focus attention on the locations most in need of infrastructure co-ordination
  - responsibility for engaging all infrastructure providers — both public and private — as part of the planning process
  - sufficient power to direct or otherwise bind infrastructure providers to their commitments to deliver the immediate and near term infrastructure needs of settlements (as determined and agreed through a structure planning process)

[16] Extending these powers to include infrastructure commitments over the medium to long term would provide long term certainty to planners, developers and the community. However, to do so would come at the unjustifiable cost of a reduced capacity to respond to changes in technology, community preferences, business needs, government budgets and settlement patterns in the time between the initial planning of a settlement and the time the infrastructure is due to be delivered.

– the ability to elevate significant strategic issues and/or decision making to the level of Cabinet when and where it is relevant to do so (as South Australia's Government Planning and Coordination Committee is compelled to do).

Issue 5.1: The Commission is interested in receiving ideas or examples of other mechanisms that could be used to bind state bodies to deliver agreed infrastructure within agreed time frames.

6 Compliance costs

Key points

- The main compliance costs imposed by planning systems involve requirements to prepare, submit and provide supporting material for planning scheme amendments or development applications; meeting specified development controls; paying fees and charges; holding costs associated with delays in obtaining planning approval.
- New South Wales, Victoria and Queensland state planning bodies compile publicly available performance measures on many local government development assessment activities in their jurisdictions - providing transparency and scope for evidence-based analysis.
- Development assessment costs across jurisdictions reveal a mixture of outcomes.
  - Single residential developments that comply with prescribed standards and do not trigger conditions in planning schemes are treated fairly uniformly across most jurisdictions. Such developments did not require planning approval or attract a planning fee in Victoria, Queensland, Western Australia, the ACT or the Northern Territory in 2009-10. But in New South Wales, normal development assessment processes and an associated planning fee were still in place in the majority of councils.
  - Assessment costs for commercial/retail/office facilities were much higher than residential developments in 2009-10. Victoria was the least expensive jurisdiction in which to apply for planning approval for a mid-size retail development. Charges were considerably higher in Queensland, NSW and the ACT.
  - Anecdotal evidence suggests charges associated with a rezoning (amending a planning scheme) were far greater and more variable in NSW than other jurisdictions in 2009-10.
- Costs of development include the preparation of an application for planning approval, a process which (depending on the nature and complexity of the proposal) can involve considerable in-house staff costs, and an extensive range of impact and consulting studies, all of which must comply with specific submission standards.
- Approval delays (and the associated impact on holding costs) are a major concern for developer interests and reflect a multiplicity of factors such as the scope and nature of approval requirements, application quality, referrals, public consultation, appeals and the efficiency of development assessment staff.
  - In jurisdictions where comprehensive approvals data was available, Victoria had the longest approval times in 2009-10 with the frequency of referrals a notable contributor to that result. The ACT had the shortest approval times at around 34 days on average.
- Leading practice characteristics of development assessment processes include the use of electronic DA systems, streaming applications into assessment tracks and developing more specific and transparent criteria by which alternative assessment pathways should apply in order to improve certainty and confidence in planning systems

Planning, zoning and development assessment systems seek to meet a number of important aims including coordinating and consolidating the release and development of land in response to current and future demand for residential, commercial, industrial and other land uses; financing, constructing and maintaining the economic and social infrastructure needed to support those land uses; and preserving and enhancing the quality and amenity of the built and natural environment (Gurran et al 2009). In delivering those goals, planning, zoning and development assessment systems also impose costs (either necessary, excessive or avoidable).

The scope to reduce the costs associated with planning systems without compromising the integrity of the planning and assessment process has been a topic of ongoing debate in Australia with current and prospective reform efforts seeking to lower those costs. For example, the National Housing Supply Council recently commented that there are compelling reasons for:

> … reducing compliance costs and improving efficiency and effectiveness by, among other things, modern lodgement and processing systems, making outcomes more consistent and predictable across State and local government jurisdictions, and reducing opportunities for third party appeals when proposed developments are demonstrably consistent with jurisdictions' precinct development plans. (NHSC 2009, p.51)

Similarly, the review of Australia's Future Tax System noted:

> Regulations on the use of land need to be governed by approval processes … . Where these processes are slow, they add to costs of house building and the risk of developing land, thereby reducing the supply of housing. … Where approval processes are streamlined, they are likely to result in supply being more responsive to changing conditions. (Henry 2010, p. E4-4)

This chapter seeks to compare the compliance burdens on businesses (and other users) of the different planning, zoning and development assessment systems across Australia. In particular, the chapter asks how the compliance burden associated with planning, zoning and development assessment requirements differ across the Australian states and territories. It does this with specific reference to the relative costs associated with planning requirements, processes and charges, both as a proportion of total planning related costs and total production costs and the factors explaining the divergences across jurisdictions.

The remainder of this chapter looks at the sources of available data in Australia (section 6.1), the nature of various compliance costs (section 6.2) and the direct costs associated with obtaining planning approval (section 6.3). In section 6.4, local government planning approval times are analysed while the alternative assessment pathways are reviewed in section 6.5. Finally, leading practice features of development assessment systems are set down in the last section.

6.1 Data sources

In examining differences in business compliance cost burdens across jurisdictions, the Commission sought information from a range of sources, but primarily from local government development assessment activity information collected by central planning agencies in five jurisdictions (the publicly transparent collections of NSW, Victoria and Queensland data were especially useful); surveys of local councils and state/territory planning agencies; and published material relating to application fees and charges. Data was obtained for around 80 per cent of councils in the cities under reference with councils in the larger jurisdictions (NSW and Victoria in particular) fully enumerated as a result of comprehensive performance reporting systems in those states (table 6.1).

With the notable exception of some leading Australian retailers and greenfield land developers, business interests were unable to provide financial information regarding the cost impact of specific planning regulations. While surprising, given the level of developer concern regarding planning related costs, this may reflect the difficulty in quantifying the costs imposed by a highly complex and opaque system which are incurred at multiple stages of the planning process. Charges relating to the provision of infrastructure have risen markedly in recent years in some jurisdictions. These charges were addressed in the previous chapter.

Table 6.1 **Data coverage for council DA activity, fees and charges.**
Number of councils

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	***Total***
Council coverage	**53**	**33**	**12**	**13**	**13**	**6**	**130**
Total councils in reference group	53	33	13	31	26	11	**167**
Coverage rate (%)	100	100	92	42	50	55	**78**

Source: NSW, Victorian and Queensland planning agencies, Productivity Commission local council survey (2010, unpublished).

The surveys of local and state/territory regulators collected information in three broad areas (see appendix B):

- the level of human and financial *resources* devoted to planning, zoning and development assessment regulation and the nature and impact of resource constraints on the ability of officers to administer those regulations
- the zoning and development assessment *activities* of consent authorities in terms of the number of and average duration of determinations and the extent to which a risk-based approach to assessment is employed

- the fees and charges associated with submitting specified planning proposals and the revenue implications of those fees and charges.

6.2 Nature of compliance costs in planning systems

Planning, zoning and development assessment systems impose both direct and indirect costs on users of those systems. The submission by the Bulky Goods Retail Association (BGRA) highlighted the main cost components faced by businesses in the following way:

> The key measurable factors that need to be adopted to benchmark the compliance burden associated with planning are time and cost. The assessment of cost needs to include the direct cost of the development application process as well as the indirect cost of holding land or property pending the issue of development approval. The time factor obviously contributes to the holding costs of land and delays in obtaining development approvals are a source of great frustration for retail businesses and property developers. (sub. 37, p. 22)

The main types of direct costs involve procedural requirements (preparing, submitting and providing supporting material for planning scheme amendments or development applications); compliance costs of meeting specified development controls (location, operating hours, business format, housing density, amenity, environmental and heritage requirements); fees and charges — application or other administration fees and developer contributions (see chapter 5) for local, headwork and community infrastructure provision; and increased holding costs associated with unnecessary delays in obtaining planning approval.

Overlaying these direct costs are the indirect costs: uncertain and protracted timeframes; complex, inconsistent and unpredictable regulatory frameworks; intra- and inter-jurisdictional differences in administration and regulatory processes. These add to the risks and compliance burdens (particularly through additional holding, legal and expert consultant costs) faced by business and non-business 'users' of the planning system.[1]

By way of example, Woolworths commented specifically on the discretionary nature of retail planning outcomes and the uncertainty this created:

> As a national retailer with multiple developments underway at any one time, one of the key challenges Woolworths faces is a lack of certainty as to how each re-zoning or

[1] The Tasmanian Conservation Trust (sub. 49, p.12) noted by way of example that the 29 local councils in Tasmania all have their own development application forms, different procedures for rezonings, separate and different forms for building approvals and another set of forms and procedures for environmental approvals.

development application will be handled and assessed by each respective development authority or local council. (sub. 65, p. 3)

On the ground, these costs, individually and in combination, manifest in significant variations in the regulatory compliance burden placed on businesses operating within and across different jurisdictions. Examples include the differences in the level and types of fees and charges, as well as variations in the duration of approval times and in access to information regarding assessment processes.

Beyond this, however, variability in planning schemes across jurisdictions and the subjective nature of regulatory interpretation and application may be the greatest source of differential compliance burdens imposed on firms. This was a common theme in consultations with businesses and their representative groups during the conduct of this study. It is also an aspect of planning regulation compliance burden that cannot be readily captured in a desk-based survey of the type used here.

Differences in regulatory interpretation were a key concern for participants such as the Australian Hotels Association which said:

> The AHA is of the view that it is most often the interpretation of planning laws, rather than the laws themselves, that are the source of obstruction to the desirable improvement of licensed premises which serve the local community. (sub. 56, p.4)

Council interests, however, defended variations in planning requirements and their application on the basis of differences in the characteristics and needs of different locations. The Western Australian Local Government Association said:

> The requirements for development approval do vary between jurisdictions but in the majority of cases, these variations reflect the nature and particular characteristics of the different localities and their planning needs. The City of Perth would not impose the same development requirements as a suburban Local Government authority as the area, scale of development and issues are incomparable. (sub. 41, p. 20)

While the direct costs associated with the planning system are, at least in a comparative sense, transparent, the indirect costs related to the systemic features of that system are much more difficult to ascertain with any degree of precision.

The Commission received very little in the way of hard evidence about the magnitude of those costs. Accordingly, the impact of those indirect costs are more likely to manifest in terms of developers avoiding certain jurisdictions and local government areas, reducing overall development activity, postponing land acquisition or release (land banking) and distorting sectoral and market investment decisions. (Gurran et al 2009 and sub. 53)

Anecdotal evidence from one national developer (Lang Corporation) bears out the potential for these kinds of outcomes (in this case argued to be the result of approval delays):

> … [The] company used to have substantial investment in NSW. Now none of its 19 projects were based in the State. This has been the case for the past four to five years. (Australian Financial Review, 26 November 2010, p. 62)

Another potentially useful measure of such costs could be the risk premiums applied across jurisdictions by lenders funding developments. According to the Business Council of Australia:

> These risk premiums differ between jurisdictions based on the expected delays in different planning systems. (sub. 38, p 4).

However, getting access to confidential information such as differential risk premiums charged by financiers to development companies has not been possible and evidence for this regulatory burden remains limited.

6.3 Direct costs associated with planning approvals

All Australian jurisdictions impose fees to cover all or some of the costs associated with planning services (typically imposed as a condition of development consent). The basis for imposing these fees, and the range of items that may be charged, differs among jurisdictions and between State and local planning authorities. Importantly, charging regimes are established by legislation and this has implications for the level of cost recovery in the provision of planning services and, consequently, the funding and performance of resources employed in those services.[2] Fees are charged for processing applications for development approval, which may be a fixed amount or vary with the value of the development proposal. In addition, most jurisdictions charge for requests to amend planning schemes (rezone), advertise or exhibit development proposals, refer matters to other authorities, hold pre-application meetings and review decisions.

Aside from the costs of meeting the specific requirements of planning controls, there are also a number of other expenses associated with obtaining planning approval (either development consent and/or amending planning schemes) or rezoning. Some costs (for example, application and referral fees, public notification and advertising charges and requisite impact, management and design/engineering

[2] The submission by the Western Australian Local Government Association (sub. 41) provided an example of one local council recovering just 45 per cent of the cost of development assessment services.

studies) are paid regardless of whether the proposal is approved. They therefore represent a risk to the developer if the proposal is refused. Others, such as development contributions for infrastructure and services (see chapter 5), are paid only if approval is granted. Appeal fees and the associated legal expenses and delays also depend on the outcome.

Regulatory costs associated with development assessment are dominated by the fee for determining whether a proposal meets specific land use and other requirements of the local planning scheme and/or zone. Depending on the jurisdiction, a permit or consent may be required to construct, alter or demolish a building, start a business, display a sign, obtain a licence to sell liquor, subdivide land, clear vegetation or change the use of a property.

Generally, the more complex a proposal (including in scale) the greater scrutiny involved in its assessment and the higher the associated charge. Fees are typically applied on a sliding scale according to the estimated development cost or capital value (which excludes the cost of land). The exception is Queensland where fees are either fixed (for example, in the case of single dwelling residential developments) or based on gross floor area for non-residential developments.

Development assessment fees are prescribed by legislation/regulations in all jurisdictions except Queensland and Tasmania where councils have the flexibility to set their own fees. While this provides the scope for (in some cases considerable) differences among councils within those two jurisdictions, it also allows the flexibility to tailor charges to the actual cost of providing the service.

The complexity of the proposal can also trigger requirements for public notification (including through advertising) to allow community involvement in development assessment decisions and for scrutiny by concurrence and referral authorities.[3] Some councils also encourage the issuance (for a fee) of compliance certificates which confirm the development meets the conditions of a development permit. Additional charges may also be levied if the applicant requests pre-application advice in order to streamline the application process (though many councils offered this service free of charge).

3 Concurrence is a requirement (either by a local, regional or State plan) for a consent authority (usually a council) to obtain the approval of a government department to a development application or new environmental plan. Referrals are also requirements in planning instruments where the consent authority must refer a development application or new environmental plan to a government department for comment or feedback. Examples of areas where referral and concurrences may be required include road and traffic issues; acquisition of land for proposed public utilities or services; heritage; biodiversity, habitat protection and managing environmental impacts; mining and extractive industries; agricultural matters or forestry matters; and water management and water quality control. See chapter 11.

Legislated development assessment fees

While maximum fees varied considerably from one jurisdiction to the next in 2009-10, they represented but a small fraction of the development cost of a project (table 6.2). In that context, observed differences are unlikely to have had any efficiency impact on development proposals (either by preventing projects/activities from proceeding or by encouraging substitution between jurisdictions).

Maximum development application fees were the lowest in the Northern Territory and Victoria ($15 000 and $16 000 respectively for developments in excess of $50 million). The highest maximum fees were paid in Western Australia with a charge of $31 100 for developments with an estimated value of more than $21.5 million. South Australia had the most uniform fee structure with a flat 0.125 per cent charge for all developments with an estimated construction cost greater than $100 000.

Subdivision refers to the division of land into two or more titles (including strata subdivision, community title and boundary adjustment). As noted above, consent for subdivisions are a component of the development assessment system. However, in some jurisdictions, an additional or combined requirement is that the subdivision plan must be certified (at a cost) and issued with a statement of compliance. A subdivision is complete once it has been registered with the relevant Titles Office.

Subdivision fees are applied as a flat charge per lot in all jurisdictions. Victoria charged the lowest subdivision fees ($20 per lot after an application fee of about $100) in 2009-10 while the ACT charged the most ($215.7 per lot on top of a base fee of $1628). South Australia imposes a minimum lodgement fee of $1132.5 with an open space levy also payable if local open space is not provided.[4]

[4] Where open space is not provided by a developer an additional cost of $5627 is required. In most cases, however, open space is provided so this additional charge does not apply.

Table 6.2 Maximum planning approval fees by jurisdiction: 2009-10

Jurisdiction	*Estimated development cost/size*	*Maximum fee*
NSW	**Development application**	
	Up to $5,000	$110
	$5001 – $50 000	$170 plus $3 for each $1,000 (or part of $1,000) of estimated cost.
	$50,001 – $250,000	$352 plus $3.64 for each $1,000 (or part of $1,000) above $50,000
	$250,001 – $500,000	$1,160 plus $2.34 for each $1,000 or (part of $1,000) above $250,000
	$500,001 – $1,000,000	$1,745 plus $1.64 for each $1,000 (or part of $1,000) above $500,000
	$1,000,001 – $10,000,000	$2615 plus $1.44 for each $1,000 (or part of $1,000) above $1,000,000
	More than $10 million	$15,875 plus $1.19 for each $1,000 (or part of $1,000) above $10 million
	Subdivision Certificate	$100 per lot
Victoria	**Planning permit application**	$502
	Change of Use	
	Single dwelling between $10 000 and $100 000	$239
	Single dwelling more than $100 000	$490
	Less than $10 000	$102
	Between $10 000 and $250 000	$604
	Between $250 000 and $500 000	$707
	Between $500 000 and $1 million	$815
	Between $1 million and $7 million	$1 153
	Between $7 million and $10 million	$4 837
	Between $10 million and $50 million	$8 064
	More than $50 million	$16 130
	Land Subdivision	
	Application fee	$386 – $781
	Certification processing fee	$100 per application plus $20 per lot
Queensland (Brisbane)	Minor development (eg. deck, pergola, carport, shed)	Code assessed $425 Impact assessed $635
	Domestic development (eg. house erection/extension or demolition)	Code assessed $1200 – $1910 Impact assessed $1800 – 2830
	Non–domestic development small (eg. lot reconfiguration, subdivision or multi–unit dwelling)	Code assessed $2900 – $4400 Impact assessed $4400 – $6600
	Non domestic development large (eg. multi–unit dwelling, subdivision, other development with new or additional floor area)	Code assessed $4650 (plus per unit) – $17 800 Impact assessed $6500 (plus per unit) – $25 900
	Major projects (minimum) (decisions recommended by relevant committee)	$26 600
	Miscellaneous (eg. structure plan, hydraulic, traffic assessment)	$400 – $12 800
	Operational works (eg. landscape, environmental or tidal management)	$630 – $4300
	Compliance fees (eg. erosion or sediment control, reconfiguration)	$630 – $18 300
	Plan sealing fees (eg. endorsement)	$130 – $1500

(continued next page)

Table 6.2 continued

Jurisdiction	*Estimated development cost/size*	*Maximum fee*
WA	**Development Application Assessment**	
	Not more than $50 000	$132
	Between $50 000 and $500 000	0.3 % of development cost
	Between $500 000 and $2.5 million	$1 500 + 0.24% for every $1 above $500 000
	Between $2.5 million and $5 million	$6 300 + 0.2% per $1 > $2.5m
	Between $5 million and $21.5 million	$11 300 + 0.12% per $1 > $5m
	More than $21.5 million	$31 100
	Land Subdivision	
	Not more than 5 lots	$66 per lot
	> 5 lots but not more than 195 lots	$66/lot for first 5 lots then $33/lot
	More than 195 lots	$6 617
SA[a]	Development Plan Assessment	
	Not more than $10 000	$31.5
	Between $10 000 and $100 000	$86.5
	More than $100 000	0.125% of development cost up to $200 000
	Land Subdivision	
	Number of new allotments equal to or less than existing allotments	$58.5
	Number of new allotments greater than existing allotments	$128 plus $12.10 for each lot up to a maximum of $5832
ACT	**Development Application**	
ACTPLA[b]	$0 – $1500	$91.15
	$1501 – $5000	$147.75 plus .205% of amount > $1500
	$5001 – $20 000	$160.15 plus .211% of amount > $5000
	$20 001 – $100 000	$212.90 plus .211% of amount > $20 000
	$100 001 – $150 000	$510.65 plus .168% of amount > $100 000
	$150 001 – $250 000	$657.65 plus .168% of amount > $150 000
	$250 001 – $500 000	$930.85 plus .168% of amount > $250 000
	$500 001 – $1 000 000	$1 691.75 plus .129% of amount > $500 000
	$1 000 001 – $10 million	$2 881.15 plus .084% of amount > $1 million
	More than $10 million	$16 172.95 plus .056% of amount > $10 m
	Land Subdivision	$1 628 plus $215.7 for each + component/lot
NCA[c]	**Development Approval**	
	$0 – $100, 000	$100 plus $2.00 for each $1000 of estimated cost of works
	$100 001 – $500 000	$300 plus $1.25 for each $1000 by which estimated cost of works exceeds $100 000
	$500 001 – $1 000 000	$800 plus $1.00 for each $1000 by which estimated cost of works exceeds $500 000
	$1 000 001 – $10 million	$1300 plus $0.75 for each $1000 by which estimated cost of works exceeds $1 million
	$10 000 001 – $100 million	$8100 plus $0.50 for each $1000 by which estimated cost of works exceeds $10 million
	More than $100 million	$54 000
	Amendments to previously approved works	25% of the scheduled fee
	Approval of signs	$200 per application
	Approval of temporary works	25% of the scheduled fee
	Advice on preliminary sketch plans	50% of the scheduled fee, as an advance of the total Works Approval fee payable, may be requested at Sketch Plan stage.

Table 6.2 continued

Jurisdiction	*Estimated development cost/size*	*Maximum fee*
NT[d]	**Development Application**	
	Change of use (no physical development)	$145
	Single dwelling on one lot	$145
	Estimated development cost less than $100 000	$145
	Estimated cost of development between $100 000 and $250 000	$435
	Estimated cost of development between $250 000 and $1 million	$630
	Estimated cost of development between $1 million and $10 million	$2 000
	Estimated cost of development between $10 million and $25 million	$5 000
	Estimated cost of development between $25 million and $50 million	$10 000
	Estimated cost of development greater than $50 million	$15 000
	Land Subdivision	$600 + $30 per lot

a SA fees do not include referral or notification fees or open space levy which apply in a small number of cases. **b** Fees shown for ACTPLA applied from 1 August 2009 to 30 June 2010. **c** National Capital Authority fees relate to development proposals on Commonwealth land subject to National Capital Authority oversight . **d** NT fees applied from 1 January 2010. Single dwelling fee only applies if approval required.

*Source*s : Jurisdictional fee regulations and http://www.nt.gov.au/lands/planning/fees/index.shtml#ads.

Stylised examples of development assessment charges

Synthetic comparisons of development assessment costs across jurisdictions reveal considerable variability within and across most development types (tables 6.3 to 6.6). Notably, with fees and charges set by regulation in most jurisdictions (the only exceptions being Queensland and Tasmania), this provides at least the basis for a consistent charging regime across councils in those localities. However, where discretion is allowed (for example, advertising, pre-application meetings or rezonings), differences can be stark.

Residential development

Single residential developments that comply with prescribed standards and do not trigger specified conditions in local planning schemes (such as overlays) are treated fairly consistently across most jurisdictions with this form of development the most amenable to minimal (if any) planning assessment (table 6.3). In that context, single residential dwellings do not require planning approval (a DA or planning permit) in

Victoria, Queensland, Western Australia, the ACT or the Northern Territory and do not attract a planning fee.[5,6]

On the other hand, in NSW council areas where exemptions under the NSW Housing Code were yet to be implemented, development assessment charges were a minimum $1277 in 2009-10 (and even higher if pre-lodgement meetings were held).[7] As mentioned above, anecdotal evidence provided by a number of councils suggests that councils do not fully recover the costs of providing DA services and cross-subsidies from rates revenue are used to make up the shortfall. In addition, there was an indication that funding shortfalls also contributed to under-resourcing of DA processing functions with a consequential impact on approval times (see below).

Variations in the cost of pre-lodgement meetings can add significantly to the upfront cost of an application in NSW (although they aim to lower the delay and other costs associated with incomplete or inadequate development applications). Many NSW councils charge for these meetings (with some costing more than $1000). Again, however, the fees associated with residential planning approvals represent only a small percentage of the construction cost of a dwelling in all jurisdictions.

Retail/commercial developments

Given the much wider range of potential impacts associated with commercial proposals, applications for establishing retail/office facilities cost considerably more than residential proposals (table 6.4). Victoria was the least expensive jurisdiction to apply for planning approval for a mid-size retail establishment of up to 1000 m^2 floor area (suitable for a small grocery store/supermarket or large restaurant) with a fee as low as $815 in 2009-10. Charges were much higher in NSW, Queensland and the ACT with maximum potential fees in excess of $5000. Again, however, charges of this magnitude would still represent a small percentage of total development costs. More significantly, in a retail context, locating suitably priced and zoned land

5 Approvals subject to the residential code in South Australia have minimal fees and assessment requirements but have had a mixed take up to date.

6 Although standard residential dwellings that meet plan requirements do not require a DA, private certification and building approval is still required and means there may not be a net saving in compliance costs to developers.

7 In other council areas, residential dwellings that meet the criteria in the NSW Housing Code still require a complying development certificate (provide by council or a private certifier) the cost of which varies across council areas.

to establish a retail premise would appear to be a much greater hurdle than the cost of obtaining planning approval (chapter 7).

Table 6.3 Residential development assessment (DA) fees

Complying development — scenario: cost $300 000 no referrals/concurrence, no public notification.

Jurisdiction/Charge type	Nature of charges	Total charge ($)
New South Wales[a]		
Pre-DA services, eg meetings	Optional	Council charges vary
Development involving erection of a building	*$1 160 plus $2.34 for each $1 000 above $250 000*	1 277
Total charges		**1 277**
Victoria		
Planning permit application to develop land for single dwelling	No charge	0
Total charges		**0**
Queensland		
Development for house erection/extension	Self assessable	0
Total charges		**0**
Western Australia		
Single dwelling on lot > 350 m2	Approval not required	0
Total charges		**0**
South Australia		
Lodgement	Base fee	50.50
Provisional planning consent for development > $100 000	No fee applicable for complying development	0
Total charges		**50.50**
Tasmania - Hobart		
Pre-DA services, eg meetings	Meetings subsequent to first charged at $50 (>1/2hr)	0
Application fee for development up to and including $500,000	$1 for every $1000 of development cost	300
Total charges		**300**
ACT		
Single dwelling on one lot	Approval not required	0
Total charges		**0**
Northern Territory		
Pre-DA services, eg meetings	No charge	0
Single dwelling on one lot	Approval not required	0
Total charges		**0**

[a] In council areas where exemptions under the NSW Housing Code were yet to be implemented.

Sources: Jurisdictional fee regulations, council fees and charges schedules.

Table 6.4 Retail development assessment fees and charges

Complying development – scenario: 1000m2 gross floor area (GFA) cost $1 million (subject to 3 referrals agencies, public notification and newspaper advertising)

Jurisdiction/Charge type	Nature of charges	Total charge ($)
New South Wales		
Pre-DA services, eg meetings	Optional. Council charges vary	Range from 0 to 1 678
DA for building/other works between $500 000 – $1 million	1 745 plus 1.64 for each $1 000 over $500 000	2 565
Referral processing	$110 (max)	110
Referral fee per approval body	$250 (max)	750
Public notification fee	DA notification	110
Advertising	Fixed fee	830
Total charges		**Min. 4 365 - Max. 6 043**
Victoria		
Pre–DA services, eg meetings	Optional. Charged in 2 councils	Range from 0 to 220
Application to develop land cost $0.5m – $1m (class 8)	Fixed amount	815
Referral/concurrence fee	No charge	0
Public notification	Council charges vary	
Total charges		**Min. 815 - Max. 1 035**
Queensland – Brisbane CC		
Pre–DA services, eg meetings	Optional. Basic pre–lodgement.	Range from 0 to 980
Code Assessed non–domestic development <= 1000m2 GFA[a]	Fixed charge	2900
Referral fee	No charge	0
Public notification	Developer responsibility	
Total charges		**Min. 2 900 - Max. 5 380**
Queensland – Gold Coast		
Pre–DA services, eg meetings	No fee	0
Code Assessed shop > 200m2 GFA	$5278 plus $1.7 per m2 above 200m2	6558
Referral fee	No charge	0
Public notification	Developer responsibility	
Total charges		**6 558**
Queensland – Sunshine Coast[b]		
Pre–DA services, eg meetings	Optional, Fixed charge	Range from 0 to 710
Code Assessed shop	$3580 plus $4.2 per m2 above 100m2 or $11 888 plus $198 per 10m2 above 600m2	Range from 7 360 to 19 808
Compliance certificate	Voluntary. Fixed charge	Range from 0 to 637
Referral fee	No charge	0
Public notification	Developer responsibility	
Total charges		**Min 7 360 - Max 21 155**
Western Australia		
Pre-DA services, eg meetings	Informal	0
Development application cost > $500 000 and < $2.5 million	$1 500 plus 0.24% of cost in excess of $500 000	2 700
Public notification		Varies by council
Total charges		**2 700**

(continued next page)

Table 6.4 continued

Jurisdiction/Charge type	Nature of charges	Total charge ($)
South Australia[c]		
Lodgement	Base fee	50.50
Development Plan assessment	0.125% of development cost	1250
Referral administration	103 (fixed)	103
Referral fee per approval body	300 (fixed)	900
Advertising	Not applicable	
Total charges		**2 390**
Tasmania– Hobart		
Pre-DA services, eg meetings	Meetings subsequent to first charged at $50 (>1/2hr)	Range from 0 to 50
Planning permit application fee for development > $500,000	$500 plus $0.50 for every $1 000 of development cost >$500 000	750
Referral fee per approval body	$50 per referral agency.	150
Public notification	Fixed charge.	220
Total charges		**Min. 1 170 - Max. 1 220**
ACT [d]		
Pre-DA services, eg meetings	Optional. No charge unless advice provided in writing.	Range from 0 to 931.5
Application for development with cost $1 million – $10 million	$2 881.15 plus 0.084 per cent for amount > $1 million	2 881.15
Impact assessment for development where existing use right available	Base fee	2 156.95
Referral fee per approval body	No charge	
Public notification	Major notification	895.20
Total charges		**Min. 5 933.3 - Max. 6 864.8**
Northern Territory[e]		
Pre-DA services, eg meetings	No charge	0
Application for development with cost $250 000 – $1 million	Fixed charge	630
Referral fee per approval body	No charge	
Public notification	No charge	
Total charges		**870**

a A discount of 30% of the standard relevant assessment fees applies to development applications lodged by a BCC RiskSmart DA accredited consultant if the application meets all the requirements necessary to be lodged as a BCC RiskSmart DA application. **b** Sunshine Coast Regional Council was established following the amalgamation of Maroochy Shire, Caloundra City and Noosa Shire councils in March 2008. Three separate fee schedules applied during the benchmarking period. The fees shown in the table reflect the lowest and highest fees charged across the three councils in 2009-10. Single charging regime introduced in 2009-10 with charges for a code assessed shop meeting the scenario of $14 397. **c** Fees do not include Construction Industry Training Levy at 0.25% of construction cost. **d** Fees shown for the ACT applied from 1 August 2009 to 30 June 2010. **e** Charges effective from 1 January 2010.

Sources: Jurisdictional fee regulations, council fees and charges schedules.

Table 6.5 Industrial development assessment fees and charges

Code-assessed development - scenario: construction cost of $800 000 (subject to 3 referrals agencies, public notification and newspaper advertising)

Jurisdiction/Charge type	Nature of charges	Total charge ($)
New South Wales		
Pre-DA services, eg meetings	Optional. Council charges vary	Range from 0 to 1 678
DA for building/other works between $500 000 - $1 million	1 745+1.64 for each $1 000 over $500 000	2 237
Referral processing	$110 (max)	110
Referral fee per approval body	$250 (max)	750
Public notification fee	DA notification	110
Public notification	Advertised development	830
Total charges		**Min. 4 037 - Max. 5 715**
Victoria		
Pre-DA services, eg meetings	Optional. Charged in 2 councils	Range from 0 to $220
Application to develop land with estimated cost between $500 000 and $1 million (class 8)	Fixed amount	815
Referral processing	No charge	0
Public notification	Council charges vary	
Total charges		**Min. 815 - Max. 1 035**
Queensland – Brisbane CC		
Pre-DA services, eg meetings	Optional. Basic pre-lodgement.	Range from 0 to 980
Code Assessed development 1001m2 - 2000m2 GFA[a]	Fixed charge	4 400
Compliance certificate	Voluntary. Category 3 land use	Range from 0 to 1 200
Referral/concurrence fee	No charge	0
Public notification	Developer responsibility	
Total charges		**Min. 4 400 - Max. 6 580**
Queensland – Gold Coast		
Pre-DA services, eg meetings	No fee	0
Impact assessed warehouse more than 500m2 GFA	Fixed charge	4 107
Compliance certificate	Not applicable	
Referral/concurrence fee	No charge	0
Public notification	Developer responsibility	
Total charges		**4 107**
Queensland – Sunshine Coast[b]		
Pre-DA services, eg meetings	Optional, Fixed charge	Range from 0 to 710
Code assessed warehouse	$3 580 plus $4.2 per m2 above 100m2 (assumed 1000m2) or $2 919 plus $6 per m2 above 100m2 (assumed 100m2)	Range from $7 360 to 8 319
Compliance certificate	Voluntary. Fixed charge	Range from 0 to 637
Referral/concurrence fee	No charge	0
Public notification	Developer responsibility	
Total charges		**Min 7 360 - Max 9 666**

(continued next page)

Table 6.5 continued

Jurisdiction/Charge type	Nature of charges	Total charge ($)
Western Australia		
Pre-DA services, eg meetings	Informal	
Development application cost > $500 000 and < $2.5 million	$1 500 plus 0.24% of cost in excess of $500 000	2 220
Public notification		Varies by council
Total charges		**2 220**
South Australia[c]		
Lodgement	Base fee	50.50
Development Plan assessment	0.125% of development cost	1 000
Referral administration	Fixed charge $103	103
Referral fee per approval body	Fixed charge $300	900
Public notification	86.50 (fixed)	86.50
Public notification	Not applicable	
Total charges		**2 140**
Tasmania- Hobart		
Pre-DA services, eg meetings	Meetings subsequent to first charged at $50 (>1/2hr)	Range from 0 to 50
Planning permit where development cost >$500 000	$500 plus $0.5 for every $1000 of development cost above $500 000	650
Referral fee per approval body	$50 per referral agency.	150
Public notification	Fixed charge	220
Total charges		**Min. 1020 - Max. 1070**
ACT [d]		
Pre-DA services, eg meetings	Optional. No charge unless advice provided in writing.	Range from 0 to 931.50
Application for development with cost $500 000 - $1 million	$1 691.75 plus 0.129 per cent for amount > $500 000	2 078.75
Impact assessment for development where existing use right available	Base fee	2 156.95
Referral fee per approval body	No charge	
Public notification	Major notification	895.20
Total charges		**Min. 5 130.9 - Max. 6062.4**
Northern Territory[e]		
Pre-DA services, eg meetings	No charge	0
Application for development with cost $250 000 - $1 million	Fixed charge	630
Referral fee per approval body	No charge	
Public notification	Fixed charge	240
Total charges		**870**

[a] A discount of 30% of the standard relevant assessment fees applies to development applications lodged by a BCC RiskSmart DA accredited consultant if the application meets all the requirements necessary to be lodged as a BCC RiskSmart DA application. [b] Sunshine Coast Regional Council was established following the amalgamation of Maroochy Shire, Caloundra City and Noosa Shire councils in March 2008. Three separate fee schedules applied during the benchmarking period. The fees shown in the table reflect the lowest and highest fees charged across the three councils in 2009-10. Single charging regime introduced in 2009-10 with charges for a code assessed shop meeting the scenario of $6635. [c] Fees do not include Construction Industry Training Levy at 0.25% of construction cost. [d] Fees shown for the ACT applied from 1 August 2009 to 30 June 2010. [e] Charges effective from 1 January 2010.

Sources: Jurisdictional fee regulations, council fees and charges schedules.

Industrial developments

Non-residential developments are treated in the same way for application purposes across most jurisdictions with charges varying according to either the gross floor area or the development cost of a proposal (table 6.5). Accordingly, retail/commercial and industrial approval charges for the same size/development cost proposal are the same in most jurisdictions. Queensland is the most expensive location to seek planning approval for an industrial development with charges in excess of $8 000 in some council areas. Victoria was again the least expensive locality with a maximum charge of $1035.

Residential land subdivision

Subdivision application charges are generally cheaper than proposals involving some form of construction (table 6.6). The one jurisdictional exception is Queensland where a 20 lot sub-division requires impact assessment with a minimum associated fee of around $10 500. The ACT imposes the second highest charge while the lowest cost jurisdiction is Tasmania (Hobart) where the charge was $700 at most in 2009-10.

Table 6.6 **Residential land subdivision development assessment fees and charges**

Merit/impact assessed subdivisions - scenario: twenty lot, no construction cost, not subject to referrals, subject to public notification requirements

Jurisdiction/Charge type	Nature of charges	Total charge ($)
New South Wales		
Pre-DA services, eg meetings	Optional. Council charges vary	Range from 0 to 1 678
Subdivision involving road opening/not involving road opening/strata	$250 plus $40 per additional lot/ $500 plus $50 per additional lot/ $250 plus $50 per additional lot	Range from 1010 to 1 450
Land subdivision	Certificate	100 per lot
	Application fee plus per lot fee. Council charges vary.	
Public notification	Advertised development	830
Total charges		**Min. 3 435 - Max. 5 553**
Victoria		
Pre-DA services, eg meetings	Optional. Charged in 2 councils	Range from 0 to $220
Subdivide land into 3 or more lots	Fixed amount	781
Land subdivision certificate	Application fee of $100 plus $20 per lot created.	500
Public notification		Varies by council
Total charges		**Min. 1 281 - Max. 1 501**

(continued next page)

Table 6.6 continued

Jurisdiction/Charge type	Nature of charges	Total charge ($)
Queensland – Brisbane CC		
Pre-DA services, eg meetings	Optional. Basic pre-lodgement.	980
Impact assessed lot reconfiguration with > 10 lots created for > 10 dwelling unitsa	$6500 plus $260 per dwelling unit	9100
Plan sealing fee	$1350 for 4 dwelling units plus $270 for each additional unit	5670
Public notification		Varies by council
Total charges		**Min. 15 750 – Max. 15 750**
Queensland – Gold Coast		
Pre-DA services, eg meetings	No fee	0
Freehold subdivision	$672 per lot	13 440
Public notification		Varies by council
Total charges		**Min. 13 440 – Max. 13 440**
Queensland – Sunshine Coast		
Pre-DA services, eg meetings	Optional, Fixed charge	Range from 0 to 710
Impact assessed lot reconfiguration of more than 10 but less than 25 lots	$5 058 base charge plus $277 per lot	10 598
Public notification		Varies by council
Total charges		**Min. 10 598 – Max. 11 308**
Western Australia		
Pre-DA services, eg meetings	Informal	
Development application for freehold or survey strata sub-division from 2 lots – 100 lots	$1 446 plus $33 per lot	2 106
Subdivision clearance from 5 -195 lots	$66 per lot for first 5 lots plus $33 per subsequent lot	825
Referral fee per approval body	Varies by council	
Public notification	Varies by council	
Total charges		**2 931**
South Australia[b]		
Lodgement	Base fee	50.50
Additional Land Division lodgement fee	Fixed charge	119
Land Division fee	$128 plus $12.50 for each additional allotment	357.90
Statement of Requirements fee	Fixed charge	338
Certificate of Approval fee	Fixed charge	281
Development Assessment Commission consultation fee	Fixed charge	168
Public notification		Varies by council
Total charges		**1 314**

(continued next page)

Table 6.6 continued

Jurisdiction/Charge type	Nature of charges	Total charge ($)
Tasmania- Hobart		
Pre-DA services, eg meetings	Meetings subsequent to first charged at $50 (>1/2hr)	Range from 0 to 50
Subdivision proposal for up to 30 lots	$500 plus $0.50 for every $1000 of development cost >$500 000	650
Public notification	Varies by council	
Total charges		**Min. 650 - Max. 700**
ACT[c]		
Pre-DA services, eg meetings	Optional. No charge unless advice provided in writing.	Range from 0 to 931.50
Subdivision	$1 628.6 plus $215.7 for each additional lot/component	5 726.90
Public notification	Major notification	895.20
Total charges		**Min. 6 622.10 - Max. 7 553.60**
Northern Territory[d]		
Pre-DA services, eg meetings	No charge	0
Subdivision	$600 plus $30 per lot	1 200
Public notification	Advertising	240
Total charges		**1 440**

a A discount of 30% of the standard relevant assessment fees applies to development applications lodged by a BCC RiskSmart DA accredited consultant if the application meets all the requirements necessary to be lodged as a BCC RiskSmart DA application. **b** Fees do not include open space levy (applicable if open space is not provided by the developer) of $5627 per lot which the Commission has treated as a form of infrastructure charge (see chapter 5). **c** Fees shown for the ACT applied from 1 August 2009 to 30 June 2010. **d** Charges effective from 1 January 2010.

Sources: Jurisdictional fee regulations, council fees and charges schedules.

Planning scheme amendments or rezonings

Fees for amending planning schemes (also referred to as rezonings or material change of use in Queensland) are applicable in most jurisdictions where the amendments are initiated at the request of an applicant (table 6.7). They are unrelated to the size of potential developments. Most jurisdictions legislate prescribed fees for rezonings. The ACT had the highest prescribed fees for a scheme amendment in 2009-10 at just under $4000.[8] Fees for similar processes in the Northern Territory and Victoria were somewhat less at about $3000 per application. However, anecdotal evidence indicates that, in NSW — where councils are able to set their own fees — the cost of applying for a rezoning is much higher than any other jurisdiction. Examples provided to the Commission ranged from $20

8 ACTPLA noted that this fee was a relatively small cost compared to the potential benefits to developers from a rezoning and that the fee represents a fraction of the actual cost of preparing and processing a Draft Variation of the Territory Plan.

000 for a minor amendment to a local environmental plan (LEP) to $85 000 for a major amendment to an LEP.

Table 6.7 **Planning scheme amendment/rezoning fees by jurisdiction**

Jurisdiction/charge type	Nature of charges	Total charge ($)
New South Wales		
Minor application to amend LEP		Varies by council
Minor application to amend LEP		Varies by council
Notification fee		Varies by council
Advertising fee		Varies by council
Total charges		
Victoria		
Request to amend planning scheme		798
Considering or making submissions		798
Adopting amendment		524
Ministerial approval		798
Total		**2 918**
Queensland - Brisbane City Council		
Preliminary approval	80% of development application fee	
Total charges		
Queensland - Gold Coast City Council		
Preliminary approval to override the planning scheme - material change of use (MCU) assessment combined with reconfiguration of lots (ROL)	100% of current MCU impact assessment fee plus $1 428/lot for ROL (<4 ha) or 100% of current impact assessment fee $9 031 plus $904/ha for ROL (>4ha)	
Total charges		
Queensland - Sunshine Coast Regional Council		
Planning scheme amendment	Administration charge	501
Preliminary approval	Either 100% or 125% of MCU assessment fee for applicable uses or types of development (including ROL) as for a development permit	
Total charges		
Western Australia		
Fee based on salary costs, direct costs, specialist report costs and documentation costs.		Depends on time taken for assessment, number of reports, etc
Total charges		
South Australia		
Request to amend development plan		Amount agreed between developers and councils.
Total charges		
Tasmania - Hobart City Council		
	Application fee with $600 refunded if application refused.	1 100
Total charges		**1 100**

(continued next page)

Table 6.7 continued

Jurisdiction/charge type	Nature of charges	Total charge ($)
ACT		
ACTPLA		
Territory Plan variation and planning studies	Initial study	1 324
	Final charge (pre notification)	2 648
Total charges		**3 972**
National Capital Authority		
Amendments to the National Capital Plan		
Total charges		
Northern Territory		
Application		2 200
Public notification	Advertised at least twice (at $240) subject to Ministerial consideration	480
Total charges		**2 680**

Sources: Jurisdictional fee regulations, council fees and charges schedules and http://www.nt.gov.au/lands/planning/fees/index.shtml.

DA preparation — in-house staff costs and associated studies

While the direct costs of government fees and charges are relatively accessible for benchmarking, many development applications also involve considerable in-house staff costs, an extensive range of impact and consulting studies as well as complying with specific submission standards.

While the cumulative costs of in-house staffing and consultancies for supporting studies may account for a small share of total development costs, they are still financially meaningful (and only the direct costs are easily measurable).

Woolworths compared the increasing burden of some of these requirements to the issue of greatest concern — infrastructure charges:

> Another growing, albeit less immediately critical [than infrastructure charges], area of cost concern for Woolworths is the increasing volume and complexity of supporting evidence, material and studies required to support development and re-zoning approval applications. (sub. 65, p. 10)

There is a range of potential studies that can be required for development approvals (to meet both council and/or referral agency requirements), although any one development application would only face a subset of these requirements. A full comparison of costs across jurisdictions is not available since these costs are generally charged within the private sector. See chapter 10 for details of matters that require referrals across the jurisdictions.

While one greenfield land development example brought to the Commission's attention involved close to $1.9 million in associated studies alone (across a range of construction, environmental and risk management issues), more typically, in the Commission's survey of developers, the cost of requisite planning studies for greenfield land development ranged between $20 000 and $55 000 depending on the location and the nature of the project. Retail developments involved much higher costs ranging up to $240 000 in some NSW locations and averaging $83 250 across 16 different developments.

Commenting specifically on avenues to streamline approval processes, the Australian Association of Convenience Stores suggested the provision of detailed reports relating to matters such as management, security, waste and acoustic issues should be required following the granting of consent (which is the case in Victoria):

> The information required to be lodged with development applications prior to and throughout the development application process is too onerous, complex and varies between each Council and each State. In this regard, the application process should be amended to require matters that are not critical to the assessment of the appropriateness of the development proposal to be prepared after the consent is granted.
>
> By streamlining application processes, upfront costs and resources associated with the preparation of certain documentation would be deferred until there is certainty that development consent is to be issued, resulting in economic savings for both proponents and Councils alike. (sub. 63, p. 5)

Heine Architects Pty Ltd (NSW) was more specific and listed a range of requirements (including waste, site, stormwater sediment management plans, shadow diagrams and geotechnical reports) that were either not needed at DA stage or unnecessary given the nature of the development (see sub. 66, p. 1).

6.4 Planning approval times

Complaints regarding delays in obtaining planning approval (both amendments to planning schemes/rezonings and development consent) have been a recurring theme among developer interests in this study. Planning approval delays can lead to significant costs for business including increases in land holding costs, lost revenue, interest costs, higher input costs (on materials and labour) and contractual penalties for exceeding agreed delivery times (PCA 2010). In some cases, the likelihood of delays may even prevent certain projects from proceeding in some locations.

Average approval times are, in fact influenced by a range of factors including the:

- nature of the planning scheme
- complexity of the proposal

- mix of development types
- quality of the development applications (and the associated need for additional information to be provided by proponents)
- requirements for government agencies to scrutinise and provide feedback on the impacts of a development project
- public consultation requirements
- appeal rights, and
- the efficiency of development assessment staff (which in turn depends on resourcing levels within consent authorities).

Brisbane City Council noted that specific factors causing delays also made comparisons of approval times across jurisdictions problematic:

> The primary difficulty to making valid comparisons between jurisdictions is the variability in planning schemes. The key indicators are typically number of applications and decision time. For example, a jurisdiction that has worked hard to simplify regulation and deregulate development activity, would report higher decision making times and fewer DAs assessed due to an increased level of complexity. Accessibility to greenfield sites, the age and availability of major infrastructure can also determine how quickly a development application can be assessed. A study which identifies all of the types of potential development and how each jurisdiction regulates these would be useful to provide a real benchmark of the burden of compliance in each jurisdiction. (sub. 18, pp. 2-3)

Delays associated with obtaining either approval or feedback from a broad range of external agencies can also add significantly to the times involved in determining development applications.

Some developer interests focused on perceived problems with the referral processes. The Urban Development Institute of Australia said:

> There are benchmarked assessment timeframe targets that apply at a local government level, yet are not enforced on state government agencies. This is where a significant degree of process friction is generated in the development process and is amplified by the fact that a number of the agencies interact with the planning process on a single issues basis, rather than holistically. In this regard, applications are often stalled in the system as issues that are ancillary to the overall consideration of a proposal are addressed in great detail, pursuant to the request of a Government agency or department that is not responsible for the ultimate assessment determination of a project. (sub. 53, p. 5)
>
> Consent authorities, on the other hand, commonly pointed to the inadequate and incomplete information provided by proponents (which requires requests for further

information) in development applications as the main source of delay in determining development proposals.[9]

Indeed, anecdotal evidence suggests that low value development applications can take just as long to process (because they are incomplete and/or of poor quality) as complex DAs (which are properly completed).

In this regard, the value of pre-application meetings was highlighted by a Victorian council:

> Pre-lodgement meetings … can lead to a quality application which reduces the amount of handling by Council (eg. chasing up more information etc), and enables a more informed decision. … applicants with larger projects would be prepared to pay for a pre-lodgement meeting. Possibly smaller projects (small residential extensions, "mums and dads") would be discouraged from a pre-lodgement meeting due to the fee. However, it is these simpler applications that can clog up a planning office and drain resources, so they need to be targeted for quality improvement. Perhaps a meeting charge based on cost of project could work. (Glen Eira Council pers. communication)

And the Council of Capital City Lord Mayors made a similar point:

> It must be acknowledged that considerable delays in processing times can and do occur, because of the failure of developers, landowners and applicants to submit the required documentation at time of lodgement and during processing of development applications. Therefore the more pre-application assistance that can be provided the greater scope there is that the applicant does not have to provide additional information to allow the application to be assessed. (sub. 31, p. 20)

In broad recognition of the ongoing need to improve development assessment (DA) processes, the Local Government and Planning Ministers' Council (LGPMC) has been progressing reform proposals in areas including electronic DA processing (including lodgement, referral, request for information, determination and tracking), use of code-based assessment systems and national performance monitoring.

The Tasmanian Conservation Trust commented specifically on the cost efficiencies available from one of those initiatives — electronic DA processing:

> Current estimates indicate that cost savings of the order of $3000 - $5000 can be achieved in the preparation and submission of applications for single dwellings by using standard codes (e.g the NSW Complying Development Code or the requirements of Part 4 of the Victorian Building Regulations with an electronic application and assessment system. (sub. 49, p. 14)

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[9] Of interest, the submission by Brisbane City Council noted that legislative requirements of a properly made application prescribed in the Sustainable Planning Act 2009 meant that '… Council had not been able to accept applications for assessment that would otherwise be acceptable (adding to compliance costs).' (sub. 18, p. 2)

In light of this background, comparisons of rezoning and development proposal determination times reveal some interesting insights. Timelines involved in rezoning/amending planning schemes (where this is required) dominate overall time to obtain planning approval (see chapter 4). Typically, while rezonings or planning scheme amendments are initiated by councils (including via submissions by developers), they are only approved by the relevant Minister in each jurisdiction.

Commenting on the duration of planning scheme amendments in Victoria, the Business Council of Australia (sub. 38, p. 4) cited an estimate by the Municipal Association of Victoria that [less complex] amendments generally took around 50 weeks from receipt to finalisation before adding:

> Complex amendments, amendments requiring environmental assessment or amendments requiring a panel exceed those general time frames. One of the greatest frustrations for business is that the actual time taken to resolve planning and zoning matters generally exceeds published guidance on expected timeframes and there is limited accountability for delays. For companies operating across a number of jurisdictions, this creates considerable uncertainty and regulatory risk. (sub. 38, p. 4)

The Western Australian Local Government Association noted the particular challenges caused by rapid economic growth noting the duration of statutory public advertising periods (currently 3 months for amendments to regional schemes) had been a relevant factor contributing to delays:

> Timeliness in land rezoning is always an issue in Western Australia. The State's economy has experienced unprecedented growth and the speed to market for land subdivision is lagging behind supply. As such the timely delivery of rezoning is imperative in speeding up the land delivery process. Hence the simplification of process and the provision of clarity and transparency are imperative. The need for local authorities to have relevant and up to date planning schemes, which facilitate current demand, is also imperative. (sub. 41, p.21)

Development application approval times

While development application approval times vary significantly from one jurisdiction to the next, comparisons need to be treated with considerable care. As well as variations in the composition of development types being assessed, and the efficiency of consent authority processes and resources devoted to them, underlying differences in the nature of jurisdictional DA systems can have material impacts on recorded approval times. For example, where consent is required for even minor works (such as a minor residential alteration), average processing times will be lower than in jurisdictions which exempt low impact developments and only require the assessment of more complex (higher impact) development proposals which take longer to scrutinise.

Table 6.8 Development application approval times by development type and jurisdiction : 2009-10[10]

Average gross days to determination (median days in brackets where available)

Jurisdiction	*Single Dwelling Residential*	*Multi-Unit Residential*	*Retail Commercial Office*	*Industrial*	*Subdivision*	*Other*	*All development types* [i]
NSW[a]	64 (45)	167 (112)	68 (45)	122 (74)	117 (67)	64 (42)	69 (46)
Vic[b]	127 (92)	186 (149)	125 (83)	115 (72)	110 (70)	142 (93)	124 (96)
Qld[c]	na	na	na	na	na	na	96
WA[d]	na		na	na	na	na	31
SA[e]	18		45	19	na	23	23
Tas[f]	na	na	na	na	na	na	35
ACT[g]	na	na	na	na	na	na	34
NT[h]	52	54	62	58	54	64	56

[a] Figures refer to DA times only and do not include Complying Development Certificates which have much shorter approval times. Data includes appeal times from a small number of councils. Final column is the weighted combination of component development types. [b] The Victorian Department of Planning and Community Development commented that median approval times were a more accurate representation of Victorian processing times because of the effect of outliers on average approval times. Examples of outlier were older completed applications being included in databases when updating computer systems by some councils and the incorporation of lengthy VCAT processing times in approval times by some councils. [c] The Queensland average of 96 days relates to 11 of the 13 councils in the benchmarking study. [d] Total approval time based on 8 council survey responses. [e] Component approval times based on 6 council survey responses and total approval time based on 9 council responses. [f] Total approval time based on 5 council survey responses. [g] ACTPLA does not collect DA data by use, rather the data is collected on either a merit or impact assessment track basis. The duration of appeals is not included in the approval times shown for the ACT. [h] The duration of appeals is not included in the approval times shown for the NT. [i] This is the weighted average of the individual development type components.

Source: State/Territory planning agencies, PC local council survey (2010, unpublished), PC estimates.

Among those jurisdictions where approvals data was *fully enumerated* for the reference period, the ACT had the fastest development assessment system at an average of 34 days (table 6.8).[11]

Factors contributing to the ACT's performance

Notable features of the ACT system are the adoption, in large part, of the Development Assessment Forum (DAF) leading practice model which includes

[10] In mid-February 2011, a paper entitled *First National Report on Development Assessment 2008/09* was released under the auspices of the LGPMC. It contains average and median approval times by jurisdiction for the year prior to those in table 6.8. The results are similar for most jurisdictions with the exception of Queensland and Western Australia for which considerably longer times were recorded in 2008-09. Those results were also heavily qualified by warnings of difficulties of making inter-jurisdictional comparisons.

[11] ACTPLA noted that approval times would have been even lower had standard residential development not been exempt from planning approval and if the National Capital Authority's Works Approval is taken into account due to the nature of applications and less onerous processes required under the National Capital Plan (especially for public consultation).

electronic DA processing and a track-based assessment system that streams proposals into one of four different categories depending on complexity — exempt, code, merit and impact (see chapter 3). In 2009-10, around 50 per cent of all development applications in the ACT were lodged electronically.

Another notable aspect is the escalating penalty associated with incomplete DA applications (providing an incentive for applicants to submit all necessary information at the outset). The cost of incomplete applications is $1200 for the third and subsequent failure notices.[12] While other jurisdictions have introduced fees for the resubmission of applications, the extent to which these fees are enforced is unclear. In a related context, around 22 per cent of DA proponents made use of pre-application meetings (which were provided free of charge unless written advice was requested) in 2009-10.

Victoria

At the other end of the spectrum, Victoria's planning permit processing time was longer than any other jurisdiction at an average 124 days in 2009-10 (a surprising result in light of the feedback from a number of participants to this study).[13] Contributing to that timeframe, around 40 per cent of applications involved further information requests, 27 per cent required referral to external agencies (a much higher proportion than other jurisdictions) and 20 per cent had objections lodged. Surprisingly, pre-application meetings (used in 19 per cent of applications) did not lessen the likelihood of a further information request[14]

Another reason for what appears to be comparatively longer approval times in Victoria is the inclusion of (sometimes lengthy) appeals processes by a number of councils in the recorded planning permit determination times.[15] For that reason, Victoria's median permit processing time of 96 days may be a better indicator of

12 According to ACTPLA, most applications fail because basic information necessary for assessment was either not supplied or insufficient to enable assessment. This information included issues with site plans, floor plans and/or elevations (plans not to scale and not identifying setbacks and dimensions etc); incorrectly filled forms; statements against criteria not being supplied or lacking detail; and missing survey certificates.

13 One example is provided by the Australian Association of Convenience Stores (sub. 63, p. 5) which commented that the Victorian approach to requiring detailed application documentation only after consent had been granted served to expedite approval outcomes.

14 Indeed, there was a weak negative relationship between pre-application meetings and further information requests (correlation coefficient of -0.17).

15 There were approximately 360 applications where lengthy VCAT processing time was included in council data. Some examples include an application lasting 978 days, of which 808 which were VCAT processing days. Another application involved 1422 days with VCAT responsible for 866 of those days.

performance than the average figure. Significantly, the 20 Victorian councils with the highest appeal rates had an average 11 per cent of permit determinations appealed to the Victorian Civil and Administrative Authority in 2009-10 (see below).[16]

New South Wales

Development assessment timeframes in New South Wales (the target of considerable criticism during the course of this study) were not unusually long with retail/commercial/office developments in particular facing among the shortest approval delays of any jurisdiction in 2009-10.[17,18] This result was also notable given average workloads across the state with a DA to staff ratio of around 66 in 2009-10.[19] However, the approval times reported for NSW include assessments of standard residential developments which are exempt developments in most other jurisdictions and which typically involve much shorter assessment timeframes. In fact, 89 per cent of single dwelling approvals went through normal council assessment procedures in NSW in 2009-10.[20] Also, contributing to its performance, just 7 per cent of development applications were referred to external agencies in

16 The Victorian Department of Planning and Community Development noted that third party appeal rights is a highly valued aspect of the Victorian planning system and results in improved outcomes.

17 NSW Planning noted that assessment times should improve and decisions made more consistent with the influence of Joint Regional Planning Panels (JRPPs) established from 1 July 2009 and which determine all DAs between $10 million and $100 million (excluding City of Sydney Council area) and certain other developments over $5 million. By way of example, the JRPPs' average determination time in 2009-10 was 166 days which compares with the State-wide council average in 2008-09 of 249 days for all DAs over $5 million and 324 days for DAs over $20 million.

18 NSW Planning mentioned that there are efforts to streamline and benchmark assessments (both internally within the Department and externally with JRPPs) which will be supported through proposed reforms to the Environmental Planning and Assessment Regulations. The Department is also monitoring the performance of referral agencies and this should identify areas where the Department should drive improvements in consultation with NSW agencies and Councils.

19 However, DA assessment staff were not a reliable predictor of approval times across NSW councils. In fact, there was a negative correlation (-0.48) between the number of DA staff and approval times.

20 The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (the 'Codes SEPP') commenced on 27 February 2009 with a transitional period (extended) to 31 December 2010. The Codes SEPP gives legal effect to a series of State-wide exempt and complying codes for certain types of development (residential and non-residential). NSW Planning noted that the Codes significantly reduce holding costs by making many types of development exempt from assessment or by allowing 10 day assessment for complying development.

NSW in 2009-10 (compared with 27 per cent in Victoria) with 90 per cent of these applications processed in less than 40 days.[21]

Significantly, there were just 235 Class 1 appeals (merit based) to the Land and Environment Court in 2009-10 (representing just 0.5 per cent of all development determinations). In line with the Victorian experience, further information requests were issued for 37 per cent of applications in 2009-10. But surprisingly, just 4 per cent of the applications determined by councils involved a pre-application meeting.[22]

Northern Territory

The Northern Territory, which also tracks development applications into streams closely aligned with the DAF model and where many minor works are exempt from planning approval or are self assessable, recorded average determination times at 56 days across all land use categories. Notably, the Northern Territory had the highest proportion of DA applicants using a pre-application meeting (at 50 per cent) in 2009-10. Limited third party appeal rights saw just seven (or less than 1 per cent of) consent authority determinations lodged with the Lands, Planning and Mining Tribunal in 2009-10 (which would have added less than a day to the average approval time shown above).

Queensland

Queensland recorded the second highest average approval time (96 days) of any jurisdiction in 2009-10. The Queensland Department of Planning and Infrastructure commented that as average approval times for a development application exclude certain types of development, the average calculation for Queensland is unlike the average for other states.[23] If all development was included in the calculation of the average approval time for a development application, Queensland's average would be less than the 96 days, reported the Department. That said, the Queensland result appears to be a substantial improvement on the state-wide 185 day average reported for 2008-09 (LGPMC 2011). While the reasons for this change are unclear, one Queensland council provided an insight into the reasons behind its own significant performance improvement during 2009-10 (table 6.9).

21 In the six months to 31 December 2009, 9,125 development applications were processed by State referral and concurrence agencies, with an average net processing time (excluding time waiting for further information from applicants) of 14.15 days.

22 This question was answered by 20 of the 53 councils in the sample. Those 20 councils accounted for 30 per cent of the DAs determined by the total sample in 2009-10.

23 As stated earlier, differences in the composition of development types will affect all measures of approval times, so other jurisdictions could make a similar claim.

Table 6.9 **Logan City Council Development Assessment Activity: 2009-10**

	Integrated Planning Act		*Sustainable Planning Act*	
Development type	*Number of DAs*	*Average approval time (days)*	*Number of DAs*	*Average approval time (days)*
Residential	593	128	361	19
Commercial/business	70	233	18	27
Industrial	36	214	10	40
Other	332	65	140	19
Total	1 031	118	529	20

Source: Logan City Council survey return, PC estimates.

Logan City Council said:

> Improvements in timeframes is attributed to Council resolutions and directives from the executive leadership team including:
>
> - increased statistical reporting
> - streamlined business and system processes
> - greater use of development permit conditions
> - internal file audits undertaken to identify business improvement opportunities
> - establishment of an internal referral agreement to address matters such as timelines, status of advice and accountability for decisions/conditions issued for approvals
> - implementation of Brisbane City Council RiskSmart model
> - implementation of ABC costing
> - review of the DA Branch to align the branch structure with the Corporate Plan, Branch vision and business improvement initiatives.

Other jurisdictions

Results for the remaining jurisdictions need to be treated carefully given the small number of councils that provided data on approval times. That said, the comparatively low result in South Australia is likely to reflect the wider scope (lesser use of exempt and complying development tracks) of developments requiring development consent in that State and possibly also the stricter limits on third party appeal rights.

Appeals

As mentioned above, appeals of development proposal decisions either by unsuccessful applicants or third parties add to the delays involved with planning

approvals. But while appeal rights may extend approval times they also play an important balancing role between the interests of developers and those of the community more broadly. Access to rights of appeal was a key theme for many local council and community groups in the course of this study. The Australian Local Government Association, echoing the views of others, stated:

> There is a considerable tension between disallowing third party appeals and ensuring an open and transparent opportunity for the community to have its say on the planning process. (sub. 33, p. 10)

In a related context, the Organisation Sunshine Coast Association of Residents commented on the relative financial strength of developers and the impact this had on planning schemes:

> A large number of developers have considerable financial resources to contest a council's decision to refuse a development application. Many councils cannot afford to effectively defend their decisions against these well-funded developers and will thus make concessions during pre-trial negotiations that ultimately weaken their planning schemes. (sub. 21, p. 6)

As discussed in chapter 3, there are notable differences in approaches to appeal rights across jurisdictions. In particular, Victoria stands out in terms of providing any objector with the right to lodge an appeal and has much higher rates of appeal compared to other localities as a result (see table 6.10). South Australia, on the other hand, provides only limited access to such appeals which — according to the Property Council of Australia (2010) — has contributed to the absence of any significant delays experienced in that State.[24]

As well as direct restrictions on access to appeal mechanisms, the cost of lodging and participating in the appeal process can also have an influence on the decision to appeal. In the case of NSW (where just 0.5 per cent of DA decisions were appealed in 2009-10), the Australian National Retailers Association (ANRA) suggested that court appeal costs were prohibitive. ANRA went on to recommend alternative dispute resolution mechanisms such as those used in South Australia and Western Australia as a means of reducing compliance costs for businesses:

> These two states have an extra level of arbitration and mediation, in contrast to NSW where proponents can only go to a Land and Environment Court — which can involve significant legal costs. (sub. 44, p. 8)

[24] South Australia amended the *Development Act 1993* in 2001 to reduce gaming of appeal processes by requiring competing businesses to identify themselves during consultation, appeals and judicial review processes and by allowing courts to award costs, including for economic loss, if the Court finds the proceedings were initiated primarily to restrict competition. (SA Government, sub. 57, p.12)

Table 6.10 **Appeals : 2009-10**

Jurisdiction	*Proportion of total determinations*	*Duration (median weeks)*
New South Wales	0.5	na
Victoria	11.0[a]	21.0[b]
Queensland[c]	2.5	na
Western Australia[c]	2.7	na
South Australia[c]	0.8	na[d]
Tasmania[c]	3.7	na
ACT	4.0	na
Northern Territory	0.9	na

[a] Due to a change in VCAT public reporting arrangements, this figure only covers the 20 councils in the Commission's sample with the highest rates of appeal in 2009-10. In 2008-09, the relevant figure for all 33 Victorian councils in the sample was 7 per cent. [b] Figure relates to all Victorian council appeals finalised in 2009-10. [c] Appeal proportions for these states refer to 2008-09 and are based on applications rather than determinations, as reported in: LGPMC (2011), *First National Report on Development Assessment Performance 2008/09*. [d] In South Australia, the average appeal duration was 16-23 weeks in the five years to 2008-09 (Trendorden 2009).

Sources: State/Territory planning agency surveys, Victorian Civil and Administrative Tribunal Annual Report 2009-10, NSW Department of Planning.

6.5 Alternative assessment pathways

Most jurisdictions have introduced or use alternative assessment bodies or pathways to deal with larger scale and/or jurisdictionally significant or sensitive projects (see box 6.1). These typically take the form of discretionary powers (based on qualitative criteria) by the relevant planning minister to 'call-in' and decide specific development proposals which are deemed to be in the public interest on economic, social and/or environmental grounds. New South Wales is the only jurisdiction to apply quantitative criteria to the assessment of specific development proposals. The number of projects using these alternative pathways is small relative to local council assessment processes in most jurisdictions — with the exception of the Western Australian Planning Commission (WAPC) because of its unique responsibility for all subdivision assessments (table 6.11).

During consultations for this study, the Commission was often told that, in some jurisdictions, the criteria for triggering these alternative assessment paths are so vague as to increase uncertainty and undermine overall confidence in the fairness of the planning systems. More specific and transparent criteria would help overcome these concerns.

Box 6.1 **Alternative assessment pathways**

NSW

Minister for Planning determines applications for major infrastructure or other major projects (capital investment value $100 million) of State or regional environmental planning significance under **Part 3A** of the *Environment Planning and Assessment Act 1997*. Department of Planning may act as approval authority under delegation. *Planning Assessment Commission* acts as approval authority under delegation where Part 3A application: has reportable political donation; is within electoral district of Planning Minister; or if Minister has a pecuniary interest; other than infrastructure projects where proponent is a public authority except a local council. *Joint Regional Planning Panels* established in July 2009 to provide independent, merit-based assessment process (following local council assessment) for regionally significant development proposals with a capital investment value mostly between $10 million and $100 million.

Victoria

Section 97 of the *Planning and Environment Act 1987*, provides Ministerial power to call-in a planning permit application being considered by a responsible authority, where it raises a major issue of policy and the determination of the application may have a substantial effect on the achievement or development of planning objectives, the decision on the application has been unreasonably delayed to the disadvantage of the applicant, the use or development to which the application relates is also required to be considered by the Minister under another Act or regulation and that consideration would be facilitated by the referral of the application to the Minister. Minister can appoint a panel (under Section 97E of the Planning and Environment Act 1987) to consider objections and submissions received in respect of the application.

Queensland

Planning Minister, regional planning Minister and Minister administering the *State Development and Public Works Organisation Act 1971*, have the power to call-in a development application if it involves a State interest. After calling-in a development application, the Minister can: assess and decide the application in the place of the assessment manager, or direct the assessment manager to assess the application, and then the Minister decides the application.

Western Australia

Western Australian Planning Commission is responsible for assessing major projects either by referral from the Western Australian Government or on its own initiative. Regional Redevelopment Authorities (RDAs) are responsible for planning, development control and other functions in respect of the land in the defined redevelopment areas (Armadale. East Perth, Midland and Subiaco). There is nor provision for Ministerial call-ins.

South Australia

Under Section 46 of the *Development Act 1993*, Minister for Urban Development and Planning can declare a proposed development a 'Major Development' if he or she believes such a declaration is appropriate or necessary for proper assessment of the proposed development, and where proposal is considered to be of major economic, social or environmental importance (regardless of size, nature or value). Declared projects are referred to the Development Assessment Commission (DAC). The DAC also determines development proposals by state agencies or private sector providers of public infrastructure, projects where Councils have a conflict of interest and where Councils request DAC to approve non-complying developments.

Box 6.1 continued

Tasmania

Under Part 4, Division 2A *Land Use Planning and Approvals Act 1993*, the Minister for Planning may declare a project of regional significance if it: has regional planning significance; requires high-level assessment; or would have a significant environmental impact. The project is referred to the Tasmanian Planning Commission which appoints a Development Assessment Panel to assess the project.

Projects of state significance are assessed by the Tasmanian Planning Commission under Part 3 of the *State Policies and Projects Act 1993*, rather than under the *Land Use Planning and Approvals Act 1993*. Projects can be declared to be of State significance if it has at least 2 of the following characteristics: significant capital investment; significant contribution to the State's economic development; significant economic impacts; significant potential contribution to Australia's balance of payments; significant impacts on the environment; complex technical processes and engineering designs; or significant infrastructure requirements.

ACT

Section 158 of the *Planning and Development Act 2007* states the Minister may direct ACTPLA to refer a development application that has not been decided. Section 159(2) specifies the Minister may decide to consider the application if: it raises a major policy issue; seeks approval for a development that may have a substantial effect on the achievement or development of the object of the territory plan to which the application relates, or approval or refusal of the application would provide a substantial public benefit.

NT

Under Section 85 of the *Planning Act* the Minister has discretion to direct the Development Consent Authority, in the performance of its functions and exercise of its powers, and at any time before the Development Consent Authority has served notice under section 53A, 53B or 53C in respect of a particular development application made to it, the Minister may direct Development Consent Authority that the Minister is the consent authority in relation to the application.

Source: State/Territory agency surveys, Q21, Q27 and Q28.

Differences in the nature and scale of projects and the criteria used to select them makes performance comparisons across jurisdictions problematic. Moreover, many jurisdictions were unable to provide detailed information on the time taken to assess the projects using these alternative pathways (table 6.12).

The relative complexity of these larger scale projects also makes comparisons with council-based consent tracks difficult. That said, the NSW Government noted that the average 2009-10 approval times for Joint Regional Planning Panel decisions (introduced on 1 July 2009 and mainly covering projects valued between $10 million and $100 million) were considerably less (in some cases around half) the state-wide council average approval times in 2008-09.

Table 6.11 Development proposal determinations by assessment pathway in 2009-10

	Council assessed	Ministerial call-in	Other state assessed
NSW	47 215	245[b]	102[c]
Vic	32 701	528	0
Qld	11 035	2	212[d]
WA	7 685[a]	0	3 740[e]
SA	20 703[a]	..[h]	641[f]
Tas	3 032[a]	..[h]	1[g]
ACT	1 469	4	0
NT	770	0	..[h]

[a] Not all councils have provided data. [b] Includes Part 3A determinations by the Minister for Planning, Department of Planning and the Planning Assessment Commission. [c] Assessments by Joint Regional Planning Panels. [d] Department of Infrastructure and Planning DA decisions. [e] WAPC decisions which include 557 development application assessments. [f] Includes land use and land subdivision assessments by the Development Assessment Commission. [g] State significant project assessed by the TPC. [h] Information not separately available.

Source: State govt survey Q27; local council survey q 13; NSW Planning; Victorian Department of Planning and Community Development; Queensland Department of Infrastructure and Planning.

Table 6.12 Major projects assessments by alternative consent authorities by development type and jurisdiction: 2009-10

Jurisdiction	*Residential*	*Commercial*	*Industrial*	*Subdivision*	*Other*	*Total*
NSW						
Minister/Department of Planning						
Proposals (no)	na	na	na	na	na	228[a]
Value ($m)	na	na	na	na	na	na
Approval time (days)	na	na	na	na	na	na
PAC						
Proposals (no)	5	1	4	na	7	17
Value ($m)	273.7	273.7	496.9	na	922.6	1 966.9
Approval time (days)	17	6	4	na	10	10
JRPP						
Proposals (no)	na	na	na	na	na	102
Value ($m)	na	na	na	na	na	1 562
Approval time (days)	na	na	na	na	na	143
Victoria						
Proposals (no)	na	na	na	na	na	528
Value ($m)	na	na	na	na	na	na
Approval time (days)	na	na	na	na	na	na

(continued next page)

Table 6.12 continued

Jurisdiction	*Residential*	*Commercial*	*Industrial*	*Subdivision*	*Other*	*Total*
Queensland						
Proposals (no)	na	na	na	na	na	212
Value ($m)	na	na	na	na	na	na
Approval time (days)	na	na	na	na	na	na
WA						
WAPC						
Proposals (no)	na	na	na	3183	na	3 740[b]
Value ($m)	na	na	na	na	na	na
Approval time (days)	na	na	na	na	na	96
RDAs						
Proposals (no)	104	55	0	na	20	221[c]
Value ($m)	303.4	9.9	0	na	668.6	1065.7[c]
Approval time (days)	23	7	0	na	15	24[c]
SA						
Proposals (no)	353	37	34	95	122	641
Value ($m)	115.3	417.0	13.9	na	106.4	652.6
Approval time (days)	43	98	102	119	79	67
Tasmania						
Proposals (no)	na	na	na	na	na	1
Value ($m)	na	na	na	na	na	na
Approval time (days)	na	na	na	na	na	na
ACT						
Proposals (no)	na	na	na	na	na	4
Value ($m)	na	na	na	na	na	na
Approval time (days)	na	na	na	na	na	na
NT						
Proposals (no)	0	0	0	0	0	0
Value ($m)	na	na	na	na	na	na
Approval time (days)	na	na	na	na	na	na

na not available. [a] Includes determinations of concept plans, project applications and Part 3A modifications. [b] Includes 557 development applications for which a breakdown by development type is not available. [c] Figure includes 42 developments ($83.8 million) assessed by the Armadale Redevelopment Authority which could not provide a non-residential breakdown of development type for those proposals.

Source: PC State/Territory planning agency surveys 2010 (unpublished), Question 23.

6.6 Leading practice in development assessment processes

Various aspects of compliance costs described in this chapter suggest the following leading practices:

- adopting electronic DA systems to reduce costs for businesses and residents but also to improve consistency, accountability, public reporting and information collection/benchmarking
- streaming development applications into assessment 'tracks' (exempt, prohibited, self assess, code assess, merit assess and impact assess) that correspond with the level of assessment required to make an appropriately informed decision. This would both speed up most DAs and release assessment resources to focus on those proposals which are particularly technical and complex or may significantly impact on neighbouring residents or the local environment
- developing more specific and transparent criteria by which alternative assessment pathways should apply in order to improve certainty and confidence in planning systems.

7 Competition

Key points

- The impacts of land use planning (including zoning and activity centres policies) on competition are evident through restrictions on entry to locations desired by businesses and on the extent to which planning systems allow businesses to constrain the activities of their competitors by gaming the objection and appeal provisions.
- Planning restrictions on the types of commercial developments allowed in particular locations are generally aimed at improving the amenity of developments for the community. However, they also limit the number, size, operating model and product mix of businesses which are able to use sites and thus restrict competition. For example:
  - councils in Victoria and Queensland refused the most DAs on the basis that they were considered unsuitable at the proposed location given current activity centre policies
  - there are councils in all states with prescriptive zones and complex use conditions. Floor space caps are used in all states and territories but appear particularly restrictive in Victoria, ACT and Western Australia
  - some New South Wales council plans include highly prescriptive descriptions of businesses allowed in particular zones.
- Which of these restrictions unjustifiably restrict competition will depend on whether they improve the efficiency of the markets they affect and overall produce a net benefit. Which unnecessarily restrict competition will depend on whether there are alternative ways to deliver the net benefit without restricting competition.
- Most governments take into account the impacts of proposed developments on the viability of existing businesses and/or centres. Councils in Queensland, New South Wales and South Australia were more likely than other jurisdictions to treat these impacts as a major consideration in rezoning and DA decisions. Restrictions aimed at protecting the viability of existing businesses are usually unnecessary and unjustifiably restrict competition. Those aimed at preserving the viability of centres may be justified if they produce a net benefit overall and are considered at a strategic planning rather than development assessment stage.
- Where planning and zoning systems are not flexible to a range of business operating models, businesses attempt to enter those markets through land rezoning. To enable or prevent these business activities, planning systems in these areas tend to impose business-specific modifications which create uncertainty, and are inefficient and anti-competitive. New South Wales seems more susceptible to this approach than Victoria or Queensland.
- In most jurisdictions, there is considerable scope for businesses to use planning criteria as a basis for objecting to developments and/or appealing DA decisions, to the disadvantage of competing businesses. Victoria and Tasmania provide the broadest scope for third party appeals. Whether this is an unjustified limitation on competition depends on whether the benefits are outweighed by the costs and on the disincentives for abuse of these provisions.
- Changes to planning and zoning systems which could improve competition include: reductions in the prescriptiveness of zones and allowable uses therein; facilitation of more 'as-of-right' development processes; elimination of impacts on the viability of existing businesses as a consideration for DA and rezoning approval; consideration of impacts on the viability of centres only during the strategic planning stages; clear guidelines on and transparent alternative assessment paths; and disincentives for gaming of third party appeals.

The terms of reference require the Commission to assess how planning and zoning regulations and their implementation unjustifiably restrict competition. The Commission has also been asked to report on best practice approaches which might be used to support competition, including: measures to prevent the 'gaming' of appeals processes and ways to eliminate any unnecessary or unjustifiable protections for existing businesses from new and innovative competitors. Each of these aspects is addressed in this chapter. In contrast to other parts of this report which have broad relevance to most or all urban land uses, the competition issues associated with planning and zoning systems have arisen primarily in the context of retail land uses (ACCC 2008; PC 2008). Much of the analysis in this chapter (and appendix F) is therefore focused on competition between retail land uses but, where relevant, reference is also made to other commercial uses of urban land.

This chapter first describes what is meant by a competitive market in a highly regulated environment and then outlines a range of different ways in which planning and zoning can impact on competition and the efficiency of market outcomes (sections 7.1 and 7.2). Barriers to business entry and operation imposed by plans are then examined, followed by a discussion of some specific issues faced by particular retail groups (sections 7.3 and 7.4). Barriers presented by government implementation of plans are outlined and business gaming of planning systems is discussed (sections 7.5 and 7.6). Finally, the chapter concludes by highlighting those practices which unjustifiably restrict competition and those which may be considered leading practices and support competition.

7.1 Competition and regulation

With a finite supply of land for development, competition in urban land use is about the ease with which land can be moved between different activities in response to market conditions. Competition is generally considered desirable because, in its 'perfect' state, competition delivers an allocation of land between alternative possible uses which maximises the net value of that land to current (and future) society. With a competitive and efficient allocation of land between uses, there is potential for flow-on benefits such as an efficient allocation of labour and other inputs between productive uses of land and lower prices for output (such as housing or retail goods and services) from businesses using that land.

However, on its own, competition between land uses is unlikely to deliver an outcome that could be considered optimal for society as a whole — in fact, competition could deliver some very undesirable outcomes (such as congestion and 'concrete jungles'). As discussed in chapter 2, the existence of factors such as non-market costs and benefits (for example, pollution or the amenity of green space)

associated with particular activities means that some form of land planning and zoning is required to achieve a socially more desirable outcome than that which a competitive market alone would deliver.[1] The resulting outcome would (ideally) be a socially optimal allocation of land across the different land uses combined with the greatest possible competition amongst businesses to buy and use land to deliver an optimal mix of activities consistent with the zoned land use.

A market which operates within a planning and zoning regulated environment would be more likely to deliver an optimal outcome if:

- there were a large number of sites,[2] the differences between these sites was known by all potential market participants, and the owners of the sites had an insignificant share of the overall market for such sites
- there were a large number of potentially competing developers/uses for a given site, each with an equal opportunity to compete for site ownership and an insignificant share of the overall market for such sites
- each potential user had an equal opportunity to develop the site and utilise it (subject to development control and building regulations) in a manner that optimised that user's net return from the site.

These characteristics are 'outcome measures' which can be used to indicate the competitiveness of markets (appendix F). For example, a grocery market in a particular locality may be competitive if all potential grocery retailers have equivalent access to suitably zoned land in that locality and equivalent opportunity to utilise that land under their individually-chosen business model.

1 The example of Houston, USA (a major city with no zoning ordinance) would suggest that government intervention may only be necessary if it is too costly for private landowners to individually develop and enforce standards. In Houston, landowners in residential districts have grouped together to form voluntary private covenants (deed restrictions), which are in some instances more onerous than zoning regulations in other cities (Day 200X; Fischel 1985, p.233). Furthermore, some external benefits and costs may be more appropriately/efficiently and directly dealt with by taxes and subsidies (such as congestion charges) than indirectly through planning and zoning regulation.

2 A large number of sites is only desirable for those land use activities for which two or more businesses can supply the market at a lower price than a single larger business. For activities such as waste disposal facilities or seaports, for example, an outcome closer to that which is socially optimal may be more likely with a single large location than with multiple small sites.

However, in reality, there will be degrees of competitiveness. For example, competition may be present even if there is only one business in an area.[3] A credible threat that other businesses can establish themselves may be sufficient incentive for a business to offer good services and value to its customers. The key issue is not the number of incumbents but whether there are any barriers (regulatory or otherwise) which prevent the ready entry or exit of market participants.

For the purposes of this chapter, the focus is on identifying unjustifiable regulatory barriers to market entry (particularly regulatory barriers in retail markets), including unnecessary limitations on the ways in which businesses can use their land and evidence of differential treatment of businesses in the implementation of planning and zoning requirements.

7.2 Impacts of planning on competition and efficiency

The impacts of land use planning on competition (including the zoning and activity centres policies outlined in chapter 4 and discussed further in section 7.3) will be mixed and broadly dependent on the extent to which location choices are restricted. Consequent impacts on businesses will be related to the extent to which businesses want to occupy restricted locations and the higher returns thus denied them (box 7.1). Competitiveness will also be affected by the capacity for businesses to game the system in order to gain a competitive advantage over competing businesses (section 7.6).

While location restrictions exist to varying degrees for all types of businesses, the impacts may be more acute for those businesses (such as retail, ports or tourism) that are particularly reliant on a given location for their customer base, compared with other activities which may be less location dependent (such as commercial offices and some manufacturing). The benefits of a given location may be such that businesses seek to locate there as their preferred choice for example, by initiating a rezoning of a site in order to remove the restriction established by planning and zoning regulations.

[3] In a study of five retail and professional markets in USA towns, Bresnahan and Reiss (1991) find that competitive conduct changes quickly as the number of incumbents increases. In markets with five or fewer incumbents, almost all variation in the competitive conduct was found to occur with the entry of the second or third firm. There have also been a number of experimental studies which demonstrate near competitive price outcomes are achievable with relatively few market participants (for example, see Bell 2002, Bell and Beare 2001 and Smith 1982).

Box 7.1 Business choice of location

There are economic incentives for some businesses to cluster together and for others to choose locations which are on the periphery of town centres. These incentives exist, and are modified to varying extent, by restrictive zoning and centres policies and can be sufficiently rewarding that businesses attempt to locate according to their preferred choice (for example, through rezoning applications) even when these choices are heavily restricted by regulations.

On the consumer side, firms cluster to attract customers who want to minimise search and travel costs (a high concentration of stores increases the consumer's likelihood of finding their desired product); to provide credibility on lower prices; to benefit from the marketing or reputation of other businesses; and because consumer location is concentrated in residential zones. Clustering can therefore increase sales for firms in the cluster. On the production side, firms cluster to decrease labour and other input costs (eg: associated with a parent company or supplier); attract trained workers; or to learn from other firms. These advantages of increased demand and decreased costs encourage firms to cluster by choice.

The attraction of clustering is, however, mitigated by the potential for more intense price competition in the proximity of rival firms. Any increase in sales and reduction in costs must dominate the reduction in prices, for firms to gain more from clustering than from stand alone operations.

The extent of clustering depends in part on the ability of firms to differentiate products. Sellers with more ability to differentiate their products may enjoy the benefits of agglomeration without competing too intensely on price and therefore be more likely to cluster. Restaurants, for example, have potential for product differentiation on menu, ambience and waiting times. Similarly, bars have considerable ability to differentiate their products and may get spillover benefits from proximity to rivals if consumers enjoy visiting multiple bars in one evening. At the other end of the spectrum are liquor stores, which sell the same high volume products. Product differentiation can also be achieved by a necessity to visually and/or physically inspect products prior to purchase (for example, shoes). The relative value and frequency of the purchase (for example, cars or furniture) can also influence the value of search/information to consumers, their willingness to travel to particular locations and consequently, the incentives for particular sellers to cluster.

However, greater product differentiation can also give stand-alone firms more local market power and may increase their incentives to locate on the periphery of a town centre rather than cluster. Fischer and Harrington (1996) note that a profitable strategy for a periphery firm can be to build a large store and stock many items and sell multiple brands to reduce consumer search costs and raise the prices that they are able to charge. Land prices and rents on the periphery are usually much lower than in a town centre and this can be major attraction for locating on the periphery.

Of course, the lower costs can be so attractive that many firms may choose to be on the periphery, and this creates another cluster so that competition increases and prices decrease.

Which of these effects dominates will determine the extent to which there is business demand for more commercial land on the periphery of urban areas. For example, Zhu and Singh (2007) find that for Walmart, Target and Kmart, there are strong returns to spatial separation (not clustering) — each firm exerts a negative impact on others when in close proximity but the effect diminishes with distance to rivals.

Sources: Ridley et al. 2010; Konishi 2005; Picone et al. (2009); Fischer and Harrington (1996)

On the one hand, restrictive zoning and spatial concentration of businesses into centres can act to constrain competition in the following ways:

1. Reduce the number of businesses in a given area

When the area available for a particular type of business is restricted by zoning, unless these businesses change their operating model to allow them to occupy a physically smaller site, there will be fewer businesses than would otherwise be the case (Ridley et al. 2010). At the extreme, it would be possible to end up with monopoly suppliers (with potential for higher prices) for some products in highly restricted zones.

2. Reduce the scope for new entrants

A limited number of sites means that for a given business exit rate, there is reduced scope for entry of new businesses to that area. The associated 'scarcity' of sites also increases the cost of these sites (either to purchase or rent), which in itself can act as a barrier to entry.

3. Reduce the diversity of products and business types

Reduced scope for new entrants, combined with potentially smaller business sites in activity centres, may result in less diversity in products offered by each individual business (if they only have the physical capacity to carry the highest margin items) and/or less diversity in the types of businesses which are able to open up in that centre (Satterthwaite 1979 in Ridley et al. 2010).

Scope for large operations may also be reduced in some locations and result in stores that are smaller than both consumers and sellers prefer (Smith 2006). Fels, Beare, Szakiel (2006, p.65) assert that in Sydney, '…zoning regulations are impeding the development of these retail services, forcing them to locate in less than optimal sites, or reducing the scale on which they are able to operate'.

4. Result in longer travel distances from consumers to sellers

Restriction of businesses to particular parts of a city (such as, in activity centres) may mean that in general, these businesses are located at a greater distance from residential areas than would otherwise be the case. With greater distances comes higher travel costs for consumers and need for more public transport infrastructure.

5. Increase the cost of appropriately zoned land

Zoning can increase (or decrease) the value of land (and therefore the amount businesses are prepared to pay for it) by reducing (or raising) non-market costs (such as pollution and congestion) that are associated with some land uses.

However, a reduced number of appropriately zoned sites for business will also necessarily raise the price which businesses need to pay in order to secure such a site.[4] That is, a zone which restricts the number of sites can give land owners market power to increase land/rental prices. It is virtually impossible to discern whether the impacts of zoning on property prices come from the successful internalisation of externalities or from the effects of a restricted supply of appropriately zoned land (Giertz 1977). Either way, these higher land prices could be expected to be passed through to final product prices. Variability in land prices in different zones is discussed further in chapter 4.

On the other hand, to the extent that restrictive zoning and centres policies locate sellers closer than they would otherwise choose (Ridley et al. 2010), these policies may improve competition in the following ways:

6. Reduce consumer search costs

With businesses clustered together in activity centres, it is potentially less costly for consumers to search for desired items and compare products and firms. A cost-benefit analysis of *Melbourne 2030* in 2008 noted that: 'the net community benefit generated by a strong centres policy are indeed substantial ... much of this benefit is tied to successful intensification of employment and residential activity around major centres' (sub. 15, p.10). The NSW Department of Urban Affairs and Planning and Transport 2001 (p.6) noted that 'Retail proposals should be accommodated in centres to allow choice and free pedestrian movement.'

7. Lower product prices and improve quality

Greater clustering of businesses in centres raises the potential for more intense competition on prices, product quality and service between similar businesses. The NSW Government's Metropolitan Strategy describes centres as 'encouraging collaboration, healthy competition and innovation amongst businesses from clustering ...' (City of Sydney, sub. 15, p.3). As consumers are able to more readily compare business offerings and have more information about the reputation of a given seller, demand becomes more responsive and prices fall (Satterthwaite 1979 in Ridley et al. 2010).

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4 These impacts will be exacerbated if ownership of a site is 'fractured' (that is, the site consists of a number of small land parcels, each with a different owner) and it is difficult and costly to undertake negotiations required to assemble land into a site large enough to support the desired development. In such a situation, small to medium developers may be precluded from entering the market and/or existing land holders may have significant market power when negotiating with developers.

The ACCC (2008) investigated the impact of proximity of competitors on the pricing behaviour of the two dominant supermarket chains (Woolworths and Coles) and reported that prices at the major supermarkets were lower when a competitor is located nearby:

- consumers shopping at a Woolworths store with an Aldi or Coles within 1 km paid prices that were on average around 0.7 per cent lower than the prices paid by consumers at a Woolworths store without an Aldi or Coles within 5 km
- consumers shopping at a Coles store with an Aldi (or Woolworths) within 1 km paid prices that were on average around 0.8 (or 1.4) per cent lower than the prices paid by consumers at a Coles store without an Aldi (or Woolworths) within 5 km.

Lower prices may deter some sellers (or induce less entry) so that those sellers remaining in centres serve more customers (assuming a fixed total number of customers). Ridley et al. (2010) noted that with fewer sellers, prices would rise somewhat but nevertheless the clustering of sellers could be expected to result in prices that are lower than in the absence of zoning restrictions. The exception to this could be if zoning is so restrictive that there are monopoly or near-monopoly suppliers charging a premium for their products. The ACCC, for example, found that small grocery retailers (which are typically located in areas where activity centres policies permit, at most, only one small supermarket) are not forced to compete on price with larger supermarket chains and are therefore able to pass on the higher prices of their wholesale supplier to consumers (ACCC 2008).

8. Reduce non-market costs of development

A reduction in non-market costs of business location decisions for a city's residents — such as reduced traffic congestion, noise and pollution in residential areas — is often a key consideration in the grouping of businesses into activity centres. It could be expected that by grouping similar activities together in an urban area, any detrimental impacts may be reduced, or at least contained. Similarly, businesses located separately to residential areas may be less constrained in terms of operating hours, noise levels, traffic movement and parking availability — this potentially improves their ability to compete with other businesses.

9. Allow for more focused funding and use of infrastructure

Zoning and activity centres policies in most jurisdictions cite the potential for the grouping of common land uses to allow for a more focused allocation of infrastructure investment and more efficient use of public infrastructure by the community. The City of Sydney considers that 'centralising major retail anchors in centres supports small businesses ... provides certainty for proponents and residents

about where retail and business will be located ... allows effective investment in infrastructure.' (sub. 15, p.3) Similarly, the South East Queensland (SEQ) Regional Plan states that out-of-centre development can '…detract from economic growth by diluting public and private investment in centre-related activities, facilities and infrastructure' (Department of Infrastructure and Planning (Qld) 2009b, p.96). The use of planning policy to facilitate infrastructure provision is discussed further in chapter 5.

The potentially mixed impact of restrictive zoning and centres policy on businesses means that the competition effects of such policies cannot be generalised and should be considered on a case-by-case basis. That is, greater clustering of businesses through zoning may provide social benefits, increase the competitiveness of local market outcomes and offset the disadvantages of having a smaller number of businesses to compete with each other, *up to a point*. The point at which zoning and/or centres policy becomes so restrictive that a reduction in the number of competing businesses offsets the benefits of clustering these businesses will vary on a case-by-case basis. Furthermore, and contrary to the position advanced by some to the Commission during consultations, it is not clear that restrictive zoning policies would necessarily provide benefits to incumbent businesses over potential new entrants. The potential for higher land costs and more price competition associated with clustering in activity centres, for example, may mean that activity centres are a viable option for only the more efficient operators.

Finally, while restrictive centres policies may be used to encourage more focused infrastructure investment, this will not necessarily translate into infrastructure being fully utilised at a government's preferred development locations. Furthermore, the costs of providing such infrastructure (see chapter 6) may fall to the businesses seeking to occupy the activity centre, which may act as an economic, though not a legal, barrier to business entry into the centre.

7.3 Barriers to business entry and operation imposed by planning and zoning

As discussed in earlier chapters, the type, number and location of businesses across an urban area are necessarily limited by planning and zoning policies. At a broad level, activity centre and zoning policies in each jurisdiction limit the possible locations for particular types of activities in urban areas. These policies are supplemented in all jurisdictions by a range of other measures which act as barriers to market entry including regulations on business size and type, and consideration during development assessments of the extent to which new businesses are permitted to impact on existing activities. These restrictions on activities which can

use particular land sites occur on both a broad scale (for example, residential vs commercial vs industrial vs greenspace) and on a narrow scale (for example, single dwelling vs multi-unit high rise, and convenience stores vs full-line supermarkets).

Activity centres policies and restrictive zoning

One aspect of planning policies which can particularly impact on the competitiveness of commercial activities is the creation and enforcement of activity centres. The definition and identification of centres in each jurisdiction can directly affect the competitiveness of businesses by controlling the number, scope and location of allowable activities.

All jurisdictions have activity centres policies of some kind (see chapter 4 for details). These policies encourage particular activities to locate in a designated hierarchy of 'activity centres' and, to varying degrees, discourage 'out-of-centre' development, usually of commercial activities. In most jurisdictions, the hierarchy of activity centres establish the type and size of activities which are encouraged or allowed to locate in each level of centre.

- Typically, larger regional type centres are promoted as locations for larger floorspace activities which service a wide population. There are sometimes minimum floorspace requirements to implement this, and while there is usually no limit on the number of large scale businesses which can operate in the larger centres, large format businesses typically face other non-regulatory barriers to entry, such as the need for site amalgamation.
- At the other extreme, local or neighbourhood type centres are promoted as destinations for small scale commercial or retail activities and there are sometimes maximum floorspace restrictions to prevent larger businesses from establishing therein (such as in the Sydney Metropolitan Strategy 2005).

Governments reinforce activity centres policy by restrictive rezoning (section 7.5), by prohibiting (to varying extent) out-of-centre development for particular commercial activities, and thereby controlling the availability of new centres. While this is often on the basis of ensuring adequate public infrastructure and transport links, the Institute of Public Affairs claims that application of such restraints 'have become the means by which shops and shopping centres are protected from competition.' (sub. 35, p.10)

Broad implementation of centres policies

Governments in all jurisdictions — but particularly councils in Victoria, Queensland and Western Australia and the ACT's planning authority — reported implementing an activity centres approach as part of their planning and DA processes (table 7.1). However, there is considerable variation between jurisdictions in the extent to which centres policies pose a barrier to out-of-centre development activity and limit competition. For example:

- The New South Wales planning documents include strong directives on centres policies and it was claimed (Department of Planning (NSW) 2005, p. 104) that out-of-centre development was actively discouraged in Sydney. The draft Centres Policy (released in 2009) suggests that out-of-centre development should only be permitted if 'there are no suitable within-centre or edge-of-centre sites and there is a demonstrated net community benefit' (Department of Planning (NSW) 2009b, p.24). The Metropolitan Strategy for Sydney to 2036, released in December 2010, has eased this position to focus activity 'in accessible centres and limiting out-of-centre commercial development' (Department of Planning (NSW) 2010f).
- The Victorian and Queensland Governments also expressly discourage out-of-centre retail development and a comparatively high proportion of their city councils reported implementing an activity centres approach. Specifically, the Victorian government considered in 2009-10 that stand-alone uses and industrial estates, for example, did not constitute activity centres (Department of Infrastructure (Vic) 2002). The development plans of Victorian councils pick up on the State Planning Policy Framework (clause 12) which ensures that 'proposals or expansion of single use retail, commercial and recreational facilities outside activity centres are discouraged by giving preference to locations in or on the border of an activity centre.' However, out-of-centre proposals are considered where the proposed use or development is of net benefit to the community. The Queensland Government has stated that out-of-centre development is 'inconsistent' with the SEQ Regional Plan (Department of Infrastructure and Planning (Qld) 2010c).
- The South Australian Government approach appears to be more open to negotiation, allowing that retail and other services may be provided outside designated activity centres where development will 'contribute to the principles of accessibility; a transit-focused and connected city; world class design and vibrancy; and economic growth and competitiveness' (30 Year Plan for Greater Adelaide, Section D6, Mixed use activity centres). Reflecting this, the SA Department of Planning and Local Government (2010b) reported that '… there

has been only limited success in directing retail development to identified centres.'

Table 7.1 **Council implementation of centres policies**

	Response rate to survey question	*Proportion of councils which implement an activity centres approach*	*DAs rejected because of activity centres policy*	
			Within activity centre	*Outside activity centre*
	%	%	Number	Number
NSW	67	22	1	1
Vic	70	91	5	11
Qld	77	90	8	12
WA	41	77	1	2
SA	48	54	0	2
Tas	45	40	0	0
ACT	100	na	na	na
NT	100	na	0	0

na Not applicable.

Source: PC Local govt survey 2010, Q43 and Q44.

It should be noted however that there has been some confusion in on-the-ground interpretation and implementation of centres policies (see box 7.2 for example). In general, the above policy statements of jurisdictions are not always consistent with evidence reported by councils on their implementation of activity centres policy (table 7.1). For example, despite New South Wales' claims that out-of-centre developments are actively discouraged, only about 20 per cent of NSW city councils reported implementing an activity centres approach and NSW councils reported refusing only two DAs on the basis that they were inconsistent with activity centres policy. City councils in Victoria and Queensland rejected the most DAs on the basis that the proposal was inconsistent with specified activities to be located either *outside* or *within* the relevant activity centre.

Box 7.2 **Orange Grove Centre case**

The 'Orange Grove Centre' was a retail centre located in Warwick Farm, Sydney which commenced operations in November 2002 (one month prior to the conclusion of the public consultation period). The centre was approved by Liverpool City Council in December 2002 to operate with 'warehouse clearance outlets' on land zoned for industrial uses, including bulky goods.

In June 2003, the Westfield Group commenced action in the Land and Environment Court, arguing that a retail outlet operating on industrial zoned land was contrary to the Council's local environment plan (LEP). The council attempted to amend their LEP in December 2003 to include 'outlet centre' as a defined activity and retrospectively rezone the Orange Grove site. However, the Court ruled in favour of Westfield in January 2004 and ordered the closure of the Orange Grove Centre's retail activities. The decision was upheld on appeal.

Attempts were again made in June 2004 to amend the council LEP to retrospectively validate planning approval for the Orange Grove Centre. The council's application was rejected by the Minister in July 2004 on the grounds that the proposed variation would facilitate an 'out-of-centre' shopping centre which would undermine the viability of competing retail activities within Liverpool and its central business district. The majority of shops in the centre closed by August 2004.

The Orange Grove Centre was approved by Liverpool Council to reopen in March 2009 as a 225-stall weekend retail market.

Source: Wikipedia and ICAC proceedings, p.58

Centre policy restrictions on types of businesses

The extent to which centres policies restrict the *types* of businesses (such as large format retailers) which are allowed in centres as compared with on the periphery, also varies between jurisdictions.

New South Wales policy in 2009-10 stated that:

> When it is not realistic for bulky goods outlets to be in centres, they should be located in one or two regional clusters to help moderate travel demand and allow for public transport accessibility. (NSW Dept of Urban Affairs and Planning and Transport 2001, pp.5-6)

Furthermore, the Sydney Metropolitan Strategy aims to:

> …limit retail and office activity to core commercial and mixed use zones, business development zones and in some circumstances enterprise corridors … Retailing in industrial areas will be limited to that which is ancillary to the industrial use or has operating requirements or demonstrable offsite impacts akin to industrial uses (such as building and hardware, plumbing and nurseries). … Clusters of large floor area

> retailing could be planned for in business development zones…but business development zones will only be allowed where adjacent to and/or linked to the strategic centres. (Department of Planning (NSW) 2005, p.105)

The NSW draft centres policy (released in 2009 but not yet government policy) and the new Metropolitan Strategy for Sydney to 2036 appear less prescriptive in their descriptions of the types of activities permitted in various zones. In particular, the NSW draft centres policy (Department of Planning (NSW) 2009b, p.15) suggests that 'Generally a single 'zone' should be applied across the whole centre to provide certainty and flexibility for the market to respond to demand. The mix of uses within a centre is usually best left to market forces.'

Whereas Victoria has allowed a number of bulky goods outlets to be co-located with shopping centres (SCCA, sub. 43, p.18), the Queensland Government considers that large format retail facilities (such as bulky goods retail activities) are to be located on the periphery of a centre, and if there is no room in the centre for those large format retail facilities then out of centre locations will be considered based on an assessment of community need and potential impact (Department of Infrastructure and Planning (Qld) 2009b).

The recent review of ACT supermarket competition policy found that 'planning rules for group centres concentrate on micro managing land without due regard to emerging market trends…' (Martin 2009, p.15) and that '…planning/zoning approaches in the ACT have left some regions deficient of competition in a quantum sense and that because of the rigidity of the planning hierarchy there has been a structural competition issue (in group centres)' (Martin 2009, p.18).

Centres policy limits on number of businesses

Some jurisdictions' centres policies further limit — either in their wording or application — access of businesses to centre sites by restricting the number of particular businesses within centres.

The Sydney Metropolitan Strategy specified the number and types of shops that were considered appropriate (at least in the smaller centres) and the physical area that the centre would be expected to occupy. For example: a 'town centre' was held to have 1 or 2 supermarkets within an 800 metre radius; and a 'village' was held to include a single small supermarket, butcher, hairdresser, restaurants and take away food shops within a 400 to 600 metre radius (Department of Planning (NSW) 2005). The ten subregional strategies which implement this strategy for Sydney also provide for 'small villages' (a strip of shops but no mention of supermarkets) and a 'stand alone shopping centre'. Compared with the Sydney region, the subregional

strategy for NSW Central Coast (Central Coast Regional Strategy) allows for an additional supermarket (2 to 3 supermarkets) in a town centre but introduces a further specification on the number of shops in particular localities (11 to 50 shops in a village and 4 to 10 shops in a neighbourhood centre).

The Urban Taskforce (sub. 59, p.64-65) provided examples of centres in Sydney which have more supermarkets than is provided for by their centre classification — specifically, six 'small villages' which already have a supermarket and five 'villages' which have more than one supermarket. The Urban Taskforce claim that the centre classifications fence in the capacity for retail services in the local centres to grow in line with community need, and combined with floor area limits in some centres, limit the scope for a competitive retail environment. Such anomalies may be reduced in the future with NSW's Competition SEPP (box 7.3) explicitly prohibiting council implementation of limits on business numbers.

It is unclear the extent to which firm enforcement of activity centres policy in Sydney may be associated with the claimed shortfall in appropriately zoned space for retail activity within existing centres (Aldi, sub. 11 and Woolworths, sub. 65). However, the 2009 NSW draft activity centres policy appears to relax some of the restrictions around the type and number of businesses which can locate in activity centres and allows for development out of centres where there is shown to be no available land within centres (Department of Planning (NSW) 2009b).[5]

Similarly, the ACT has a legacy of 'one full line supermarket per group centre' and this has been assessed to be an 'ongoing impediment to supermarket competition and diversity' (Martin 2009, p.15). The ACT Supermarket Competition Policy Implementation Plan (released in January 2010) is intended to allow multiple supermarkets into 'Group Centres' but nevertheless still restricts the accessibility of new sites to competing supermarkets (as per further discussion later in this chapter).

Information request 7.1: The Commission is interested in examples from businesses on the ways in which the implementation of centres policies in various cities constrained their business activities during 2009-10.

Zone categories and allowable activities

The extent to which business entry and location is restricted by zoning varies, in part, with the categories of zones in each jurisdiction and associated requirements

[5] The Independent Retailers of NSW and the ACT report that anticipation of greater scope for out-of-centre development in NSW in the future has led a number of developers to prepare proposals for new out-of-centre developments (sub. 16, p.13).

placed on developments (see chapter 4 for broad detail on zoning in each jurisdiction). Barriers to business entry presented by zones typically evidence as either a refusal by a planning authority to consider a DA and the necessary rezoning, or a DA approval but with prescriptive conditions such as floor space and car park restrictions.

However, it is important to note that reliance on zones to regulate the types of activities undertaken on different sites varies considerably between different council areas and in some cases zones provide little indication (on their own) as to what activities are actually permitted. Rather, any assessment of restrictions on competition would need to consider the broader suite of restrictive measures, including: overlays, area 'codes' or precinct requirements, and additional restrictions on floor areas, plot ratios, building heights, street frontage and setbacks, car parking requirements, etc. Generally, the more finely tuned are these restrictions, the fewer are the possible sites in which a business can locate or, likewise, the fewer the number of businesses which are able to compete to use a given site.[6] Furthermore, even if a development is permissible under the land use table of a plan, it can sometimes be refused if it is inconsistent with the stated or interpreted zone objectives in the plan.

The impact of zoning will also differ with its specificity – for example, specifying land use as 'residential' will have a different impact on market outcomes than the alternative approach of requiring uses to be consistent with the functional outcomes of residential occupancy (outcomes which may be generated by a broader range of business solutions such as non-residential and small/medium service industries) (Pacific Infrastructure Corporation, sub. 8, p.2).

Given these complexities and the scope of planning measures which can restrict competition, it is not feasible to examine the restrictiveness of zoning in all zone categories for all 175 councils in this study. Rather, some of the more restrictive aspects are considered below, using indicators where possible to benchmark which jurisdictions may be more restrictive on competition.

Requirements on business size and type

Most, if not all, councils have conditions in their local development plans on the acceptable and unacceptable activities for particular zones and in some cases, individual sites. Such conditions may be justified on the basis of social or

[6] Analysis of the quantity of land in each zone would shed light on the availability of sites for particular business types. Unfortunately, such data is available for only a few jurisdictions across Australia.

environmental grounds. However, to the extent that they limit the number and type of businesses which can operate in an area (even further to those restrictions afforded by centres policies and zoning categories), these conditions reduce competition in markets and are likely to result in higher prices for both land and final products.

Among the city councils surveyed for this study, those in Queensland were the most likely to report placing planning restrictions on business that are additional to state level restrictions (table 7.2). Furthermore, the Northern Territory and city councils in Queensland and Tasmania were most likely to report having restrictions in their plans which vary with a business characteristic.

Table 7.2 **Council reported restrictions on businesses**

Per cent of surveyed councils which responded in each jurisdiction

	Response rate to survey question	*Council restrictions additional to state/regional restrictions & zoning*	*Council restrictions which vary with business characteristic*
	%	%	%
NSW	67	36	40
Vic	70	30	27
Qld	77	90	89
WA	41	31	57
SA	48	15	50
Tas	55	33	100
ACT	100	0	0
NT	100	50	100

Source: PC Local govt survey 2010, Q40 and Q41.

Information request 7.2: The Commission is interested in examples from business about local plan conditions which restrict business size and/or products sold.

Floorspace, store size and number

Restrictions on the size of individual activities or businesses which can operate in an area are some of the principal limitations in plans on business entry to some zoned areas. Most activity centre plans provide 'guidelines' on the type of retailer which can operate in each centre which are based on business size (for example, a supermarket servicing a large region is distinguished from a small store which meets daily shopping needs of local community). Limits on the size of particular activities, when combined with geographical/zone boundaries on the location of activities, effectively limit the number of businesses in the area. Some restrictions which were brought to the Commission's attention include:

- LEPs for most Sydney councils (at end 2009-10) included maximum floor space restrictions in some zones and/or centres. Retailing in enterprise corridors, for example, is limited in the Sydney Metropolitan Strategy to those businesses which have less than 1000m^2 of floor area (Actions Centres and Corridors, p.114). The NSW draft centres policy (announced in 2009 but not yet government policy) suggests the use of minimum retail and commercial floorspace targets for each region or subregion, and for each council area. In the absence of other information, the policy suggests that targets should be set at 2m^2 per capita, increasing by 0.1m^2 every 5 years (p.10).[7]
- Floorspace caps are regularly used in Victoria to specify the maximum leasable floor area for shop use in business 1 and 2 zones. In some councils (such as Manningham), the planning scheme specifies maximum floor areas for shops in business and mixed use zones which vary by individual street address.
- Until the introduction of *Activity Centres Policy for Perth and Peel* in August 2010, Western Australia restricted retail competition by capping the amount of retail floorspace which could be provided in particular levels of activity centres (*Statement of Planning Policy 4.2 – Metropolitan Centres Policy*). For example, neighbourhood centres had a limit of 4500m^2 of net lettable area while regional centres were limited to 50 000m^2 and strategic regional centres to 80 000m^2. These limits applied to the entire activity centre (shopping centres, retail strips and homemaker centres) and limited expansion of all forms of retailing. Once the caps had been reached, new retailers were prevented from locating within activity centres and existing retailers were prevented from expanding (SCCA, sub.43, pp.22). The Western Australia Red Tape Reduction Group (2009, p.109) found that:

  > The Metropolitan Centres Policy State Planning Policy No. 4.2 (MCP) appears to be an unjustifiable constraint on competition in the Perth metropolitan area. The policy, which is not subject to parliamentary scrutiny, creates a significant barrier to entry. Abolishing the policy would encourage development in Western Australia and facilitate a greater degree of competition, particularly in the retail industry.

- The City of Onkaparinga in South Australia reported that 'there is an on-going debate with state government over the impact of proposals to limit supermarket size or specifying a ratio between the supermarket and specialty uses upon competition' (sub. 52, p.5). They nevertheless stated that they are proposing to remove their current caps on total centre floorspace but to cap the floorspace of individual premises within local and neighbourhood centres at 1200m^2 and

7 2m^2 per person appears conservative given that the City of Sydney have reported having around 3m^2 per person currently plus an undersupply of supermarkets (SCCA, sub. 43). It has also been estimated that retail floorspace is at least 2m^2 per person in Melbourne, Adelaide and Canberra (chapter 4).

2200m^2 respectively. The aim of this approach is to encourage larger numbers of small to medium sized supermarkets in local and neighbourhood centres rather than fewer larger stores in larger centres. It is planned that large format stores will still exist in district and regional centres (sub. 52, p.4).[8]

- The ACT makes extensive use of floor space caps in its centres. For example, retailers in zone CZ3 in the city centre and town centres and CZ2 in town centres are limited to 200m^2 per lease (although in some cases, other zones in these centres allow for larger size stores). Retailers in other centres are limited to 100 to 500m^2 of gross floor area, depending on the particular shop and the particular centre. A new Woolworths store approved for the Giralang local shops in 2010 included a floorspace limit of 1670m^2 (Houston 2010).

Planning documents can also introduce requirements for mixtures of activities in particular zones — for example: mixed residential/commercial or mixed retail/commercial — often in an attempt to achieve some social objective. The Urban Taskforce (2009, p.12) stated that:

> There is an increasing tendency by many planning authorities, to force residential developments to build retail space on the ground floor, even when the developer believes it is unlikely that the space will be adequately tenanted.

Plans for a number of councils (for example, many of the Sydney councils, Cairns and Launceston) include requirements on mixed use of space. The Launceston council plan states that in its central business district zone: 'Preference is given to retail activities and eateries at street level. It is not intended that offices or other business premises displace existing retail space at street level; and … Residential uses are encouraged to establish above street level in the zone…'

The *Activity Centres Policy for Perth and Peel* similarly includes thresholds for 'mix of land uses' which vary from 20 per cent of total floor space in smaller centres up to 50 per cent in the larger centres. Requiring a developer to include uneconomic uses into a new development and to regulate density of a development through imposition of maximum floorspace ratios on a site will reduce the viability of projects for which the thresholds are imposed, limit scope for future expansion, and impose a competitive disadvantage on these developers compared with others who do not have to meet similar requirements.

At the other end of the spectrum, some jurisdictions also have *minimum* floor space requirements that businesses have to meet in order to locate in particular areas. Bulky goods retailers and retailers in industrial areas are generally limited to

8 South Australia is reviewing its activity centres policies in 2011, including the use of floor space caps, to ensure consistency with competition policies arising out of COAG.

ancillary retailing either by maximum floor space areas or percentage of floor space areas. Following the approval of Costco (14 000m^2 retail development in Auburn), the Auburn Council in Sydney's west included in their new proposed LEP a minimum gross floor area of 10 000m^2 (Auburn LEP clause 65(3).

The Commission has little evidence to suggest that planning restrictions related to business size are necessary to regulate the location of retail business and ample evidence to suggest that such restrictions are often targeting (either to benefit or prevent) new business approaches. Commercial considerations — such as the ease of site access for restocking, the value placed by consumers on car parking facilities close to shops, the cost of land and the limited availability of large sites in different parts of cities — influence the location of retailers toward outcomes which are likely to be socially beneficial and therefore do not need to also be specified in planning regulations.

Other site restrictions on business operation

Even businesses which are allowed by their size or type to operate in a particular locality may face a raft of jurisdiction-specific restrictions on their operations which limit their expansion opportunities and capacity to compete (SCCA, sub. 43). Some of these are part of the planning (or zoning) systems and are of relevance here (such as business signage, parking requirements, building setbacks, plot ratios and business trading hours). Others are part of regulatory systems that are separate to planning systems (such as building regulation requirements).

Detailed definitions of activities based on factors such as the type of goods sold or the customer base targeted can unnecessarily restrict business operations. For example, one of the development plans of the Blue Mountains Council includes definitions for retailers such as a 'general store' (which specifies the type of items which would be sold therein) and a 'fast food outlet' (which refers to timing of payment for food and use of menu and packaging). It further restricts the establishment of a general store in rural zones to be at least 1600 metres from other general stores. Such highly prescriptive definitions limit capacity for business innovation and market adaptation, which are important ways by which businesses compete, and would not be enforceable under NSW's proposed competition SEPP. They have also been queried in the court system — in *Hastings Co-operative Ltd vs Port Macquarie Hastings Council (2009)*, it was noted that 'why one use is permissible and another similar use is prohibited will often be a matter of speculation … there is no obvious logic in permitting a general store, but not other forms of shop.'

Similar examples of highly prescriptive definitions for businesses exist in many other jurisdictions. For example, Eccles and Bryant (2008) point out that in Victoria, while a video rental store would not generally be able to establish in a residential zone (because it would usually exceed the maximum floor area of a convenience store and does not sell food or drinks), a convenience store which also hires out videos could do so.

Many of the business-specific restrictions reported by Queensland councils are contained in the 'codes' for activity use which accompany their plans. For example, the Noosa plan (part 14) includes a business uses code which specifies factors such as particular business types that are expected to locate in particular areas and hours of operation for some business types.

Imposition of restrictions on business operation is not limited to councils. In approving construction of a Coles supermarket and liquor outlet in Bankstown, the Joint Regional Planning Panel (JRPP) attached conditions on hours of operation for the stores and loading docks and number of trucks allowed in the loading dock at any point in time (JRPP 2010).

One of the most overt restrictions on competition was the undertaking of the ACT government in May 2009 to exclude particular supermarkets which have a large market share from locating at some sites and promote expansion by selected chains which currently have a smaller market share. The government has explicitly excluded Woolworths from bidding for location on four newly released supermarket sites and Coles from bidding on three sites. At the same time, Supabarn has been given an unimpeded opportunity to anchor one site and another site has been earmarked by the government for use by Aldi and Supabarn (Barr 2010). These barriers to market entry appear to be founded primarily on the comparatively high market shares of Woolworths and Coles in the ACT (appendix F), rather than any evidence of adverse competition outcomes as a result of this dominance.

The ACT policy is an example of a government using a regulatory constraint to competition (that is, the barrier to local market entry) in an attempt to boost another aspect of competition (increased variety of businesses in the market place). There may be instances when the benefits of such regulatory action exceed the opportunity costs of the restriction to the community. However, given the explicit competitive advantage afforded to particular operators and the higher grocery prices that are expected to result in the local ACT markets involved (Wilson 2010), it is not clear that this particular policy will result in a net increase in competition in the ACT grocery market.

The Victorian Tourism Industry Council reported that the scope of tourism developments is often heavily restricted by planning and land use requirements,

such that the business is unable to expand and/or maintain commercial viability (sub. 10, p.2). The Tourism and Transport Forum similarly commented that: 'The development controls which often make tourism unviable include limits on height, room numbers, noise, operating hours and other effective limits on the ability to conduct tourism trade. The cumulative net effect of these development controls is often to make tourism development unviable, even in zones where tourism is permitted' (sub. 50, p.21). The Department of Resources, Energy and Tourism noted that differentiated treatment of high density residential development from hotels in the application of planning legislation has made investment in hotels uncompetitive compared with other forms of commercial and residential investment (sub. 22, p.4).

Ports Australia reported that where residential activity is permitted to encroach on ports and transport corridors, the competitiveness of ports is constrained (sub. 60, p.7). Fremantle Ports reported that this encroachment manifests through road access restrictions, rail curfews, restrictions on hours of operation, ability to use land for port purposes, types of trade imported and exported and has 'a direct impact on the competitive ability of both the land transport sector and ports through a loss of potential to use the corridor and port for its current and future planning capacity ...' (sub.14, p.3). Encroachment issues are discussed further in chapter 4.

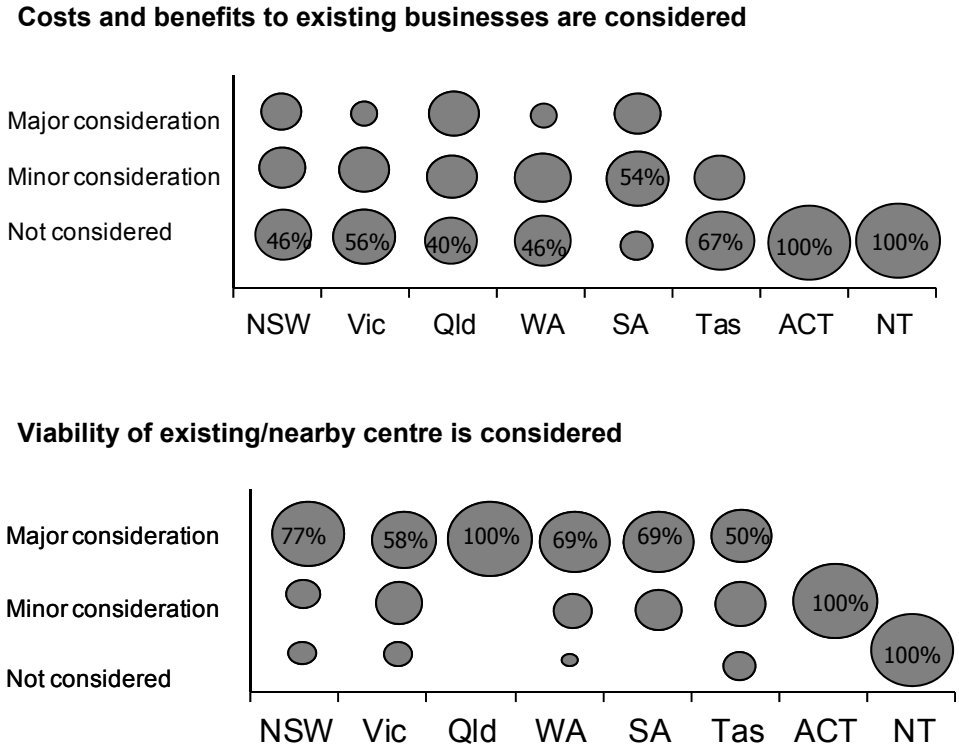
Finally, there are a wide range of decisions made in other policy areas for social, cultural and environmental reasons but which have impacts on the extent to which planning and zoning systems restrict competition. The declaration of an area or building as being of heritage significance is one such area which can impose requirements on business regarding site use and conservation. Heritage declarations can be made at a Commonwealth, state or local government level, may not be anticipated at the time of site purchase (and therefore not incorporated in the price of the site) and may occur regardless of the level of investment that the occupying business has in that location. The declarations can put the business occupying a heritage site at a competitive disadvantage as any business expansion which requires modifications to the structure may be substantially constrained.

Potential impacts on existing centres and businesses used as barriers to market entry

A significant limitation on competition imposed by many jurisdiction plans is a restriction on the extent to which new businesses are permitted to impact on existing activities. Proponents of some commercial DAs are required to provide to the relevant assessor and/or the community, evidence of the likely impacts of their proposal. These requirements generally include an economic impact assessment.

The main matters often looked at in an economic impact assessment are: existing supply and demand for the proposal, including an analysis of the demography for the area and the financial habits of the residents; any impacts on existing businesses (particularly for larger scale proposals); net employment impact assessment. Economic impact assessments are most commonly required for new industrial, commercial and retail developments such as manufacturing centres, offices, retail operations and entertainment facilities.

Figure 7.1 **Council consideration of competition impacts**[a,b]



[a] The size of bubbles represents the per cent of responding councils in each state/territory which reported in each category. [b] Council response rates to this question are less than 20 per cent in Victoria, Western Australia and South Australia.

Data source: Productivity Commission Local government survey 2010, Q42.

Most (but not all) surveyed city councils in Australia consider the costs and benefits to existing businesses and impacts on the viability of a town centre in making DA decisions (figure 7.1). The Northern Territory was unique in that it reported to consider neither impacts on existing businesses nor viability of existing centres in making DA decisions. In contrast, Queensland, New South Wales and South Australian city councils were more likely than other jurisdictions to treat the costs and benefits to existing businesses as a major consideration in assessing a rezoning application or DA. City councils in these same states were also the most likely to

treat the viability of existing or nearby centres as a major consideration in rezoning and DA decisions. Often the requirement to consider these impacts is quite explicit in the council plan. For example, Hastings LEP (2001) includes as an objective for its Neighbourhood centres zone 2a1: 'to ensure that the neighbourhood centres are viable and not in competition with one another …'

Whether or not the impacts of a proposal on existing businesses and centres are considered in evaluating the merits of proposal and the weight given to these impacts is critical to the overall effect that a planning system has on competition.

On the one hand, some jurisdictions (such as New South Wales — box 7.3) have proposed legislative measures to ensure competition is not grounds for DA rejection and case law has generally ruled out competition as a basis for DA refusal. In the High Court decision on *Kentucky Fried Chicken Pty Ltd v Gantidis* (1979) for example, Justice Stephen stated that:

> … the mere threat of competition to existing businesses, if not accompanied by a prospect of a resultant overall adverse effect upon the extent and adequacy of facilities available to the local community if the development be proceeded with, will not be a relevant town planning consideration.[9]

The SA Environment, Resources and Development Court have also made a number of judgements concluding that competition is not a planning consideration in the assessment of planning applications (sub. 23, p.12).

Furthermore, in a market economy, it is in the public interest for competitors to have an impact on each other as these impacts are one way that prices are kept low, service standards desired by consumers are maintained and efficiency in the distribution of the economy's land, labour, financial and other resources is supported. Moran (2006, p.35) noted that:

> … with respect to shopping centres or theatre complexes, the government criteria for agreeing to new providers include prerequisites that the existing providers will not be adversely impacted by the competition. In the wider areas of government, not only would such strictures be rare, they would be recognised as harmful to the interests of consumers and would, indeed, be illegal under Part IIIA of the *Trade Practices Act.*

9 Note, however, that while the threat of competition is not a valid reason to refuse development permission, the case decision leaves open the possibility that a development proposal which reduces 'the extent and adequacy of facilities available to the local community' may be refused. There have been a number of subsequent court cases which have drawn on the decision of *Kentucky Fried Chicken Pty Ltd v Gantidis*.

Box 7.3 **The NSW Draft SEPP on Competition**

In July 2010, the NSW government released for public consultation, a draft SEPP on competition, to be effected under its Environmental Planning and Assessment Act 1979.

The draft SEPP applies to retail, business and office developments which are proposed under Part 4 of the Act (that is, not major infrastructure projects or other Part 3A developments). Specifically, in assessing these developments, the SEPP provides that the following aspects are not matters to be taken into consideration by the consent authority:

- commercial viability of the proposed development
- likely impact of the proposed development on the commercial viability of other developments (unless the likely impact is an overall adverse impact on the extent and adequacy of facilities and services available to the local community).

Furthermore, the SEPP proposes that anti-competitive barriers to retail development in planning instruments and development plans will not have effect. Specifically, the following restrictions cannot be upheld (except where a restriction arises because of controls related to the scale of the development or any other aspect which is not merely about the number or proximity of businesses):

- restrictions on the *number* of a particular type of retail premises in any commercial development or in any particular area
- restrictions on the *proximity* of a particular type of retail premises to other retail premises of that type.

Urban Taskforce contend that the possibility of refusing a DA because of its perceived overall adverse impact on the local community will mean that in practice, the proposed new SEPP will lead to little change in the consideration of competition effects of proposed developments (sub. 59, p.44). The Planning Institute of Australia (NSW division) 2010 notes that the draft SEPP is simply codifying existing case law and points out that it raises new definitional problems with regard to 'commercial development', 'overall adverse impact', 'extent and adequacy' and 'loss of trade'.

Source: Consultation Draft for State Environment Planning Policy (Competition) 2010

On the other hand, a possible reason why consideration of competition impacts is so widely included in planning and DA processes is that there is no other obvious stage (or body, in many cases) to consider the potential consequences for market concentration that may be associated with a DA.[10]

[10] The ACCC considered that the challenge of freeing up planning/zoning impediments to achieve improved retail grocery competition could not be left solely to its role in enforcing and promoting compliance with the *Trade Practices Act* (ACCC groceries inquiry). A development proposal can be consistent with the requirements of the *Trade Practices Act* but nevertheless be detrimental to competition. For example, ACCC clearance of a proposal by a supermarket chain

The expectation amongst planners and the community that the impacts on existing businesses and communities will be considered is, rightly or wrongly, widely entrenched. The Planning Institute of Australia (PIA) for example, noted that they consider that new centres should be established 'if they can be supported by evidence that indicates they will have an acceptable level of impact on existing centres.' (sub.27, p.4) NSW government policy (which would be reversed by its proposed SEPP on competition) underpins the approach taken by many of its councils and states that 'a centre should not be commercially threatened by competition from a new retail proposal…' (NSW Department of Urban Affairs and Transport 2001). A local supermarket owner, commenting on the arrival of Aldi to his town in 2001 stated that '…competition's good, providing there's not too much competition.' (Powell reported in ABC transcript, 2001)

Concerns about ending up with a town centre that is devoid of thriving 'competitive' businesses are widespread among both community and regulators. There are numerous examples of 'dead' town centres that have resulted partially from poor planning decisions by governments and a lack of consideration of the development proposal in the context of existing activities (Kennedy 2004; Witherby 2000; Rohde 2004). NARGA claim that many Australian towns have:

> … a small shopping centre out of town and a substantial proportion of empty shops (amongst dollar stores) in the main street … In each case the appropriate planning processes would have been followed. The question is whether these properly assessed the net impact on the town or on competition in the affected sectors. Local government would have been sold on the "extra jobs" provided by the new development, not realising that in many cases these came at the expense of existing employment and the loss of existing businesses, diversity they offered and the support they gave to local communities. (sub. 47, p.4)

The SA Department of Planning and Local Government (2010, p.225) attributed closure of shops in neighbourhood and local centres to 'threat from competition' from large-scale retailing. It reported that in South Australia during 1999-2007, 12 small centres comprising 56 shops, closed.

Assessment of the economic impacts of a proposal on existing centres is the primary approach taken by jurisdictions to protect existing businesses from competition and reduce the perceived likelihood of ending up with a dead centre. For example:

- New South Wales is planning for 'business development zones' that, while aimed at start-up and emerging industries have, as an objective, that businesses

for a particular site acquisition means that the proposal is considered unlikely to substantially lessen competition. A decision by the ACCC to not intervene does not imply that there are no alternative outcomes that would improve competition, nor that the acquisition would not reduce competition (by an amount less than 'substantial').

located therein should 'support the viability of centres' (NSW Draft Centres Policy 2010, p.16).

- In Victoria, the Advisory Committee assessing the Woolworths' proposed home improvement store in north Geelong stated that '… disbenefits through the consequent negative impact on other traders and centres are also likely and would partially mute the strong community benefits' and consequently recommended refusal of the proposal (Victorian Department of Planning and Community Development 2010).
- The WA Local Government Authority indicated that 'The approval of similar land uses within an area can increase competition and affect the ongoing viability of existing operators.' (sub. 41, p.12)
- Whyalla Council reported that 'competition is not used as a basis for planning policy or development in South Australia…' but goes on to state that economic viability can be taken into account where there is, for example, 'a new retail centre rendering existing centres unviable.' (sub. 55, p.1)

The ACT has gone a step further in considering the impacts of proposals on competition for existing businesses. As described earlier in section 7.3, the ACT government undertook in May 2009 to actively pick supermarket operators for new sites (and exclude some larger operators) and to allow existing independent operators to increase the size of their stores in local centres (Barr 2010). While the government justified its decision on the basis of the long-term competition benefits which could arise with greater diversity in supermarket ownership, the approach to achieving these benefits has been widely criticised as anti-competitive for providing government support to certain market participants over others (ABC 2010; Harley and Carapiet 2010; SCCA sub.43) and because of the higher than competitive grocery prices which are expected to result (Wilson 2010).

Some groups have pointed out in submissions to this study that it is not the impact on individual businesses that is usually considered but the broader community impacts. ALGA reported that:

> Councils are required to take into consideration the issue of competition when undertaking their strategic or statutory planning responsibilities, if it is not a stand alone planning consideration, then as part of the all encompassing "in the public interest" test … An assessment of competition is not based on a review of the operator of a particular business but rather the land use impacts of the proposal in question. … Major commercial and retailing developments are carefully considered, and are subject to wide ranging assessments on the likely transport, infrastructure, urban design and economic impacts. (sub. 33, p.10)

Council of Capital City Lord Mayors similarly claim that 'the issue of competition, however, is but one part of the economic impact and would not normally carry determining weight when considering all the other factors within the planning equation.' (sub. 31, p.11)

While it is difficult to make an assessment of the impacts on existing centres without also measuring the likely impacts on the key existing businesses within those centres, this distinction is a necessary one if planning objectives for viable centres are to be progressed with minimal adverse impacts on competition.

Jurisdictions vary widely in terms of the extent of impact by competitors which is considered acceptable. Manningham City Council reported that:

> At Panel Hearings and at VCAT, an impact of 10% to 15% on retail sales is often taken as being the level at which "significant impact" is said to occur; that is, a level of impact that is beyond the normal fluctuations of day-to-day competition and a level at which the role and function of a centre may be threatened. (Manningham City Council 2009, p.6)

Information request 7.3: The Commission is interested in examples from business of DA proposals which were explicitly assessed on the basis of their potential impact on existing competing businesses and/or centres. The Commission also welcomes business views on which councils or cities are the most and least likely to take such an approach in their DA assessments.

Information request 7.4: The Commission is attempting to discover whether there are 'rules of thumb' or acknowledged criteria for assessing the extent of impact on existing businesses which is acceptable for a proposed development to proceed.

Information request 7.5: The Commission would appreciate some indication from development approval bodies as to how the potential benefits of lower prices and improved product range for consumers offered by a new development are traded off against the costs of a potential dead city centre.

7.4 Barriers and issues for particular retail groups

Changes to the style of retailing (and associated changes in the type of sites required for retailing) have been gradual in Australia with the appearance of chain stores in the early 1900s; enclosed shopping centres in the 1950s and 1960s; direct factory outlets in the 1970s and 1980s; bulky goods centres in the 1990s and, more noticeably, in the decade since 2000. On a smaller scale in recent years, the re-emergence of street markets and temporary stalls, the increased popularity of outdoor food and beverage services and electronic retailing, and the changing role

and location of convenience stores, have also potentially had an impact on the land requirements of the retailing sector.

The SCCA report that 'Each new retailing format which arrives in Australia asserts that it is 'new and innovative' and that the planning system needs to be adapted to accommodate its unique qualities' (sub. 43, p.6). A 2006 VCAT decision enunciated a role for a planning system faced with new format businesses:

> … an expansive rather than a restrictive approach should be adopted that makes allowance for the evolution of the retail industry but in a way that will achieve a net community benefit … it would be inappropriate to constrain opportunities for the retail industry to develop on the basis that new types of retail premises do not fit comfortably within existing definitions and traditional concepts of retailing which may have informed earlier decisions about how specific uses ought to be characterised … As new forms of retailing evolve, the role of planning is to ensure that they locate in appropriate places where they will best meet the needs of net community benefit and sustainable development. It is not the role of planning to frustrate the development of retailing or try to force uses into inappropriate locations by taking a restrictive view about which definition certain activities fall within. (*Radford v Hume City Council* (VCAT 2662, 21 December 2006)

Planning and zoning issues with new format retailers arise primarily because:

- the prescriptiveness of planning and zoning systems (such as specifications relating to store sizes or goods sold) has led to ad hoc definitions and regulatory changes to either cater for or prevent particular retailers from locating in particular areas
- lack of flexibility in the expansion of centres, the capacity to rezone and/or amalgamate sites to facilitate larger format operations has limited location options for larger potential entrants
- those in the community with a fear of businesses that are 'big' or 'foreign' for example, can legitimately use the objections and appeals facilities of planning and zoning systems to delay or stop such developments. (See community consultation discussion in chapter 9 for more details.)

These planning and zoning issues engender competition concerns for existing businesses, when new retail entrants are offering much the same types of goods and services as existing businesses, drawing on the same customer base, but are, for whatever reason, receiving different regulatory treatment through planning and zoning systems. For example, the new retailers may:

- have access to lower cost sites (either through spot rezonings or through meeting prescriptive definitions on the business type)

- be less affected by planning and zoning requirements for public amenity, etc (because of the lesser requirements on out-of-centre sites)
- receive differential treatment in the rezoning of land.

On the basis of such reasons, the SCCA contend that 'it is these requests for special treatment that are anti-competitive' (sub. 43, p.6). Instead of working within existing requirements, some large retailers and developers negotiate to their commercial advantage for changes to existing requirements.

The interaction with the planning and zoning systems of supermarkets, large format retailers and developments on airport land are considered here. Details on the scope and market share of these groups and other key retail market participants are included, where such information has been available, in appendix F.

Supermarket retailers

The key issues with the planning and zoning systems identified by supermarket groups are the availability of suitable sites and the ease with which these sites can be made ready for development — including any public consultation necessary, rezoning and other approval processes. These factors are critical for the ability of new entrants in a market to compete against existing retailers.

Table 7.3 lists the possible locations for small and large retailers in each jurisdiction. For most areas, there are at least two zones in which retailers may locate, although large format supermarkets are not permitted everywhere that other large format retailers are permitted (for example, generally not in industrial zones) and there is usually a raft of other requirements which render sites in the permissible zones unviable. For the selected growth areas reported, the zone system appears most complex and area specific for the New South Wales and Queensland areas.[11] The resulting floorspace per person used for grocery retailing, however, appears to be determined more by population levels than zoning systems, with lower floorspace per person in those catchments which have a higher population (chapter 4).

[11] It should be noted however, that the gradual shift to use of LEP templates in New South Wales and the eventual implementation of new planning documents following council amalgamations in Queensland may result in some simplification of zone categories for council areas reported here.

Table 7.3 **Zones for alternative format retailers by selected growth area**[a]

	Growth area	*Small supermarket* [c] *(1500sqm)*	*Large format retailer*
NSW[b]	The Hills (Baulkham Hills)	3a Business (retail) zone 3b Business (commercial) zone	3a Business (retail) zone 3c Service business zone 4b Light industry zone
	Camden	3 (a) General Business 3 (b) Business Special 3 (c) Neighbourhood Business 3 (e) Town Centre 3 (f) Town Centre (Support) 3 (g) (District Business Zone)	3 (a) General Business 3 (b) Business Special 3 (b1) Business Support 3 (e) Town Centre 3 (f) Town Centre (Support)
Vic	Wyndham	Mixed use zone Business 1 zone Business 2 zone	Mixed use zone Business 1 zone Business 2 zone Business 3 zone Business 4 zone
	Melton	Mixed use zone Business 1 zone Business 2 zone	Mixed use zone Business 1 zone Business 2 zone Business 3 zone Business 4 zone
Qld	Ipswich	Urban Areas locality - Major Centres Zone Local Retail and Commercial Zone Local Business and Industry Zone CBD Primary Retail Zone CBD North – Secondary Business Zone CBD Primary Commercial Zone Rosewood locality - Town Centre Zone Townships locality - Township Business Zone	Urban Areas locality - Major Centres Zone CBD Primary Retail Zone CBD North – Secondary Business Zone CBD Primary Commercial Zone Rosewood locality - Town Centre Zone Townships locality - Township Business Zone
	Moreton Bay (Caboolture)	District Centre Zone Local Centre Zone Metropolitan Centre Zone	District Centre Zone Local Centre Zone Metropolitan Centre Zone
WA	Cockburn	Regional Centre District Centre Local Centre	Regional Centre District Centre Mixed Business Light and service industry Industry
	Wanneroo	Commercial	Business Commercial Service industrial

(continued next page)

Table 7.3 **(continued)**

	Growth area	*Small supermarket [c] (1500sqm)*	*Large format retailer*
SA	Playford	Regional centre zone District centre zone Neighbourhood centre zone Local centre zone Town centre zone	Regional centre zone District centre zone Neighbourhood centre zone Commercial zone
	Mount Barker	Regional town centre zone Neighbourhood centre zone Historic Township (Main street heritage area) zone	Regional town centre zone Light industry zone
Tas	Sorell	Business zone Village zone	Business zone Village zone
	Brighton	Commercial zone	Commercial zone Industry zone
ACT	Canberra	Core zone Business zone Services zone Local centres zone	Core zone Business zone Services zone Industrial mixed use zone
NT	Palmerston	Zone C – commercial	Zone C – commercial

a Listed are the zones in which these retail formats are not expressly prohibited. In some zones these businesses are permitted without a DA but in most are only permitted with council approval and/or are permitted but other requirements (such as floor area or height restrictions, minimum street setbacks or car parking requirements) would nevertheless make it difficult for these retail formats to locate in these areas. **b** The 2009 draft centres policy for New South Wales provides that supermarkets (=shops) and retail premises may be located in local and major centres in areas zoned Business 2 (Local Centre), Business 3 (Commercial core) and Business 4 (Mixed use). **c** A supermarket falls within the definition of a 'shop' in New South Wales, Victoria, Queensland, Western Australia, South Australia and the Northern Territory.

Sources: Territory and council plans in selected growth areas.

Where there are flexible planning instruments and a ready supply of suitable sites, a business is more likely to enter a market through the development of new stores. If there are substantial restrictions over development and/or few suitable sites, the business is more likely to enter a market by the purchase of an existing retailer (Urban Taskforce 2009, p.31).

Coles and Woolworths typically adopt the former approach to entering new markets, although they also regularly expand on existing sites. For example, the SA Department of Planning and Local Government (2010) reported that '… retail floor space growth from 1999 to 2007 has mainly involved replacement of small supermarkets with larger ones [and a significant increase in homemaker shopping]'. However, the ACCC (2008) found that there was little evidence to suggest that

Coles and Woolworths have simply 'bought out' existing competing stores and these retailers typically open around 20 new supermarkets each per year (appendix F). Aldi also has a set floor plan model, prefers to purchase sites and develop its own stores (although it has adapted its model to operate within shopping centres where necessary) and plans to continue its rapid expansion (appendix F).

However, in submissions to the ACCC groceries inquiry and to this study, Aldi noted that access to suitable sites for development is one of the greatest impediments to competition in the Australian retail grocery market and the 'primary brake' on its growth in Australia (Aldi 2008 and sub. 11, p.1). For example:

- A proposal for mixed retail/commercial development on land zoned for that purpose in St Peters, Sydney, was rejected by the council in May 2009 because it was deemed to 'undermine a retail hierarchy which has been established to ensure the viability of the Green Square Town Centre' (City of Sydney Major Development Assessment Sub-Committee 2009).
- In Victoria, Aldi indicated that a key barrier to entry in the Geelong area has been the lack of land in the business 1 zone in existing activity centres. This has forced Aldi to consider out of centre sites which need to be rezoned (sub. 11, p.4). Notably, of the five new stores in Victoria which Aldi submitted for approval by Advisory Panel in 2010, all required a land rezoning — four sites from residential 1 to business 1 and one site from business 4 to business 1 (Victorian Department of Planning and Community Development 2010).

Where 'as of right'[12] development is permitted in retail and commercial zones in and around activity centres, entry into markets may be more straightforward with fewer delays and greater certainty around the right to use a site for its zoned purpose. Other smaller operators tend to enter markets through the purchase and conversion of existing retail sites but nevertheless, have stated that planning and rezoning systems limit access to suitable sites:

> Access to new suitable sites is a significant impediment to expansion of supermarket chains … Rezoning applications are a long and slow process which further hampers the ability to respond to consumer demand. This is particularly relevant in inner city areas where higher population densities are being encouraged where there are generally smaller lot sizes that require amalgamation to provide sufficient land to accommodate a supermarket development. (Franklins 2008, p.10)

Possibly in reflection of these difficulties in locating and amalgamating inner city sites, the market shares of the smaller grocery retailers are generally higher in outer

12 'As of right' developments are those which comply with all applicable zoning regulations and do not require any discretionary action (such as a consideration of economic, environmental or social impacts) by the assessment body in order to be approved.

city areas, in the regional cities and in the smaller state capital cities, such as Perth and Adelaide (appendix F).

Analysis of vacancy rates in retail centres suggests that while it may be difficult for businesses to locate in larger regional shopping centres and some prime retail strips, there is no evidence of a lack of space in other areas (appendix F). That said, if this space is fragmented (either spatially across an activity centre or between different landholders), then larger sites may be more difficult for businesses to locate.

A further issue with site availability is that many new site options are associated with shopping centre developments and these are often not available to smaller supermarkets or new entrants. The ACCC found that a preference of centre owners to have Coles and/or Woolworths as tenants (in order to enhance the success of the centre) creates a significant barrier to entry for other supermarket operators and is 'likely to lead to a greater concentration of supermarket sites in the hands of Coles and Woolworths' (ACCC 2008, p.xix).

Large format retailers

For the purposes of this discussion, 'large format retailers' are loosely considered to be those with a retail footprint that exceeds that of other retailers located in activity centres and typically exceeds the size of land sites in activity centres. What is 'large' will necessarily vary between areas and over time.

The key planning issues faced by large format retailers are essentially: the prescriptiveness of business/retailer definitions included in most plans (table 7.3); and a lack of large sites in activity centres which result in high prices when such sites are available.[13] For the most part, these two issues mean that large format retailers tend to locate on land that is:

- in out-of-centre location
- available in larger lot sizes than those in centres
- is often less well serviced with public infrastructure
- has fewer planning requirements related to public amenity
- generally available at a comparatively lower price and be less costly to develop.

13 In any given part of the metropolitan area, even without zoning and associated use restrictions, there are likely to be few suitable sites readily available for large scale residential, retail or commercial development. Where a site consists of a number of small land parcels, each with a different owner, it may be difficult and costly to undertake the complex negotiations required to assemble the land into a site large enough to support a major development. 'Fractured ownership' can be particularly problematic for infill developments within existing urban areas.

These potentially lower costs afford considerable competitive advantage to the large format retailers over other businesses retailing similar products in centre locations. The extent to which out-of-centre sites provide a cost advantage over in-centre sites in each jurisdiction is revealed by a comparison of land/rental costs in chapter 4 and development costs in chapter 6.

Bulky goods retailers

Bulky goods retailers have differentiated themselves from other retailers (at least notionally) to the extent that 'bulky goods retailing' is defined, albeit inconsistently, in all state and territory planning schemes and commonly recognised as a separate category of retailing. Based on its separate definitions (appendix F), bulky goods retailing can generally locate on land that is zoned for purposes other than core retail — such as lower order business/commercial and industrial zoned land (table 7.4), which is generally available at a lower cost than retail land within existing activity centres.

In return for this access to out-of-centre land, most planning schemes apply floorspace limits (minimum or maximum size requirements or both) and or restrictions on the types of goods which may be sold by bulky goods retailers. New South Wales, for example, has reported that:

> Regulation of the format [bulky goods retailing] is often required to stop bulky goods outlets selling non-bulky goods. This practice impacts on centres and raises community costs beyond any benefit. Where such concerns exist, councils are encouraged to apply floorspace limits or restrictions on the types of goods for sale. This is a fair restriction in return for the cost and locational advantages not available to other retail outlets. (NSW Dept of Urban Affairs and Planning 2001, p.11)

Table 7.4 Zones and plan restrictions for bulky goods retailers by selected growth area

	Growth area	*Bulky goods showroom/retailer*[a]	*Definitional limits*	*Restrictions on operation*
NSW[b]	The Hills (Baulkham Hills etc)	3a Business (retail) zone 3c Service business zone * 4b Light industry zone *	Bulky goods excludes sale of foodstuffs and clothing unless 'ancillary'.	Zone 4b: activities which generate 'a low return per unit of floor area'.
	Camden	3 (a) General Business 3 (b) Business Special 3 (b1) Business Support * 3 (e) Town Centre 3 (f) Town Centre (Support)		Zone 3(b1): Restriction on sale of foodstuffs and clothing unless 'ancillary'
Vic	Wyndham	Mixed use zone Business 1 zone Business 2 zone Business 3 zone Business 4 zone * Industrial 1 zone Industrial 3 zone	Defined as a 'shop' or 'retail premises' or 'restricted retail premises', depending on items sold.	Generally a minimum floor area of 1000m2 in mixed use and industrial zones Maximum leasable floor area limits for 'restricted retail premises' apply on some sites in some zones.
	Melton	Mixed use zone Business 1 zone Business 2 zone Business 3 zone Business 4 zone * Industrial 1 zone Industrial 3 zone		Generally a minimum floor area of 1000m2 in industrial zones. Maximum floor area limits apply on some sites in mixed use zone.
Qld	Ipswich	Local retail and commercial zone Local business and industry zone Regional business and industry investigation zone - Business park zone Amberly airbase and aviation zone Showgrounds, Sport, Recreation, Service Trades and Trotting Zone	Defined as 'bulky good sales' to have a building having a gross floor area of more than 500 square metres and sell a particular listed range of goods.	Exempt use in local retail and commercial zone if less than 6000m² of gross floor area in the LC1 Sub Area or greater than 2000m² of gross floor area in the LC2 Sub Area – otherwise, impact assessable use. Impact assessable use in other listed zones – but no size restrictions.
	Caboolture, Moreton Bay	District centre zone Metropolitan centre zone	Defined as a 'retail showroom'	Self assessable or code assessable use only in district centre and metropolitan centre zone; elsewhere, retail showrooms are an inconsistent use but may be allowed after impact assessment.

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Table 7.4 **(continued)**

	Growth area	*Bulky goods showroom/retailer*[a]	*Definitional limits*	*Restrictions on operation*
WA	Cockburn	Regional Centre District Centre Mixed Business * Light and service industry Industry	Defined as 'showroom' and excludes retail of personal items such as foodstuffs, liquor or beverages, clothing or personal adornment items, magazines, books, newspapers or paper products & medicinal or pharmaceutical products	Vehicle parking requirements are the only explicit restrictions.
	Wanneroo	Business Commercial Service industrial		
SA	Playford	Regional centre zone * District centre zone * Commercial zone *	Defined as 'retail showrooms' or 'bulky goods outlets'	
	Mount Barker	Regional town centre zone* Light industry zone *		Bulky good outlets in some 'policy areas' are required to be at least 500sqm.
Tas	Sorell	Business zone (B1) * Village zone (B2) *	Defined as a 'showroom' to broadly include all goods of a bulky nature (excl. animals).	
	Brighton	Commercial zone * Industry zone *		
ACT	Canberra	Core zone Business zone Services zone Local centres zone Mixed use zone Industrial mixed use zone *	Termed 'bulky goods retailing' and defined to be a shop which includes a loading dock within the building.	Maximum gross floor area per shop of 3000sqm in industrial zones.
NT	Palmerston	Service commercial zone	Defined as showroom sales of goods of a bulky nature.	No floor area restrictions.

a Listed are the zones in which bulky goods are not expressly prohibited. An asterisk beside a zone indicates a zone in which bulky goods are expected to locate. Other zones, while not expressly prohibiting bulky goods, may impose other requirements (such as floor area or height restrictions, minimum street setbacks or car parking requirements) that would nevertheless make it difficult for bulky goods retailers to locate in these areas. Generally bulky goods retailers require council approval even in zones for which they are allowed. **b** Rowe (2008, p.32) documented that in Sydney (in 2008 at least), 38 per cent of council LEPs contained no definition of bulky goods and of those which did, there were 15 different interpretations of the term. Furthermore, bulky goods were allowed in commercial and industrial zones for nine LGAs, in industrial zones only in 12 LGAs, in commercial zones only in 6 LGAs and prohibited in all zones in 12 LGAs.

Sources: Council plans in selected growth areas; Rowe (2008).

Examples of some of these regulatory restrictions on bulky goods retailers are listed in table 7.4 for selected growth areas across Australia. At this stage, it appears that Victoria makes the most use of floor space limits and Queensland councils have the most complicated and prescriptive zoning categories (but Queensland plans are nevertheless relatively clear as to what are 'consistent' and 'inconsistent' uses in each area and the resulting level of assessment required).

As for supermarket retailers, barriers to entry of new bulky good retailers are potentially lower in those areas for which 'as-of-right' development on sites is facilitated. The ANRA gave the example of the proposed establishment of a bulky goods warehouse in a light industrial precinct of Balgowlah, Sydney. Even though there was existing bulky goods development in the precinct, barriers to the new entrant included additional consultation with a range of decision bodies and the community, plan amendments and resubmission multiple times, and ultimate approval with limited trading hours and other operational restrictions (sub.44, p.7).

In practice, some retailers have developed business models which allow them to operate successfully in both bulky goods centres and the more traditional shopping centres. Furthermore, distinctions between bulky goods retailers and other retailers have become increasingly blurred with many bulky goods centres now retailing clothing and other small consumables (the sale of which does not appear to necessitate large areas for delivery, display, handling or storage)[14] and most department stores retailing bulky items such as furniture and whitegoods.

That the lower costs of locating on out-of-centre sites provide a competitive advantage is perhaps evidenced by the rapid expansion in bulky good centres across Australia over the past two decades. In 2009-10 alone, there were at least 27 new centres opened, under construction or in the planning system — adding a total of over 600 000m^2 of retail space (appendix F). The corresponding floorspace for bulky goods is now roughly similar in the major mainland state capitals (around 0.4 to 0.5 m^2 per person), although slightly higher (at 0.55 m^2 per person) in South East Queensland (chapter 4).

The competitive advantage afforded to businesses in a large bulky goods centre over other retailers located in town centres is likely to be accentuated in smaller markets, such as in Tasmania, Northern Territory or in mainland regional centres.

[14] The SCCA have on occasion recommended that definitions of bulky goods retailing include a limit of 10 per cent on ancillary retailing but few jurisdictions have introduced such explicit guidelines (SCCA 2005). Rather, those jurisdictions which attempt to limit non-bulky goods retailing in bulky goods sites tend to require a 'dominance' of goods defined as bulky.

Costco

Costco's entry to Australia highlighted the extent to which prescriptive definitions of retail businesses in planning documents limit the scope for alternative business models (appendix F).

In Melbourne, once it was established that Costco's form of retail model fitted within the definition of a 'shop' under existing zoning regulations, Costco was able to locate as an 'as of right use' on a site already zoned for retail in the Melbourne Docklands (Costco 2009).

In Sydney, Costco was unable to locate a site of the required size (at least 3 hectares) within existing retail centres or in the fringes of bulky goods centres and enterprise corridors. Costco's development proposal for its Auburn site (Parramatta Road Retail Precinct) is located in an enterprise corridor and necessitated a rezoning of industrial land to retail. Development of the store was supported by Auburn Council and as the proposal met the minimum threshold to be called-in by the Minister, it was assessed as a part 3A application. While the Costco proposal did not fit into existing New South Wales planning laws, the company aligned itself to definitions of a 'bulk goods retailer' in order to facilitate the planning approval process:[15]

> We're a new type of retailer, we don't fit into most planning laws ... You have to be a supermarket or department store. We're none of that, but we're all of that. (various newspaper articles, 6 April 2010)

> The Costco business model ... is that of a 'retail warehouse' which is not recognised as an individual form of development under the Standard Instrument definitions … Whilst Costco cannot be properly characterised as 'Bulky Goods Retailing' the Costco wholesale and retail warehouse shares many structural and operational characteristics with bulky goods retailing but equally can not be considered to solely be a traditional retail centre development. (Costco submission to the NSW Planning Department)

Costco subsequently reported that:

> It is Costco's experience to date that the current planning system in NSW entrenches limited types of retail uses which: discourages competition by limiting the opportunity for new entrants into the market by way of restricted land zoning and by limiting the number of retail outlets in a given area … does not promote dynamic change or competition. (Costco 2009)

The government subsequently raised the threshold on projects called-in by the Minister from $50m to $100m. It also proposed a limit on the size of retail

[15] Costco would be classified under the draft NSW Activity Centres Policy as a 'big box' retailer or 'shop' and could therefore be located in Local Centres, Commercial Core or Mixed Use zones.

occupants of at least 10 000m^2 at the Parramatta Road Retail Precinct where the Sydney Costco is to be located (Clause 65(3), Draft Auburn LEP 2000 (Amendment No.22)). SCCA claim that the proposed LEP that applies to the Parramatta Road Retail Precinct where the Sydney Costco is to be located is anti-competitive and would not enable certain other businesses and retailers to develop there (sub. 43).

The other aspect highlighted by Costco's entry is the lack of large sites for retail businesses in activity centres. Costco reported that 'Australia's urban sprawl was making it difficult to find sites that were large enough to fit the warehouse store in "downtown" locations.' (news.com.au, 2010). A typical Costco store is around 13 000m^2 — similar in size to a small Myer or David Jones store — but with all retail space on a single level. While it may be advantageous to have a planning system which facilitates a range of business models, it could also be expected that there is a point at which business models should be somewhat adaptable to local conditions.

Woolworths home improvement stores

Woolworths introduced its concept of a home improvement store to the planning systems of Victoria, Queensland and New South Wales in 2009. By widening its retail offer to include a mix of hardware and whitegoods, Woolworths has challenged the existing planning definitions of stores which are permitted to locate in the industrial and business zones in which bulky goods retailers usually locate, in Victoria and New South Wales at least. In its Victorian planning applications, the proposed stores' land uses necessitated in some cases, a rezoning of land to a business 4 zone.

As a potentially significant competitor to the new Woolworths stores, Bunnings has been an objector in the planning process. In Victoria, Bunnings' principal argument is that Woolworths are seeking the right to sell goods (specifically, whitegoods and home entertainment) that Bunnings are not permitted to sell because of their location in industrial zones (Business Day 2010).

Mitre10 highlighted the differential treatment afforded to Woolworths because of the size of their proposal:

> Woolworths has already received abnormally favourable planning treatment in Victoria whereby the State Planning Minister has circumvented existing local government planning systems and approved at least 12 sites for new big-box hardware operations … This 'free ride' which other new operators do not enjoy will inevitably lead to a lessening of competition in the retail hardware industry as more independent operators fall by the wayside and the Wesfarmers-Woolworths duopoly further extends its dominance. (sub. 39, p.2)

It is important to note that these issues with large format retailers have only arisen because of very prescriptive definitions on the types of goods which can be sold in particular zones. The claim that new entrants should be required to meet the same planning and development requirements that existing businesses were required to meet when establishing is not conducive to an adaptable regulatory system. It would be of potentially greater benefit to the competitiveness of market outcomes in the longer term if zoning requirements were flexible enough to allow both the entry of alternative business models and the modification of existing models.

Retailers on airport land

The use of surplus airport land for non-airport commercial developments has been a growing trend in the past 20 years. Each of the capital city airports now has retail, commercial and/or light industrial developments on airport land with land zoned for commercial activities representing up to 25 per cent of airport land (table 7.5). The key competition issues with airport land retailing are essentially twofold — the competitive advantage afforded to those businesses allowed to locate on airport land which is lower cost and less impacted by planning and zoning requirements; and the differential treatment (equity and cost competitiveness issues) received by these businesses in the planning and zoning approval processes. While many of the issues

Table 7.5 **Use of airport land for commercial purposes** [a]

	Area zoned for commercial uses (%)		*Area zoned for commercial uses (%)*
Sydney	3	Perth	3
Bankstown	16	Jandakot	25
Camden	5		
Hoxton Park	0		
Melbourne	7	Adelaide	17
Essenden	23	Parafield	15
Moorabin	7		
Brisbane	16	Hobart	0
Archerfield	0	Launceston	2
Coolangatta	18		
Townsville	0		
Canberra	18	Darwin	4

[a] Estimate based on spatial analysis of land use maps according to airport Master Plans. 'Commercial' is defined to include: retail, business, community, leisure, entertainment, recreation, hotels, conference facilities, shopping centres.

Source: Walker and Stevens (2008).

relating to infrastructure provision and community consultation have been dealt with in other reviews specific to airports, planning and competition aspects have not been comprehensively addressed to date. Furthermore, as the range of uses on airport lands expand (beyond bulky goods and offices to include supermarkets for example), the scope for competition impacts broadens.

As outlined further in chapter 11, developments on Commonwealth airport land are within the responsibilities of the Commonwealth Minister for Infrastructure, Transport, Regional Development and Local Government. As such, airport developments are not subject to the planning and development laws of the states and territories or the land use plans of local councils. In the case of the Canberra airport, the Commonwealth Government removed the need for development at the airport to conform with the National Capital Plan. In discussing developments at Canberra airport, the PIA (ACT division) has been reported as stating that:

> …it was not a lack of sites but Canberra's cumbersome planning regime constraining new development. Developments had to undergo consultation, zoning and leasing approval and battle retailing analysis with several government departments, but the airport was a one-stop shop under federal jurisdiction. (Thistleton 2011)

Consequently, the vast majority of proposed retail developments on airport land are approved. In recent years, only two major airport retail developments have been refused at the planning stage: the Victorian government intervened to stop development at Avalon Airport because of concerns about the potential impacts on retail developments in nearby Geelong; and a proposed outlet centre, homemaker centre, food courts and discount store adjoining Sydney airport was not supported by the Commonwealth government (Atkinson 2008).

The cost advantages afforded to businesses located on airport land relative to other competing businesses have been detailed by the SCCA to include: no obligation to meet infrastructure costs of developments; exemption from payment of state taxes such as land tax and parking levies; absence of the need for development approval and public consultation for developments less than $20 million which are consistent with the airport master plan; and exemption from state retail trading hours (SCCA 2008a). These potential competitive advantages are likely to be accentuated in smaller regional cities where a major commercial development at an airport would represent a significant increment in the overall amount of commercial space. This is an issue not just for retail space but also more broadly for the competitiveness of industrial and office space in smaller cities.

7.5 Barriers presented through government implementation of plans

As with any regulatory system, the written requirements may set the broad framework in which governments and regulated parties interact, but the manner in which these requirements are interpreted and applied can have a substantial impact on the competitiveness and efficiency of regulatory outcomes. Aspects in the implementation of planning and zoning systems which may particularly affect market outcomes include the consistency with which regulatory requirements are implemented; approaches used for the government release of sites for development; and the different stances of jurisdictions on changing the allowable uses for sites.

Inconsistent implementation as a barrier to entry

Consistent interpretation and application of regulatory requirements within a jurisdiction is critical: for business to have confidence to invest in a development and ensure resources are not spent unnecessarily in either 'second-guessing' or attempting to manipulate outcomes; to enable past decisions to be used to assess the potential for a successful outcome in the future; and ensure that some developers are not unfairly advantaged over others (ANRA, sub. 44). Planning processes should be implemented in a manner which reduces the risks to business associated with the regulatory system and deliver certainty for investors, businesses and communities. Planning systems should not attempt to mitigate risks associated with markets.

There are a number of ways which inconsistent implementation of planning and zoning systems can act as a barrier to new business entry:

1. Alternative development assessment paths

All states and territories have some discretionary aspects to the assessment of some DAs and, for example, afford their planning minister with varying degrees of power to decide on individual DAs — usually those deemed to be 'of state significance', 'critical' to planning or economic outcomes for a region or the state, or of substantial significance to the development or future implementation of planning policy. In states with small councils or councils with low-resourced development assessment facilities, such alternative assessment paths for large, complex or state-significant projects may be necessary to ensure the benefits and costs of a development proposal are fully understood and taken into account in the decision making process. The assessment paths for DAs in each jurisdiction are noted in chapter 6.

Of particular interest here is the proportion of DAs that could potentially be handled at a council level but are instead 'called-in' by the relevant state minister. The proportion of DAs called-in to the Minister was reported to be highest in Victoria and South Australia. While for some projects a call-in is anticipated (or lobbied for) early in the DA process on the basis of the project size and known regulatory requirements, for other projects a call-in can occur late in the process and substantially alter the proposal's chance of success.

The Tourism and Transport Forum noted that 'The primary concern with ministerial call-in is that it is uncertain and encourages jurisdiction shopping between state and local approval.' (sub. 50, p.20) Study participants raised particular concerns about inconsistencies in DA handling in Victoria and South Australia:

- The Business Council of Australia noted that 'While it is possible to have projects of economic significance fast-tracked in Victoria, some proponents suggest that the process is ad hoc, relying heavily on the discretion of the Planning Minister in using their powers and the proponent's knowledge of Victorian planning processes.' (sub. 38, p.4)
- The Council of Capital City Lord Mayors reported that 'Concerns of differential treatment have been a topic of some discussion within SA, the Major development status that removes a project from the normal planning process, are [open] to differential and favoured treatment – for example relatively small projects (in North Adelaide) given major project status for no apparent transparent reason.' (sub. 31, p.14)

Exploitation by businesses of alternative assessment paths for their own gain is discussed later in this chapter.

2. Inconsistent enforcement of regulatory requirements

Some study participants reported that few government resources are devoted to ensure compliance with the conditions of a development's approval. The partial enforcement, or non-enforcement of a regulation '… places those businesses complying with the regulation at a competitive disadvantage to non-complying businesses' (Organisation Sunshine Coast Association of Residents, sub.21, p.6). Inconsistent enforcement of regulatory requirements has the potential to augment business gaming of planning and assessment processes and afford some businesses with a competitive advantage.

3. Development risks associated with long assessment periods

Development proposals which experience delays and long assessment periods incur a greater risk of needing to be modified for: regulatory changes in the relevant jurisdiction; changes in assessment staff and interpretations of regulatory position;

and community attitude changes. Long and uncertain project gestation periods can also mean that unexpected changes in demand conditions have a significant impact on the viability of development projects. Where such factors cannot be incorporated into higher prices for the final developed product, the competitiveness of the developer may be adversely affected.

The length of DA processes in each jurisdiction were detailed in chapter 6. While Victoria has lengthier processes for DAs than other states, developers have indicated to the Commission that other positive features of the Victorian planning system offset the comparatively slow DA approval times to reduce the overall risk to developers (chapters 8 and 9).

The Urban Taskforce was particularly critical of regulatory risks in New South Wales, noting that:

> The fluid and ever widening legislative environment has deprived the development industry of any protection from more onerous obligations once they have irrevocably committed to a development site. In fact diligent developers must now factor in an unusually high risk premium for developing in NSW, because of this uncertainty … Quite aside from the risks of the law being changed, the application of the law, as it stands, is a highly subjective and politicised process that can be extremely unpredictable. A decision-maker who wants to refuse development consent is literally blessed with an unending array of rules, policies strategies and ordinances that can be relied upon to justify a "no". A decision-maker who is minded to approve a development must navigate a complex and internecine maze of conflicting, overlapping, vague and rambling documents.' (2009, p.5 and 31)

It further reported that 'any person looking to acquire land in NSW for redevelopment will need to factor in huge regulatory uncertainty if any kind of rezoning is required.' (Urban Taskforce 2009, p.14). This view was echoed by Costco following its negotiations to enter Victorian and NSW markets:

> It has been Costco's experience that the level of investment risk that has been made in NSW by Costco is significantly higher than in Victoria. Following several meetings with the Victorian government it was clear that the Costco retail model would be accepted into Victoria under its planning system. The level of certainty of a Costco operating in NSW has been much lower and Costco has at its own risk, now entered into a contract for the purchase of land and development of land where the proposed Costco store remains prohibited. (Costco 2009)[16]

16 Costco received concept plan approval from the NSW government and final planning approval from the NSW Planning Assessment Commission in April 2010 for a store in Auburn in western Sydney. The approval is subject to 157 conditions including a requirement that Costco must build a new intersection on a nearby road to cope with the extra traffic around the store and that Costco will prepare and implement a range of plans related to factors such as waste and environmental management and building construction management.

In contrast, other study participants reported to the Commission that clarity on the allowable uses for sites renders Queensland's planning system a much lower risk environment in which to attempt business establishment. Queensland legislation includes the option for consent authorities to issue a preliminary approval, which may override planning schemes requirements and alter the level of assessment required of a DA (Sustainable Planning Act (QLD) 2009, subdivision 2).

Uncertain planning requirements may disproportionately impact on the ability of smaller land developers to compete, as they may be more dependent on the timing of income streams from a given project and thereby more commercially vulnerable to any planning system delays.

Competition and the government release of land

As the owner of substantial tracts of land (both greenfield and previously developed), government release of land for (re)development by the private sector has potential for significant impacts on competitiveness of some land markets. In particular, government land release can influence how much land is released, when and where it is released, for what purpose and which developers benefit. This has implications for the viability of a development project and the overall value of land use to the community. For example, a Queensland residents group, OSCAR, considered that 'the interventions of the State [QLD] government in identifying areas to be fast tracked for future development has had the result of reducing competition. By the state choosing the sites for major new Greenfield development large landholders become the beneficiary of development.' In WA, the UDIA reports that smaller developers have been driven out of the greenfields sub-division market because only the largest developers can roll out the required infrastructure on the necessary scale. Smaller developers either wait until the infrastructure passes their development or retreat from the market (sub. 53, p.15).

To reduce scope for the government release of land to act as a barrier to developer participation in land markets, competitive tender processes may be used. A competitive tender process is particularly important if the site is to be retained as a single parcel to be developed by just one developer in order to avoid the situation in which a government monopoly on land is simply transferred to a private developer. There may be more scope for competition (but at the cost of less coordinated development and possibly a loss in economies of scale) if a site is divided into multiple parcels with competing businesses able to develop each parcel.

Where a government land organisation (GLO) which operates as a business is the final site developer, it is important for the competitiveness of market outcomes and

an improved resource allocation throughout the economy that principles of competitive neutrality are adhered to. That is, government businesses must operate without net competitive advantages over other businesses as a result of their public ownership. Features of the GLOs are discussed further in chapters 3 and 4.

There may also be some competitive advantage afforded to developers who work with governments on projects. The Urban Taskforce reported, for example, that 'There is a reduced willingness for private capital to develop certain activities (such as "affordable housing") unless it is in a joint venture agreement with agencies/companies that benefit from favourable [government] treatment' (2009, p.6). While to some extent this is an inevitable consequence and aspect of such a partnership, in general, the competitiveness of outcomes can be improved if the process by which developers are selected to work with governments is open and competitive.

Moving the boundaries

The stance of different jurisdictions on changing the allowable uses for a site can have a major impact on the competitiveness and efficiency of land use in a city. In some jurisdictions, the preferences of regulators to preserve existing uses of sites can substantially limit the scope for innovation and competition between land users. In other jurisdictions, use of spot rezonings can substantially alter the wealth distribution within the local area and may open up the planning and zoning system to more gaming behaviour.

Preservation of existing uses as a barrier to competition and innovation

Planning and zoning systems can inadvertently act as a barrier to competition and innovation by entrenching existing patterns of development. This entrenchment can occur at two levels: first, by maintaining existing industries and land uses in given areas; and second, by maintaining the existing look/feel of a given location. While it is generally desirable for plans to be clear about requirements and strictly enforced, an efficient allocation of land between uses is only possible if plans are also flexible enough to cope with changes in suitability of sites for use by different industries and innovation in factors such as building construction and design/use of space.

The suitability and desirability of sites for particular uses necessarily changes and evolves over time. All Australian cities have examples of areas which are currently residential but which are becoming increasingly attractive for expansion of activity centres; industrial areas which are either too congested, restricted or run-down to be

viable sites for industry; or agricultural land on the fringe of urban areas which is more highly valued for residential or commercial development.

The extent to which planning policies and their implementation allow existing sites to be redeveloped for a different land use varies considerably between jurisdictions and cities. Often governments have a view on the 'need' for a particular type of development and this influences willingness to consider a rezoning for development. Generally, if the private sector is seeking to develop a particular parcel of land, a market need could be presumed to exist (Urban Taskforce 2009, p.13). The important issues that government should then be considering is whether the particular proposed use of a site is likely to provide the best long term outcome for the community and whether the infrastructure exists or will exist to support the proposed development.

Some planning and zoning systems are used to keep land in its current use, at the expense of other uses which are more highly valued by the community. Restrictions on the development of agricultural land are a common example of this.[17] For example, the Penrith Development Control Plan 2010 for the Mulgoa Valley seeks to 'protect the agricultural capability of prime agricultural land'. Similarly, the Urban Taskforce (2009, p.10) noted that in Sydney 'planning authorities have moved to protect industrial land, in part, because they correctly perceive that the market will re-allocate some of this land to higher order (more valuable) uses, if it is given the opportunity to do so.' However, such restrictions may be necessary to achieve desired planning outcomes where councils consider the proposed developments to be contrary to the long term welfare of the broader community (for example, because of the irreversibility of using agricultural land for development or the locational importance of some sites to major facilities such as ports and airports).

Attempts by planning authorities to limit the decline of particular commercial activities in some locations are rarely effective. Simply zoning land for a particular purpose does not mean that the desired activities will remain. Rather, such planning action may result in sites remaining either vacant or underutilised and comparatively unproductive. The SA Department of Planning and Local Government (2010, p.225) reported that:

> Retail, particularly in small centres, can often be displaced by commercial activities such as real estate, medical therapies and accounting. Planning has little control over this process…

[17] Given the difficulty in returning developed land back to agricultural purposes, some of these restrictions on development of agricultural land may be justified, but only to the extent that they maximise the value of the land to the community (and this means not just the value to future generations but the current generation as well).

Grocery retailers have also commented on the inappropriateness of some land zoned for retail:

> Local planning and zoning restrictions tend to bear little resemblance to commercial reality, areas that are zoned for retail uses are not necessarily in appropriate locations. Additionally, Government initiatives to increase population densities have created demands for retail space that cannot be met under existing zone criteria. (Franklins 2008, p.10)

Some planning and zoning systems are used in a paternalistic way that may partially and unnecessarily duplicate market processes or limit development which would be commercially marginal anyway. For example, the City of Adelaide reported that 'the planning and zoning system prevents the entry of some industries because it is recognised that large scale manufacturing is not suited to the City environment or the desired service focus of City business into the future. This is partially because the land values are too high. The City is trying to encourage residential and commercial business growth…' (sub. 23, p.8)

A number of submissions to this study noted that a failure or delay in reviewing planning documents and a lack of flexibility in zoning processes can hamper the competitive operation of markets by inhibiting the transition of land between alternative uses within urban areas (for example, subs. 23, 31 and 41). The Council of Lord Mayors reported that 'the preclusion of new industries and the continued existence of particular industries in some locations can arise from a local government authority's failure or delay to review its town planning scheme in a timely manner. The overly prescriptive nature of older town planning schemes in operation within some local government authorities can also preclude innovation, new development and technology and preclude local governments from being able to respond to market changes.' (sub. 31, p.12)

On a finer scale, implementation of planning and zoning systems may limit the scope for developments which are innovative — for example, in building style, use of space and technology, or integration with infrastructure and surrounding land uses. To remain competitive, businesses must continually evolve to meet market and consumer demand, but many planning and zoning systems are not responsive to these changes and land use tables in town planning schemes may not adequately allow for alternative business structures (WALGA, sub. 41 and ANRA, sub. 44). Use of planning systems to restrict some new industries is particularly evident in areas that are seen as having a 'niche' character (PIA (NSW division), sub. 1).

By their nature, innovative proposals break from traditional and existing patterns of development and yet, planning procedures often give the most credence to developers with an inherent interest in preserving existing development patterns.

One reason for this is that planning authorities reduce their own legal and political risks if they continue to enforce the status-quo, but raise the potential for considerable litigation, judicial review and community backlash if they pursue options that diverge markedly from existing developments (UDIA, sub. 53).

Spot rezoning and associated changes in land values

The legal capacity of jurisdictions to change the allowable uses on particular sites is summarised in table 7.5 and detailed in chapter 4. Up (down)-zoning occurs when a government changes either the zoning of a particular site or the requirements which must be met within a zone with the effect of increasing (decreasing) the future development potential of that site.

While rezoning of individual sites ('spot rezoning') increases the flexibility of a planning and zoning system for developers, it (inconsistently) affords a competitive advantage to the developer who gets windfall profits by a rezoning of land for higher value uses, raises efficiency and equity issues, and may open up the planning and zoning system to greater gaming and abuse.

Table 7.6 **Capacity for spot rezoning and changes of land use**[a]

Jurisdiction	*Relevant planning provisions/guidelines*
NSW	Spot rezoning is possible with council endorsement, state dept assessment of proposal and Ministerial approval if appropriately zoned sites are not available. Alternatively, projects which are approved under Part 3A may be approved by the Minister for rezoning.
Vic	Rezoning is possible with council agreement as to need and Ministerial approval. Land which abuts or is seen to be sufficiently close to appropriately zoned land may be spot rezoned.
Qld	Council consent to a planning scheme amendment is required and possibly public notification.
WA	Spot rezoning is possible by a planning scheme amendment with agreement of council and approval of the WA Planning Commission and the Minister.
SA	Rezoning is possible if the development is consistent with council development plans and state planning objectives. Projects given major project status may be approved by the Minister for rezoning.
Tas	Rezoning is possible as a plan amendment with agreement of local council and the Tasmanian Planning Commission, and Ministerial approval.
ACT	Rezoning is possible as an amendment to the Territory Plan. Consultation with a range of prescribed agencies, ACTPLA agreement and Ministerial approval are required for a plan variation.
NT	Rezoning is possible as an amendment to the NT planning scheme. Proposal goes through the NT Department of Land and Planning and requires Ministerial approval.

a Refer to chapter 4 for further details on rezoning processes in each jurisdiction. Public consultation requirements associated with rezoning are discussed in chapter 9.

Source: State legislation and state agency websites.

From an efficiency perspective, there are potentially increased costs for land owners and governments associated with rezoning areas of land one plot at a time, rather than a larger scale rezoning. For example, each business requiring a rezoning may be required to produce detailed supply and demand reports to demonstrate the market and community need for the rezoning (Urban Taskforce 2009). It is also potentially more difficult for governments to implement a consistent and coordinated approach to planning and land use when subsections of an area are subject to individual consideration.

The value of land can increase (or decrease) substantially when zoning for use is changed (Pacific Infrastructure Corporation, sub. 8; Master Builders Australia, sub. 32). While the decision between rezoning one area as opposed to another may not affect the overall benefits to the community (and therefore the efficient allocation of land), it can have a substantial effect on the individual wealth of those whose land is rezoned (that is, equity implications). For example, Moran (2006, p.72) reports that:

> Land used for alternative purposes to urban development (ie. agriculture) on the periphery of Melbourne is worth only a few thousand dollars per hectare. The fact that it sells for a premium, even before its release, reflects speculator's views that the authorities will eventually designate the land as useable for purposes the community actually values most … Land prices on the urban boundary that are considerably in excess of agricultural land prices reflect the scarcity value caused by regulatory restrictions on supply.

Accordingly, some developers purchase land speculatively in anticipation of an up-zoning that will enable higher valued future development. While there are some regulatory and market risks associated with such an action, speculative purchases remain a largely commercial decision.

On an equity basis, some councils discourage spot rezoning of land. For example, the Town of Vincent (WA) noted that '… the Town does not support spot rezoning as it is generally considered to be inequitable to rezone one lot over another.' (sub.1, p.6) In contrast, 'one of the most arbitrary elements of the [NSW] planning system relates to the spot rezoning process' (Urban Taskforce 2009, p.84). In commenting on the NSW planning system, Costco reported that:

> A planning system that requires 'spot rezonings' on an individual basis to foster development and rollout of a retail format such as Costco does not support or promote the levels of confidence and certainty required for large scale investment. (Costco 2009)

The potentially large changes in land values associated with rezoning provide incentives for landowners, developers and others to lobby for or against rezoning and changes to activities allowed in particular areas. For example, residents faced with a drop in their property prices associated with rezoning for higher density

urban infill have a financial incentive to lobby against multiunit developments in their suburbs. Conversely, some retailers have achieved considerable competitive advantages in recent years over other retailers by purchasing lower priced land outside of activity centres and successfully lobbying planners to have that land rezoned (up-zoned) for retailing activities.

Some up-zoning and back-zoning of land may also occur inadvertently through the relaxation or imposition of requirements associated with a particular zone rather than through an explicit rezoning. For example, a reduction in the allowable floorspace limits or increase in street set back requirements may reduce the value of a retail site; similarly, a reduction in the number of houses allowed on a given site may reduce the value of a residential block to a developer.

Urban Taskforce (2009, pp.16 and 101) reported the case of GPT Re Limited vs Belmoran Property Development Pty Limited 2008 in which a site that permitted large-scale retail development was down-zoned to permit retail of only 400 square metres. The decision to reduce the development potential of the site was taken after a developer had announced its intention to build a new shopping centre.

The listing of a property as 'heritage' can similarly reduce the future development potential and value of the site. Heritage listing can occur without the consent of a property owner in New South Wales and may therefore be considered a regulatory risk. In contrast, a property owner in Queensland is entitled to claim compensation for the entry of their property on the local heritage register (Urban Taskforce 2009).

Information request 7.6: The Commission is interested in views on the extent to which an 'uplift charge' or 'betterment levy' on the increased value of rezoned land would reduce inequities and incentives for rezonings that are aimed at capturing wind-fall gains in land values.

7.6 Business gaming of planning systems

A common feature of many regulatory systems is that there is scope for regulated businesses to use the system to their own gain. Use of planning systems is considered: first, from the perspective of the extent to which businesses exploit aspects of these systems to achieve a particular outcome for their own projects; and second, by examining the extent to which businesses use planning systems to adversely influence the outcomes of competitors' projects. A particular aspect of this, raised in the terms of reference, is the 'gaming' of appeals processes.

Use of the system to facilitate own projects

Strategies for site acquisition

The larger developers have a range of strategies for acquiring sufficient land for large-scale developments in the future — most of these are some form of land banking (as discussed further in chapter 4). Depending on the jurisdiction and clarity of the planning and zoning system, these strategies come with some risk (uncertainty in demand, capacity to acquire necessary neighbouring sites at a market price, uncertainty in getting any necessary rezoning) and necessarily require higher returns to make the exercise worthwhile. For example:

- Shopping centre developers sometimes acquire land adjacent to existing centres to facilitate future redevelopment and expansion (SCCA, sub.43). Building height restrictions in local government plans are one factor that makes lateral expansion the only option for some shopping centres.
- Developers in some areas are able to rely on a council's penchant for 'orderly' and 'compatible' development and use strategic purchase of land adjacent to council land as a means of gaining development control over the use of council land. For example, in Warners Bay (north of Sydney), the Lake Macquarie City Council has recommended the sale of council land to Woolworths without a public tender, 'believing a sale without competition was appropriate because Woolworths had gained control of an adjoining site and an "orderly development" was desired.' (Cronshaw 2010)
- NARGA claim that the large supermarket chains have gained access to supermarket sites by 'gaming the council planning/zoning system ... In some cases this has meant giving the local government access to part of a site, building a library as part of the project or offering some other benefit. A common approach is the purchase of a car park from a cash strapped council.' (sub. 47, p.4)

That these strategies require resources usually associated with larger developers means that site ownership in some markets may become more concentrated through these activities.

The PIA noted, however, that manipulation of the planning system by business is sometimes not so deliberate or explicit. In particular, it reported that in a pre-development assessment process or other informal liaisons between councils, agencies and the development industry, the market demands of a particular group/developer may be understood and could steer a particular policy direction which may unintentionally support one development outcome and therefore be anti-

competitive. As an example, the PIA outlined the case of large retail developers lobbying to place a supermarket in a particular region:

> …a new town centre plan is being prepared and a floor space bonus for a supermarket is included in response to this lobbying in the planning controls. It isn't tailored to a particular supermarket retailer but it does provide an incentive for supermarket retailers and therefore has anti-competitive implications for smaller footprint retailers. This is common and is often supported by communities who want the supermarket. (sub. 1, p.7)

Use of alternative assessment paths

The existence of alternative assessment paths was discussed earlier in the context of consequent uncertainty to developers. Alternative paths also provide a means for some businesses to use planning systems to lobby and game the planning system for use of a preferred path for their proposals. In particular, businesses may gain a competitive advantage through access to sites otherwise not available, acceptance of development proposals which might otherwise be substantially modified to meet requests of particular interest groups, and speedier or less costly project approval processes. NARGA consider that lobbying governments for 'fast track' approval of projects is one way that large companies use their resources to game the regulatory system (sub. 47). The alternative paths for a DA assessment were outlined in chapter 3 and the differential costs to business of each of these were detailed in chapter 6.

All jurisdictions noted that major projects can be assessed at state level or 'called-in' by the Minister:

- the introduction of a 'major cases' priority list at VCAT in early 2010 for projects over $5 million led to claims that some projects were being 'upsized' in order to become eligible for fast track treatment (Cooke 2010a);
- similar claims have been made to the Commission during consultations about adjustments made to project proposals in New South Wales — in some cases to enable assessment by a Joint Regional Planning Panel (JRPP) and in other cases, Ministerial 'call-in' — although it should be noted that most projects dealt with by JRPPs are 'non-discretionary' and that the JRPPs scrutinise the capital investment value of projects.

Aldi reported that the Advisory Committee model for rezoning approval in the Geelong region of Victoria has 'enabled Aldi to pursue sites that were otherwise unavailable without council support' (sub. 11, p. 4). As noted earlier, Victoria and South Australia recorded the highest number of development proposals which were assessed at state level in 2009-10.

Use of objections and third party appeals

Planning approvals processes for business developments generally fall into one of two categories — developments on land that is appropriately zoned for the purpose but nevertheless requires development approval; and developments which do not fit the land use designation and/or associated development controls for that site and require a land rezoning. Both processes are open to 'gaming', whereby incumbent businesses can avail themselves of objection or submission rights in order to prevent a development or at least to increase the time, cost and risk faced by a would-be competitor. As noted in chapter 6, these delays and costs can be particularly onerous if they involve reviews by appeal courts or tribunals.

Objections

The lodgement by an existing business of objections to the establishment or expansion of a competitor is one way which businesses can 'game' the planning systems. The scope for objections in each jurisdiction is detailed in chapter 3. Broadly, all jurisdictions allow for objections as part of a public consultation process for most projects.

In a survey of major retail chains for this study, the Commission found that objections to a retail development proposal can number several hundred but that councils do not always disclose either the number of objections or details on the nature of objections to the development applicant.

To receive consideration as a legitimate objection, an objection would necessarily need to be founded on planning principles of the relevant jurisdiction (CCCLM, sub. 31; WALGA, sub. 41). However, the Commission was repeatedly advised during consultations that jurisdiction plans generally provide an abundance of 'exceptions' and 'conditions' which businesses (and community groups) can use as a seemingly legitimate planning-related basis for an objection. Indeed, increased traffic congestion around the proposed development site is a common objection to a range of developments.

While most jurisdictions report that objections which are not based on sound planning principles would not preclude the approval of the relevant development, often the purpose of an objection is achieved simply if a proposal is delayed through the objection process — in these cases, rejection of the proposal would be just an added benefit. Furthermore, the planning systems in [states] require that only those parties which have lodged an objection may have standing to appeal a DA decision.

A desire to leave open the possibility for an appeal creates an additional motivation for parties to lodge an objection. [18]

Third party appeals

As with objections, to receive consideration as a legitimate appeal, an appeal must be founded on planning principles of the relevant jurisdiction. The parties which are eligible to lodge third party appeals in each jurisdiction, the types of DAs for which they can do so, and appeal activity during 2009-10 are discussed in chapter 3. While there is ample evidence of active participation in appeals processes by potential business competitors, some study participants have been at pains to point out to the Commission that 'gaming' of appeals processes by businesses does not occur (or is very limited).

The SCCA, for example, reported that it is unaware of any attempts by competing businesses to 'frustrate or influence the planning process on illegitimate grounds' (sub. 43, p.28). IGA also reported that:

> … it is the experience that in the last 5 years the major chains do not appeal zoning and development applications except on proper grounds. It is now observed that the practice of gaming appeals is in fact very rare. It has been observed that businesses do not regularly oppose competitor development except where it is proper to do so. (sub. 16, p.12)

PIA similarly reported that 'gaming of appeals' does not occur frequently and is not a major barrier to competition' (sub. 27, p.14). However, they also noted that '… anecdotal evidence suggests that there are some examples where developers deliberately act to delay the development approval process through submissions based on competition issues. This is usually in relation to centres or shopping issues.' (sub. 27, p.14)

Consistent with this view, Woolworths reported that it has been the subject of gaming of planning processes by its competitors:

> … [a] major impediment to store development is the use of the planning process by competing businesses to object to and frustrate new store development (often referred to as a gaming of the planning process). This is a constant challenge for Woolworths that faces such objections on a regular basis in relation to new store developments. Even where such objections do not successfully prevent the stores developed they often add to the delay and cost involved in the development process. Woolworths has

[18] Note that DAF (2009) considers it to be best practice that 'only those people who have provided an objection to the planning authority as part of the assessment process should have an appeal right, as objectors should not be able to circumvent the planning authority assessment process.'

> recently experienced blanket and systematic attempts by particular competitors to "game" the planning process with the apparent intention to prevent or frustrate the rollout of some of its stores. (sub. 65, pp.4, 16)

Aldi likewise claimed that 'Some Aldi development applications have been delayed and frustrated unfairly and unnecessarily from third party objectors' (sub. 11, p.6) and Costco are reported to have stated that '… our competitors, the two biggest retailers out there, we feel are fighting us at every junction to slow down the process.' (Greenblat 2010)

From its recent inquiry into grocery prices across Australia, the ACCC concluded that gaming of planning processes was occurring:

> The ACCC also received specific and credible evidence of incumbent supermarkets using planning objection processes to deter new entry in circumstances where the incumbent supermarket had no legitimate planning concerns. When questioned about this practice, Woolworths said such appeals are lodged to protect Woolworths' opportunities for new stores and to protect existing business. Woolworths further stated that this is a practice adopted regularly by other supermarkets … Further, the complexities of planning applications, and in particular the public consultation and objections processes, provided the opportunity for Coles and Woolworths to 'game' the planning system to delay or prevent potential competitors entering local areas. (ACCC 2008, p. xix)

Aside from appeals by retail competitors, both Queensland and South Australia reported examples of third party appeals by competitors in the provision of child care centres. Brisbane City Council noted that 'particular operators have been regular litigants against approvals for other childcare centres in close proximity to any of their existing premises (sub. 18, p.3 and sub. 31, p.7). South Australia reported that in the case of *ABC Development Learning Centres P/L vs City of Tea Tree Gully and Ors,* the court ruled in favour of the council rather than ABC, which sought to resist establishment of a competing child care centre (sub. 57, p.12).

The extent to which gaming of appeals occurs in each jurisdiction is likely to be related to the ease with which third party appeals can be made and the impacts that such appeals could be expected to have on competitors. For example:

- Of all the jurisdictions, Victoria and Tasmania appear to be the most open in terms of the range of parties eligible to lodge an appeal on a DA (chapter 3). In contrast, third party appeals are not permissible in Western Australia. Queensland and South Australia reported that there is limited scope for gaming of appeals processes in their states because of the restricted range of DAs which can be appealed (Brisbane City Council, sub. 18 and CCCLM, sub. 31).
  - Brisbane City Council noted that most applications to extend or construct new buildings within commercial centres and industrial zones are code

assessable development and therefore no third party appeal rights exist (sub. 18 , p.2).

  - South Australia similarly limits third party appeals to a small range of DAs (those in category 3), with fewer third party appeal rights and lower notification requirements for developments which conform to expectations for the relevant zone.

- There are no appeal rights for a rezoning request in any jurisdiction,[19] and Brisbane City Council noted that this removes the ability of competitors 'to disrupt development applications during the assessment process or lodge appeals against approvals' (sub. 18 , p.2).
- While most states have generic legislative provisions to allow courts to dismiss appeals which could be considered to be frivolous or vexation claims made by a business competitor, Queensland and South Australia explicitly include such provisions in their planning legislation.
  - Queensland allow courts to award costs against a party if 'the court considers the proceeding was instituted or continued by a party bringing the proceeding, primarily to delay or obstruct' (Section 457(2a)). Brisbane City Council considers that this provision allows the court to penalise anti-competitive behaviour' (sub. 18 , p.2).
  - South Australia requires competitors to identify themselves during consultation, appeals and judicial review processes. If a court ultimately finds that proceedings were initiated primarily to restrict competition, then they may award costs, including for economic loss, against the party initiating the proceedings. South Australia indicated that with the introduction of these legislative provisions, gaming of appeals processes by competitors has been less of an issue in that state (South Australian Government, sub. 57).
- Third party appeals, made for whatever reason, can substantially delay developments and constrain the capacity for new businesses to compete with incumbent businesses (the success of some businesses, for example, may be contingent on becoming established in time for seasonal retail trade). As discussed in chapter 6, the time taken to get a decision on a third party objection can extend to 20-30 weeks in some jurisdictions.
- The chances of a successful appeal will also influence the extent to which businesses use appeal processes for commercial purposes. In Victoria, third party appeals against council decisions to grant planning permits were successful or partially successful in 76 per cent of cases in 2008-09 (VCAT 2009). In contrast,

[19] Note though, that as part of the rezoning process in Victoria, third parties may make submissions and present to Panel Hearings.

the lack of past success in court appeals may deter action by competing businesses in other jurisdictions. IGA report that in New South Wales, objections based on economic impact have succeeded in only two court cases in the last decade (sub. 16, p.12) — although objections based on other issues may have been more successful. Chapter 3 reports further on the number of third party appeals lodged and the proportion that were successful, either completely or in part, in each jurisdiction. Victoria, Queensland and Tasmania reported the most third party appeals lodged in 2009-10.

Overall, it would appear that gaming of planning processes by use of third party appeal provisions is likely to be most problematic in Victoria and Tasmania (which both have comparatively open standing to lodge an appeal and evidence of businesses having made use of this in 2009-10). Gaming of appeals processes may be less of an issue in Western Australia (no third party appeals), Queensland (limited scope for third party appeals) and in South Australia (due to both limits on the scope for appeals and capacity of courts to award costs where proceedings are found to have been initiated primarily to restrict competition). It should be noted that rather than simply prohibiting third party appeals, a more socially desirable outcome may achieved by a reduction in incentives for third parties to appeal and/or greater penalties associated with vexatious or otherwise illegitimate appeals.

7.7 Concluding remarks and leading practice approaches

In assessing the potential impacts of planning and zoning on competition, the extent to which competition appears to prevail in some land use markets was considered at a very broad brush level and primarily for retail markets. While there is evidence of barriers to market entry (both regulatory and non-regulatory) and inadequate supplies of floorspace for some commercial activities (chapter 4), there nevertheless appears to be a reasonable number of competing businesses and continued entry in most markets (appendix F). Furthermore, in the case of grocery retailing at least, it appears that the dominance of Woolworths and Coles in most markets (appendix F) is not necessarily at levels that are detrimental to competition (ACCC 2008) and not likely to be significantly reduced through any changes to planning and zoning systems.

Requirements and practices which unjustifiably restrict competition

Some restrictions on competition may be required to improve the overall efficiency of urban land allocation and use. There are however, constraints imposed by

planning and zoning systems which could be considered to unjustifiably restrict entry into markets and reduce the flexibility with which businesses can operate in a particular zone or centre. The extent and nature of such restrictions vary considerably between local government areas and cities but, in 2009-10, the following measures in particular appeared to unjustifiably restrict competition where they were used:

- large numbers of prescriptive zones and complex systems of overlays and use conditions which can be found to varying degrees in council plans in all jurisdictions
- highly prescriptive descriptions of businesses allowed in particular zones in some NSW council plans, extensive use of floor space caps in Victoria and the ACT and centre size limits in Western Australia (but note that these were removed in August 2010)
- allocation of particular commercial sites in the ACT to selected retailers
- consideration of the costs and benefits to existing businesses (particularly by city councils in New South Wales, Queensland and South Australia) and impacts on activity centre viability (by all jurisdictions but to a lesser extent in the Northern Territory) as a major consideration in assessing a rezoning application or DA.

Some restrictions also arise as a by-product of the way in which planning and zoning regulations are implemented by governments and/or because of the ways in which businesses game the planning systems — including the exploitation of objections and appeals available to them. Features of planning and zoning systems which appear to unnecessarily restrict competition:

- regulatory uncertainty on site use and rezoning potential (including use of 'spot' rezonings), particularly in NSW cities
- alternative DA assessment paths with a lack of clear and consistently implemented guidelines for which projects are considered under each path — this seems to be an outcome particularly of the South Australian planning system.

Leading practices to support competition

In addition to identifying aspects of planning and zoning systems which unjustifiably restrict competition, the Commission has been asked to report on best practice approaches to support competition in land use markets.

No single jurisdiction stands out as having a planning and zoning system which could be considered to represent best practice in all respects. However, there are

some features of planning and zoning systems which, if implemented, would be likely to improve the competitiveness of the relevant markets. For example:

1. Land use zones (and overlays) in activity centres which are less prescriptive and exclusionary to businesses and industrial zones which are available only to industry would enable planning and zoning systems to facilitate improvements in the competitiveness of city land use.

The combination of highly prescriptive zoning and few large commercial sites within activity centres has led businesses to push for special consideration of their business type and/or attempts to locate in out-of centre locations and industrial zones which present fewer restrictions for them. A reduction in the prescriptiveness of zones and allowable uses (particularly those relating to business definitions and/or processes) would facilitate new retail and business formats to locate in existing business zones without necessitating rezonings and other changes to council plans to accommodate various business models.

Land areas set aside for industrial uses should be used for those industrial activities which need to be located in separate areas because of either their adverse impacts on other land users or because overall city planning outcomes are improved through their location near major infrastructure such as ports or airports or near primary production facilities such as quarries. For most businesses (retail, commercial, service providers and some light industrial), there are few adverse impacts associated with their location decisions and therefore few planning reasons why they should not be co-located in a business zone. The NSW proposal (2009, p.15) of a single business zone applied across an entire centre with the mix of uses with a centre left to the market has the potential to be a leading practice in this area.

Such changes in business location would necessarily require accommodating adjustments to infrastructure investment in order to avoid adverse outcomes such as congestion.

Implementation of this requirement would also necessitate greater consideration of business uses in the allocation of land in cities than these activities currently receive (chapter 4).

One immediate consequence of this would be fewer zones and greater range of businesses which can operate within activity centres. On the surface, the Victorian system of zones appears close to best practice. However, the complexity of overlays detracts from the simplicity of the zones. South Australia and Western Australia also appear to have reasonably straightforward and consistent zoning systems and do not appear to be burdened by unnecessarily restrictive overlays.

2. Facilitation of more 'as-of-right' development processes for activities would reduce uncertainty for businesses and remove scope for gaming by commercial competitors.

As-of-right development processes for activities applying to locate on land for which they are zoned would be facilitated by less prescriptive business definitions in plans. This would enable, for example, new retail formats to locate in existing zones without necessitating changes to council plans to accommodate each variation in business model. One consequence of more as-of-right development would be reduced spot rezoning, with its inherent inefficiencies, inconsistencies, windfall gains and gaming by business competitors.

The Commission was informed during consultations across Australia that clarity and flexibility of use on commercial sites is greatest under the Queensland planning system.

3. Impacts on existing businesses should not be a consideration during development assessments. To minimise the adverse impacts on competition, it is highly desirable that the broader implications of business location on the viability of activity centres be considered at a generic level during city planning processes rather than in the context of specific businesses during development assessment processes.

From the Commission's surveys of planning agencies and local governments, it would appear that the two territories place the least consideration during development assessment on commercial impacts on existing businesses. This approach could be considered a leading practice in this area. New South Wales' proposed SEPP on competition also prevents such a practice and once implemented, this could increase scope for market entry and competition in that state.

The majority of governments (but to a lesser extent in the Northern Territory) take into account the impacts of proposed developments on the viability of existing centres during a rezoning or development assessment. While this is potentially a competition-limiting practice, maintaining the commercial viability of a city's activity centres is usually an important objective of planning systems (jurisdiction planning objectives are discussed in chapter 8). However, it is more appropriate that the impacts on activity centre viability of possible business location decisions be fully considered during plan preparation and review rather than assessed on an ad hoc basis when a particular development is proposed.

Adequate 'future-proofing' of activity centres and provision for new centres during strategic planning processes could reduce the extent to which impacts on the viability of existing centres is an issue. Areas for future retail and commercial

expansion need to be clearly identified and known to the public. To support this, fragmentation of land in edge-of-centre locations should be avoided.

4. Legislated access and clear guidelines on eligibility for alternative DA paths (where they exist) would increase certainty and reduce scope for businesses to manipulate development assessment processes to their commercial advantage.

The existence of alternative assessment paths for DAs is both a key source of uncertainty in the planning system for developers and an opportunity for business gaming of the assessment processes. Clarity in the eligibility of projects for alternative assessment paths — including clarity on the powers of the planning minister, what constitutes a 'state significant' project, 'critical infrastructure', a project which is likely to have a 'substantial effect' on planning policy and its future implementation — is highly desirable for effective implementation of planning systems. It is not clear that any state or territory government is sufficiently definitive on alternative development assessment paths at present.

5. Third party appeals which are appropriately contained in terms of the types of DAs which can be appealed and the parties which can appeal are a highly desirable approach to enable planning systems to support competitive outcomes.

Third party appeals of DA decisions should be possible but limited to issues which were subject to DA consideration (that is, appeals on matters that were resolved during planning processes, rather than during development assessment processes, should not be considered). This would mean that third party appeals are not possible, for example, on compliant DAs. South Australia and Queensland appear to have third party appeal practices which are most likely to facilitate efficient outcomes in commercial land use markets. Highly desirable features of these systems which appear to reduce vexatious appeals include clear identification of appellants and their reasoning for appeals, and the capacity for courts to award costs against parties seen to be appealing for purposes other than planning concerns. Requirements for parties to meet and discuss issues can reduce the incidence of third party appeals proceeding to court (Trendorden 2009).

8 Governance of the planning system

Key Points

- Leading practice strategic plans are statutory (which promotes compliance and certainty) with funding allocated for infrastructure at the planning stage (which promotes certainty and investment and reduces lobbying for preferential treatment). Queensland and Victoria have the strongest ties between funding and strategic plans.
- Coordination and consistency between plans — strategic, regional and local — is achieved by a variety of methods and is central to good governance. However when strategic plans are updated, the development of new local council plans may lag several years, as it has done in New South Wales, Queensland and Tasmania.
- Most key plans were updated in 2010 or will be updated in 2011 suggesting they are very up to date but with implications for the continuity, predictability and stability of the planning systems.
- The planning resources and outcomes of local councils differed across jurisdictions:
  - on a per capita basis, Queensland councils were the most well resourced, having the largest number of staff and spending around twice as much as councils in Victoria, Western Australia and Tasmania.
- There is reasonable consistency in planning priorities between state governments and their local councils. In the Commission's survey, most governments selected "accommodating higher population growth" as a top priority along with the accompanying need to transition to higher population densities via infill.
- There is a common perception that if relations between state and local governments were improved, better planning outcomes could result. New South Wales councils appear to be least happy with the quality of their relationship with their state government, while Queensland, Western Australian and Tasmanian councils appear to be the most positive about relationships with their state governments.

8.1 The importance of governance

The concept of 'governance' refers to the use of institutions, structures of authority and other bodies to establish policies and rules, to allocate resources for implementation and to coordinate and control the resulting activities. This chapter provides an assessment of the approaches and effectiveness of the different levels of

government in the governance of their planning, zoning and development assessment systems. Specific aspects of coordination between these levels of government are discussed in further detail in chapters 10 and 11.

What constitutes good governance for planning, zoning and DA?

As well as implying a high level of organisational effectiveness in formulating policies and implementing them, 'good governance' also implies accountability, transparency, participation and openness. According to the World Bank:

> Good governance is epitomized by predictable, open and enlightened policy-making, a bureaucracy imbued with a professional ethos acting in furtherance of the public good, the rule of law, transparent processes, and a strong civil society participating in public affairs. Poor governance (on the other hand) is characterized by arbitrary policy making, unaccountable bureaucracies, unenforced or unjust legal systems, the abuse of executive power, a civil society unengaged in public life, and widespread corruption. (World Bank, in Global Development Research Centre 2010)

Good governance is important to business, competition and the community because it means the inevitable discretion available to planners in determining how land will be used is not abused but instead serves both the public interest and ensures all businesses compete on an equal footing. A good governance structure enables decisions to be made at the optimal time and in the optimal sequence.

Governance of planning, zoning and development assessment in Australia is quite unlike governance of many other regulatory frameworks as there is not a clear demarcation between making and implementing policies. When important conflicts have not been addressed in the strategic or spatial plans and clear trade-offs or determinations made, then rezoning and development assessments will effectively involve some 'on-the-run', case-specific policy making. In general, successful and consistent implementation of planning and zoning policies is less likely when policy-making is undertaken at the rezoning or development assessment stage.

The role of each of the different levels of governments in planning was discussed in chapter 3 and, in general, good governance is considered to be facilitated by the adoption of subsidiarity principles (box 8.1).

Box 8.1 Subsidiarity principles and the governance of planning systems

Subsidiarity is generally defined as the principle that decisions should be made by the lowest level of governance capable of properly doing so (Marshall 2007; PC 2005; Inman 1998). The idea is that smaller, local governments have specific knowledge and expertise relevant to decisions such as development approvals and can use that knowledge to assess the competing interests at stake at a lower cost, thus maximising the net welfare of the local community. While national consistency is a strong attraction of higher-level decision making, national governments sometimes struggle to monitor and enforce the implementation of their decisions at the local level.

A decision becomes unsuited to local determination (and more suitable for, say, state determination) when the effects of the decision are felt outside the area governed by that particular body. In these cases, the local body tends to act in the interest of its constituents even when negative consequences for other parties are 'overproduced' or positive outcomes are 'under-produced'. For example, they may allow housing development to place additional stress on public transport, reducing the facilities available to communities further out.

This suggests that, ideally, a decision making body should be responsible for an area corresponding to that area affected by the decision. However, this is difficult to achieve since simultaneous decisions of a given body are likely to impact on different and/or overlapping areas. Furthermore, the costs associated with a decision may extend over a different area (or group of residents) than the benefits derived from a project (such as in the case of a waste disposal facility or public access to a beach). In practice, a workable option is to consider the spread of the costs and benefits for the issue or project in question and which level of government is most likely to fully weigh up these to make sound decisions.

Governance of planning systems is a complex and difficult task

As described in chapter 2, planning is complex, involves many players and affects many aspects of the liveability of cities and the ease of doing business. As well as addressing an array of objectives which has expanded over recent decades, planning is characterised by a number of issues which further increase the challenges and complexity to achieving good governance:

- many buildings/developments have unique characteristics
- in order to reduce environmental impacts and accommodate a growing population, governments are putting an increased emphasis on infill — this means they must engage more with local area residents about factors such as increased population densities and congestion

- people generally want to have more say in planning, zoning and development assessments
- many property owners want maximum flexibility in doing what they want with their property and minimum flexibility for their neighbours and new entrants to the neighbourhood
- national and state/territory governments have been getting more involved in planning, zoning and development assessment — often in order to allocate limited financial resources to projects that offer the greatest community benefits
- trade-offs must be made between consultation and timeliness — depending on choices made, these tradeoffs will more or less favour either business or the community
- developers have an incentive to push planning and zoning rules in order to maximise returns on investments
- donations to political parties by developers are often perceived as bribes and meetings between government officials and developers can be seen as exerting undue influence.

Table 8.1 reflects what factors the states and territories nominated must be in place or be resolved or achieved in order to successfully implement the strategic and spatial plans of their cities. These factors are numerous and broad ranging — from bipartisan political support, to receipt of funding for infrastructure and to achieving community acceptance of core strategies such as increased infill.

Higher levels of public transport use, community acceptance of urban infill housing developments and Commonwealth and state and territory funding for infrastructure provision were widely seen as the more major issues for the successful implementation of plans, as well as cooperation and participation of locals councils for those jurisdictions where local government is a primary decision maker (all except ACT and NT).

Table 8.1 **Important factors for successful implementation of capital city strategic and spatial plans**

(as assessed by state and territory planning agencies)[a]

■ important ■ moderate □ minor

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT
Intra and inter govt support								
Bipartisan political support	■	■	□	■	□	■	■	□
Cooperation and participation of local councils	■	■		■	■	■	na	■
Locational factors								
Significant re-zoning of land	■	■	□	■	■	■	□	■
Securing land corridors for transport infrastructure	■	■	■	■	■	■	■	■
Businesses locating along key transport corridors	■	■	■	■	□	□	■	■
Businesses locating in cities and major centres	■	■		■	■	□	■	■
Higher levels of public transport usage	■	■	■	■	■	■	■	■
Community acceptance of urban infill housing developments	■	■	□	■	■	■	■	■
A greater proportion living in smaller dwellings	■	■	□	■	□	■	■	■
Funding factors								
Greater acceptance of using price signals	□					□	■	
Greater acceptance of user charges	■	■	□	■		■	■	□
Commonwealth funding for infrastructure	□	■		■	■	■	■	■
State funding for infrastructure	■	■	□	■	■	■	■	■
Local council funding for infrastructure	■	□	□	□	■	■	na	na
Private sector funding of infrastructure	□	■	■	■	■	■	■	■

a A blank denoted that the particular factor is 'not assumed' in order for implementation to be successful. **na** denotes a factor which is 'not applicable'..

Source: PC State and territory surveys (2010), Q15.

It is not possible to fully satisfy all the above simultaneously — some of these factors conflict with each other and necessary resources to implement plans are constrained. Typically, trade-offs must be made and how governments make these tradeoffs is an important aspect of governance. For example, the Master Builders Association explained:

> Increased housing supply may also change the shape of Australian cities and towns in ways that many existing residents may not desire. How different tiers of government balance their concerns against those of potential new residents is an important question of governance (sub. 32, p. 27).

There is wide agreement that the current governance arrangements of the planning system need improvement. COAG's Local Government and Planning Ministers

Council (LGPMC) commented that one of the main deficiencies relating to structure and governance are:

> Mismatches between the scale of planning issues and the scale of governance structures which seek to address them. This can include centralising decision making on the one hand, and leaving broader issues to be addressed through subsidiary governance structures on the other. As the scope of issues changes (from local to regional and from regional to national) governance structures are not flexible enough to manage the scale and complexity of the issues (LGPMC 2009, p. 14).

Box 8.2 How we plan: system principles

Integration and coordination — combining and rationalising structures, functions, policies and processes under a clear set of rules to produce a coherent, integrated outcome. Integration can be vertical (combining and rationalising higher order and subsidiary systems, e.g. a hierarchy of plans), or horizontal (integrating different aspects of a single system, e.g. a state government).

Certainty — consistency regarding the conditions under which development will proceed, the rate and scale at which it will take place, and the way planning principles and mechanisms will be applied.

Responsiveness — the flexibility needed to respond to changing or unforseen circumstances.

Equity — fairness, such as protection of personal rights, equitable access to appeal mechanisms, and procedures that do not discriminate against individuals or groups.

Efficiency, effectiveness and economy — no unnecessary processes and governance arrangements, the integration of appropriate performance measures into evaluation mechanisms, and outputs that promote the economical use of resources (without compromising equity and accountability).

Transparency, accessibility and accountability — clear and appropriate accountability for decisions, as described in legislative provisions, organisational structures and planning instruments, for example, open and legible planning systems that users can access and interact with.

Community engagement — promotion of community engagement, including consultation, participation and increased community understanding and support for planning processes.

Source: Local Government and Planning Ministers' Council 2009, p. 3

Providing a framework in which to address these deficiencies, the LGPMC (2009) outlined broad principles against which planning systems and practices can be benchmarked. The 'system principles' (reported in box 8.1) are particularly relevant

to governance. Most of these principles are considered in the following sections to assess the extent to which good governance prevails in planning and zoning systems:

- the internal consistency and clarity of planning documents — including consistency with budget funding — or, if not, have ways to obtain and deploy money to compensate for any fiscal gaps (section 8.2)
- the structure, responsibilities, resourcing and capacities of planning agencies (section 8.3)
- engagement among governments in order to mediate national, state and local interests (section 8.4)

The additional aspects of governance related to the processes and characteristics of planning agencies, involvement of community and business in planning processes and integration of regulatory functions to deal with multi-dimensional policy problems are addressed in chapters 9, 10 and 11.

8.2 Consistency and certainty of planning instruments

There are a wide variety of planning instruments that control the growth and development of cities. To be effective, the plans should be consistent, current and promote certainty of rules and outcomes.

As discussed in chapter 3 (tables 3.3 and 3.4), all the states and territories except Tasmania and the Northern Territory have a set of planning documents that includes a state level economic development strategy, strategic plans for cities and regions, and infrastructure plans for cities and regions. These state and territory level documents spell out the desired framework of planning outcomes.

Consistency in the layers of plans

Consistency between state and local plans is fundamental to good governance. It means good integration both of requirements imposed on developers or others and of the development visions of the state and local councils. This particular aspect of consistency is not relevant to the two territories as there are no local councils with planning functions. Benefits for communities of good integration and coordination include increased knowledge and understanding, confidence in outcomes and greater support for and trust in government. Developers also benefit, for example, through higher confidence, quicker approvals, greater certainty and reduced compliance costs (subs. 1, 23 and 31).

Benefits that accrue to society generally include higher quality projects; increased investment; better environmental or development outcomes; clearer understanding of where future urban development will occur and at what density; the level of service required for the projected population and economic growth; and greater certainty for the timely provision of infrastructure (subs. 1, 23, 31 and 41).

Strategic plans provide a predictable, though not rigid, direction for land planning, and thus create an environment where developers, councils and other planning bodies can base their own plans on these expected outcomes. However incoming governments often make immediate changes to metropolitan strategic plans to meet election campaign commitments. This can reduce the predictability and stability that long-term planning is intended to provide (box 8.3).

Table 3.3 in chapter 3 shows the hierarchy of planning instruments in each jurisdiction. Western Australia has the most levels in its hierarchy (eight) and Tasmania and the Northern Territory the fewest (one and two, respectively). These hierarchies are by no means clearly articulated; in fact, only the ACT lists all the different types of plans in one place on its website. It is potentially very difficult in most jurisdictions for users to determine which documents are relevant to their development. While there is no definitive rule on how many plans are appropriate, when the hierarchy consists of a large number of plans, it can be more difficult to understand the interrelationships and areas of overlap if they are poorly explained.[1] All jurisdictions except Tasmania have high level strategic plans, detailed metropolitan plans and infrastructure plans in some form, table 3.4.

Tellingly, the Australian Logistics Council stated that this review would greatly aid decision making if the Productivity Commission simply mapped in one place all government documents purporting to influence planning (sub 46). This suggests that more work is needed to rationalise the various instruments and the way they interact and overlap.

1 Western Australia has nine plans which are required to be consistent: State planning strategy; Local planning strategies; Regional, district and local structure plans; Regional planning schemes; Local planning schemes; State planning policies; Development control policies; Planning bulletins; and Local planning policies. In addition, it has numerous other plans, and limited explanation is provided of how they fit together.

Box 8.3 **Implementation of strategic plans**

Even when long term plans are in place, they may not create the intended stability as political circumstances change. The following examples illustrate the types of significant policy changes that can occur.

The Melbourne Metropolitan plan is undergoing some changes. The new planning minister in 2010 overturned the previous government's planning laws facilitating high-density residential developments near all public transport. The new government has instead identified specific sites close to the CBD for high-density redevelopment (Pallisco 2011).

Australian Housing and Urban Research Institute (AHURI) research suggests that developers, rather than government policy, determined the form of housing and the mix of housing types in Victoria.

> Government planning strategies were thought to have a minor effect by some of the planners and no effect at all by the developers. One developer said that his company did not take government planning strategies into account because 'they're so vague. I mean how could they ever influence anything you do? They're so general.' (Goodman 2010)

The intended outcomes of the 30 year Plan for Greater Adelaide have also been recently challenged by the rezoning of a large section of agricultural land for urban growth at Mt Barker which caused a backlash from the community, who claim the 30-year plan was ignored (Oleary 2011).

The Sydney Metropolitan Plan could face the same issue, as the election platform of the Coalition includes a move away from the high levels of infill development that Sydney has seen in recent years (Nicholls 2011).

> The rate of development in established areas of Sydney would be cut in favour of development at the city fringe under a Coalition government, in a retreat from more than a decade of planning policy that has focused on increasing density to address population growth.

Methods of achieving consistency

True consistency requires goals and expected outcomes to be aligned between all plans. A clearly articulated hierarchy of plans identifies which must be followed in the event of inconsistency and creates a framework for the operation of subsequent plans, in order to promote consistency.

Local planning schemes are statutory in every jurisdiction (table 3.3) and provide on-the-ground implementation of higher-level plans. Various processes are used to ensure consistency between city or regional and local planning schemes. The most common process is the requirement that planning Ministers sign off on changes to planning schemes (all jurisdictions, table 3.8) and sign off at earlier stages of the

scheme amendment process (all jurisdictions except Tasmania, appendix D). Other methods include the use of a standard instrument or included terms in all planning schemes (Victoria, New South Wales); consistency as a statutory requirement (Tasmania); and, at the development assessment level, a requirement that state planning instruments are complied with in every development (Queensland).

When state strategic plans are updated, the state can require local councils to update their plans to reflect changes. Until the planning schemes are updated they will be out of alignment, and recent experience has shown this situation can remain for years. For example:

- Logan City Council in Queensland introduced a new planning scheme eight years after the 1998 Integrated Planning Act was introduced. Some Queensland councils which were amalgamated in 2009 are not expected to have draft planning schemes in place until December 2013 (PC state survey question 4)
- New South Wales introduced a standard instrument in 2006 to be used for all local planning schemes, however in July 2010 only six out of 145 local councils had completed their new complying Local Environment Plan
- in Tasmania, there are local planning schemes that pre-date the planning system, which was updated in 1993 (Riley 2010).

It seems these states have not achieved full commitment from councils on reform.

When local plan amendments significantly lag changes to strategic plans, the effectiveness of strategic planning is undermined.

Currency of planning instruments

Plans need to be regularly updated because the elements that underlie them — such as demographics, population growth and social and political goals — are constantly changing and it is a rare plan which accurately predicts these changes. Jurisdictions vary in how different the updated plans are from their predecessors. As exogenous circumstances change, plans may need to be radically different. However, some changes, such as the ACT's move away from the "Y Plan" to a more centralised model, can upset the decisions and calculations of residents and businesses based on the old circumstances.[2] In their responses to the Commission's survey, two jurisdictions described the latest update of their strategic and infrastructure plans as revolutionary (Northern Territory and ACT) and four as both comprising evolutionary and revolutionary elements (New South Wales, Victoria and South

[2] The 'Y plan' refers to the shape of Canberra's major town centres.

Australia; in Queensland the strategic plan was evolutionary and infrastructure plans were revolutionary). Changes in Western Australia were termed evolutionary. Tasmania does not yet have strategic plans for its cities.

Table 8.2 **Dates of review of laws, plans and planning instruments**[a]

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*[b]	*ACT*	*NT*
State level economic development strategy		2011		2011	2010[c]			
Regional strategic plans	2011[d]	2011	[e]	[f]	2010			
Capital city metropolitan strategic and spatial plan	2010	2011	[g]	[h]			2010	2010
Regional city strategic plans	2011[d]	2011	2020[g]					
State level infrastructure plan	2010		2011[i]		2010		2011	
Regional infrastructure plans	2010		2011[i]	[f]	2010			
Capital city infrastructure plan	2010	2011	2011[i]	[h]	2010			
Infrastructure plans for key regional cities	2010		2011[i]		2010			
Last comprehensive review of planning law	2008	2009[j]	2009	2005	1993[k]	2008	2008	2005
Last time the planning legislation was fully re-enacted	1979	1987	2009	2005	1993	1993	2007	2009

[a] Shaded squares indicate that no relevant plan exists; blank squares indicate that information is pending. [b] Tasmania does not have plans at this level, but is in the process of developing them. [c] Next review not scheduled. SA: In accordance with section 22 (3b) of the Development Act 1993, the Minister must ensure that the various parts of the Planning Strategy are reviewed at least once in every 5 years. [d] There are eight NSW regional strategies, due to be updated between 2011 and 2015. [e] The last review was 2009 and the next is not set. [f] Contain provisions for monitoring, review and updating. [g] In January 2011 all planning schemes were in the early stages of review in preparation of new planning schemes that will be in accordance with the Queensland Planning Provision (QPP). For example Townsville City Council amalgamated with Thuringowa City Council in 2009 and expecting to complete a draft strategic plan by December 2013. Local government planning schemes are legislatively required to be reviewed every 10 years. [h] Directions 2030 mentions 'regular' reviews and 5-yearly reporting. [i] SEQIPP was last updated in 2010; FNQIP in 2009. Priority infrastructure plans are legislatively required to be reviewed every five years. However the SEQIPP is updated annually. [j] A review is still underway (July 2010). Draft legislation was released December 2009. [k] The last comprehensive review of the planning *law* in South Australia occurred 1993. However, the system itself was reviewed by an independent Planning and Development Review Committee, which delivered its findings in June 2008. Most of the recommendations of that Review have been subsequently adopted and implemented by the Government.

Source: Productivity Commission survey of state agencies 2010, questions 4 and 8 (unpublished).

Almost all key state and territory plans were updated in 2010 or will be updated in 2011 (table 8.2). This suggests planners are constantly trying to improve these important instruments, but it is unclear how this affects the continuity, predictability and stability of the planning systems.

As for planning legislation, all states and territories have comprehensively reviewed their Act in the last five years except South Australia (17 years) (table 8.2). All

planning systems are undergoing changes (see chapter 3) and planning Acts and regulations tend to be amended regularly.

What constitutes a comprehensive review may differ between states. The year the planning Acts were last passed gives a different picture of their currency, with New South Wales lagging the other states significantly and only three states with Acts less than five years old (table 8.2).

Legislative force of plans

Table 8.3 **Statutory strategic spatial plans**[a]

	City	*Statutory effect*	*Date passed*	*Latest/next review*
NSW	Sydney	✓	Dec 2005	late 2010
	Lower Hunter	✓	Oct 2006	Jan 2011
	Far North Coast	✓	Jan 2007	Jan 2012
	Mid North Coast	✓	Mar 2009	Mar 2014
	Sydney-Canberra Corridor	✓	Jul 2008	Jul 2013
	Murray	✓	late 2010	late 2015
Vic	Melbourne	✓	2002, 2010[b]	
	Geelong	×		
	Wodonga	×		
Qld	SEQ	✓	1998	2009
	FNQ	✓	2009	2009
WA	Perth	×[c]	Aug 2010	2010
SA	Adelaide	✓	1994[d]	2011[e]
Tas[g]	Hobart			
	Launceston			
ACT[h]	Canberra	×[i]	2004	2010[e]
NT	Darwin	×[f]	Feb 2007	2010[e]

[a] Shaded squares indicate that no relevant plan exists; blank squares indicate that information is not available. [b] Melbourne 2030 in 2002 and Melbourne @ 5 million in 2010. [c] Directions 2031 is by design not a statutory plan but rather a long-term strategic guide to decision-making. [d] The first metropolitan Adelaide part of the Planning Strategy was released in 1994 and subsequently updated in 1998, January 2003, August 2006, December 2007 and February 2010. The regional areas of South Australia were addressed in the Planning Strategy in 1994, 1996 and January 2003. They are currently being updated on a region-by-region basis and this process will be completed in 2011. [e] Currently being updated. [f] The Darwin Region Planning Principles and Framework are part of the NT Planning Scheme and therefore statutory, however there is no higher-level statutory plan in the Northern Territory. [g] Tasmania does not yet have a city strategic plan for Hobart or Launceston, but is developing them. [h] The National Capital Plan applies to all of the ACT and was last amended in 2009. [i] Canberra review cycle: every 5 years it is considered whether it needs to be reviewed. The planning strategy is not statutory (it provides long term policy and goals).

Source: PC state and territory surveys question 5

As outlined in table 8.3, four states have legislated their high-level metropolitan spatial plans or strategies for their capital cities (New South Wales, Victoria,

Queensland and South Australia), which were introduced or updated within the last five years. Other jurisdictions legislate only at the planning scheme level. Legislated plans at a higher level promote certainty for business, government and the community and allow businesses to form rational expectations about where they will be able to develop and operate.

The comments above about consistency between strategic plans and local plans are also relevant in this context. If strategic plans are more "aspirational" or general and less detailed then it is more difficult for councils to interpret state government intentions and give effect to them through local planning.

An issue as to the desirability of strategic plans being general or detailed concerns the tension between certainty and flexibility. While both characteristics are desirable, a gain in flexibility often means a loss in certainty and vice versa. As the ACT Government has pointed out: the less detail the greater flexibility but the greater the uncertainty and the potential for different interpretations and conflict. For example, establishing a legal growth boundary in a city reduces flexibility by prohibiting urban development beyond the boundary; at the same time, such a boundary promotes certainty since developers know that urban development will be permitted within it.

Three ways to provide significant guidance with some flexibility include having skilled and independent assessors able to judge different ways to meet objectives; reporting requirements; and appeal provisions. These mechanisms are compatible with having statutory strategic plans, whether those are general or specific. While more general strategic plans allow greater flexibility (when interpreting how to implement them), if this reflects that some difficult trade-off decisions have not been addressed during strategic planning, then the unresolved issues will necessarily be addressed during development assessment; and at this level of decision making, there is likely to be less transparency and less scope to bring all relevant considerations to bear. For this reason the greater flexibility in how plans are implemented needs considerable procedural protections to ensure the objectives of the plans are met.

Another mechanism is used in the National Capital Plan for the ACT. It has a 'flexibility provision' which allows uses not specifically provided for in the Plan to be approved without amending the Plan where the proposal is judged to be consistent with the policies and principles of the National Capital Plan.

Issue 8.1: The Commission proposes that a leading practice would be to enact strategic plans at a metropolitan level. Further, even where these plans are not

enacted contentious issues are best resolved at the strategic level. While strategic plans may be general or specific, specific strategic plans could incorporate a 'flexibility provision' where an independent arbiter can judge whether unspecified or changed uses are consistent with the policies and principles of the plan. However, achieving the optimum balance is challenging and others may wish to comment on alternative ways of doing this.

Budgetary commitment to plans

The budgets of some states and territories line up with their land and infrastructure plans so that the infrastructure required to implement the plan is already included in forward estimates. This promotes certainty and reduces lobbying: if information about infrastructure funding is public, developers can build in those areas rather than buying land and lobbying the government to upgrade or fast-track infrastructure elsewhere. It also creates certainty for government to plan for services such as schools and hospitals in greenfield areas. The Queensland infrastructure plans[3] and Victorian transport plan[4] include dollar funding and estimated completion timeframes. This is leading practice for good governance and integration of planning with transport and infrastructure. Other states and territories fund infrastructure as part of their budget processes. New South Wales, Western Australia and the ACT have 10-year infrastructure funding plans. For more details on infrastructure funding frameworks see chapter 5.

As for the administration and other costs associated with implementation of plans, five jurisdictions specifically allocate spending in the forward estimates (New South Wales, Western Australia, Tasmania, Northern Territory and ACT).

Clear delineation of responsibilities and authority

Some states concentrate most planning powers in their central department or agency, while others leave greater responsibility to local councils, (see chapter 3 table 3.8). The various regulatory agencies derive their power from legislation: some have only generic powers to meet their objectives, while others are given specific powers. For example, the Victorian planning Minister may prepare local planning schemes or direct their preparation; and the planning Minister in New South Wales can issue directions that must be followed by local councils when preparing planning schemes.

3 For example the South East Queensland Infrastructure Plan and Program 2010-2031, from p 63.

4 The Victorian Transport Plan, from p 148.

Clear assignment of powers and responsibilities is necessary for planning systems to be navigable and consistent. Therefore, the number of regulatory bodies should be kept to the minimum required for an effective system and their role and relationship to other bodies should be easy to find out. Most bodies encountered in the course of this study (tables 3.5-3.7) have helpful websites containing details about their functions, however the reporting structure of these bodies (as shown in figure 3.1) is much more difficult to ascertain.

8.3 Resources, activity and performance

Structure of local government across Australia

This section presents information on the resources, activity and performance of state/territory government planning agencies and local councils. In comparing the council data, care needs to be taken due to variations in the structure of local government across jurisdictions.

The size of Local Government Areas (LGAs) in Queensland is significantly different from those in other states (table 8.4). The median population of Queensland LGAs is over twice that of New South Wales LGAs and around four and a half times the median population of LGAs in South Australia and Western Australia. Only Victorian councils come close to matching the size of their Queensland counterparts on a population basis. On an area basis too, Queensland LGAs stand apart as being by far the largest in Australia.

Table 8.4 **Number and size of LGAs examined in this study, by jurisdiction** [a]
2009-10

		NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Number of LGAs	no.	54	33	13	32	27	11	1	4
Capital city	no.	43	31	8	31	26	7	1	3
LGA Population									
Median	'000	77	136	164	36	36	22	352	29
Lowest	'000	14	36	22	2	5	7	na	28
Highest	'000	300	247	1 052	199	160	66	na	76
LGA Area									
Median	km^2	88	91	2 272	59	92	653	808	220
Lowest	km^2	6	20	537	1	4	78	na	53
Highest	km^2	2 776	2 464	12 973	1 781	1 827	5 129	na	2 914

[a] For the list of councils in the cities covered by this study, see Appendix B.

Source: Tables C.1 – C.7.

The large average size of councils in Queensland and, to a lesser extent, Victoria, reflects changes in the structure of local government that have occurred in the past two decades. Local government in all states (except Western Australia)[5] has undergone significant structural reform, with the resulting mergers and amalgamations reducing the number of councils in each jurisdiction. This was particularly prominent in Victoria, where between 1991 and 2008 the number of councils was reduced by 62 per cent. Significant reductions in council numbers over the same period also occurred in Queensland, South Australia and Tasmania (46 per cent, 44 per cent and 37 per cent respectively), while New South Wales cut its number by 14 per cent (DITRDLG 2010b).

In order to overcome the comparability problems arising from differences in the structure of local government, the findings below are, where possible, standardised according to population size. Given that the territory governments perform local government functions with respect to planning, they have been included in some of these comparisons.

Resourcing of planning agencies

Financial resources

The financial resources of state/territory agencies and local councils provide one indication of their capacity to manage the planning, zoning and development assessment process. This particularly applies to expenditure, but the income received for planning-related activities is also relevant.

Planning expenditure data for the states and territories in 2009-10 are shown in table 8.5. New South Wales appears to have incurred the highest total expenditure on planning-related activities, but the picture is incomplete as no separate information was provided by Queensland and Victoria. Two of the smallest jurisdictions, Tasmania and the ACT, had the lowest and highest spending per FTE staff respectively.

Planning expenditure data for local councils in 2009-10 (table 8.6) indicate that Queensland councils had by far the highest average expenditure of the state jurisdictions, at around $11.6 million. This was approximately four times greater than the next highest, New South Wales and Victorian councils. The high Queensland figure is a consequence of recent amalgamations that produced some larger councils, including five of the six largest (by population) in Australia:

5 Western Australia is currently undertaking a local government reform process that includes council amalgamations.

Brisbane, Gold Coast, Moreton Bay, Sunshine Coast and Logan. If the data is standardised according to LGA population size, Queensland councils' planning expenditure is more in line with other jurisdictions and planning expenditure per FTE planning staff is broadly similar across jurisdictions.

Table 8.5 **Planning expenditure, state and territory agencies** [a]
2009-10

		NSW[b]	Vic	Qld	WA	SA	Tas	ACT[c]	NT[c]
Expenditure on planning-related activities	$'000	93 736	**d**	**d**	32 692	15 981	900	43 285	6,991
Planning-related expenditure/FTE staff	$'000	180	**d**	**d**	124	184	75	206	134

a Planning includes all planning, zoning and development assessment related activities. **b** Excludes Landcom. **c** Includes expenditure on both territory wide and council-type planning functions. **d** Expenditure data on planning, zoning and development assessment related activities not provided by state agencies.

Source: Productivity Commission survey of state agencies 2010, question 11 (unpublished).

Table 8.6 **Planning expenditure indicators, local councils** [a b]
2009-10

		NSW	Vic	Qld	WA	SA	Tas
Planning expenditure per council							
Mean	$'000	2 649	2 681	11 609	1 075	1 434	838
Lowest	$'000	700	1 345	480	202	259	89
Highest	$'000	8 850	6 185	39 230	2 317	2 911	1 945
Planning expenditure per 1000 population							
Mean	$'000	29	22	39	16	29	21
Lowest	$'000	7	8	22	6	10	9
Highest	$'000	61	43	59	116	150	37
Planning expenditure/ FTE planning staff							
Mean	$'000	117	102	129	99	117	118
Lowest	$'000	64	64	73	65	77	81
Highest	$'000	216	159	178	202	224	177

a Planning expenditure incorporates spending on all planning, zoning and development assessment related activities. **b** Differences in the way states structure their councils need to be taken into account when interpreting these data.

*Source*s: Productivity Commission survey of local councils 2010, questions 4 and 8 (unpublished). Tables C.1 – C.6.

The spending by councils on planning-related activities shown in table 8.6 is only partially offset by assessment fees collected for development proposals, for which Queensland councils have a significantly higher average than the other states — both in absolute terms and when standardised according to population (table 8.7). It

is interesting that it was a council in New South Wales that received the highest level of fees by population. A comparison of planning expenditure and development assessment fees per council in 2009-10 indicates that in all jurisdictions planning expenditure was significantly higher, typically by a magnitude of 3-4 times income received (although much less so for Queensland). Councils also often receive planning-related income through infrastructure charges, or developer contributions, and these are generally higher than development assessment fees (see chapters 5 and 6). However, these charges are required to fund the provision of infrastructure and, as such, cannot be regarded as offsetting general expenditure on planning-related activities.

Table 8.7 **Planning income indicators, local councils** [a]
2009-10

		NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*
Development assessment fees per council							
Mean	$'000	890	704	7 316	445	422	231
Lowest	$'000	163	144	600	71	128	61
Highest	$'000	2 800	2 992	21 000	839	1 103	400
Development assessment fees per 1000 population							
Mean	$'000	9.7	5.6	24.7	6.8	8.6	5.7
Lowest	$'000	3.7	1.4	16.0	3.2	3.5	3.0
Highest	$'000	50.7	34.2	43.5	40.6	20.4	11.8

[a] Differences in the way states structure their councils need to be taken into account when interpreting these data.

Sources: Productivity Commission survey of local councils 2010, question 32 (unpublished). Tables C.1 – C.6.

Staff resources

Staffing resources indicate the capacity, capabilities and competencies of state and local governments for dealing with planning, re-zoning and development assessments. The staff resources of the state and territory planning agencies in 2009-10 (table 8.8) reveal that FTE planning staff numbers per capita were the lowest in Tasmania, Queensland and South Australia. All jurisdictions had a relatively high proportion of staff with relevant tertiary qualifications.

Queensland local councils have more staff resources, both on an absolute basis and when standardised according to LGA populations (table 8.9). Councils in New South Wales and South Australia also have a relatively high number of staff per capita, while Western Australian councils are the least well resourced on this basis. A town planning or urban planning degree was the minimum qualification for both strategic and statutory planners at the vast majority of councils.

Table 8.8 Planning staff resources, state and territory agencies [a]

2009-10

		NSW [b]	Vic	Qld [c]	WA	SA	Tas	ACT [d]	NT [d]
FTE staff	no.	522	386	201	264	87	12	210	52
FTE staff/10 000 population	no.	0.7	0.7	0.4	1.1	0.5	0.2	5.9	2.3
Proportion of staff with relevant tertiary qualifications	%	68[e]	na	na	98	100	83	na[f]	63
Proportion of staff with relevant tertiary qualifications with more than 5 years experience	%	36	na	na	65	74	75	na	71
Turnover rate for staff with relevant tertiary qualifications	%	16	na	na	3	10	0	7	15
Remuneration package for entry level planner	$'000	65	50	47	53	52	68	65	46

a Staff employed in planning, zoning and development assessment roles in all relevant state government agencies. **b** Excludes Landcom. **c** Excludes the Urban Land Development Authority. **d** Includes staff involved in both territory wide and council-type planning functions. **e** The tertiary qualifications may not necessarily be in town planning or civil engineering. **f** The ACT Government's core planning agency, ACTPLA, does not maintain a register of the formal qualifications of its staff. However, it believes the majority would have formal qualifications, although not necessarily in town planning or civil engineering.

Sources: Productivity Commission survey of state agencies 2010, question 11 (unpublished). ABS (2010d). Tables C.1 – C.7.

Table 8.9 Planning staff resources, local councils [a b]

2009-10

		NSW	Vic	Qld	WA	SA	Tas
Average FTE staff per council [c]	no.	22.6	25.3	84.0	10.8	12.2	7.3
FTE staff/10 000 population	no.	2.5	2.1	3.0	1.7	2.5	2.0
Remuneration package of entry level planner	$'000	61	55	49	56	58	58
Minimum qualifications for Strategic Planners							
Town/Urban Planning degree	%	88	74	73	77	86	80
Minimum qualifications for Statutory Planners							
Town/Urban Planning degree		81	81	64	85	77	83

a Staff employed in planning, zoning and development assessment roles in local councils. **b** Differences in the way jurisdictions structure their councils need to be taken into account when interpreting these data. **c** Number of staff as 30 June 2010.

Sources: Productivity Commission survey of local councils 2010, questions 4, 6 and 7 (unpublished). Tables C.1 – C.6.

Local government planning activity and performance

Planning activity

An indication of how local governments allocated their planning-related resources can be obtained by examining four components of their planning expenditure — staff salaries, consultancies, legal expenses and other expenses (table 8.10).

Table 8.10 **Components of planning, zoning and development, local councils** [a]
2009-10

		NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*
Staff salaries	%	71.9	77.4	62.9	79.6	70.0	85.5
Consultancies	%	7.0	10.7	9.1	8.0	6.9	6.3
Legal expenses	%	11.4	7.5	13.5	7.5	9.3	7.2
Other expenses	%	9.7	4.4	14.5	5.0	13.8	1.0

[a] Differences in the way jurisdictions structure their councils need to be taken into account when interpreting these data.

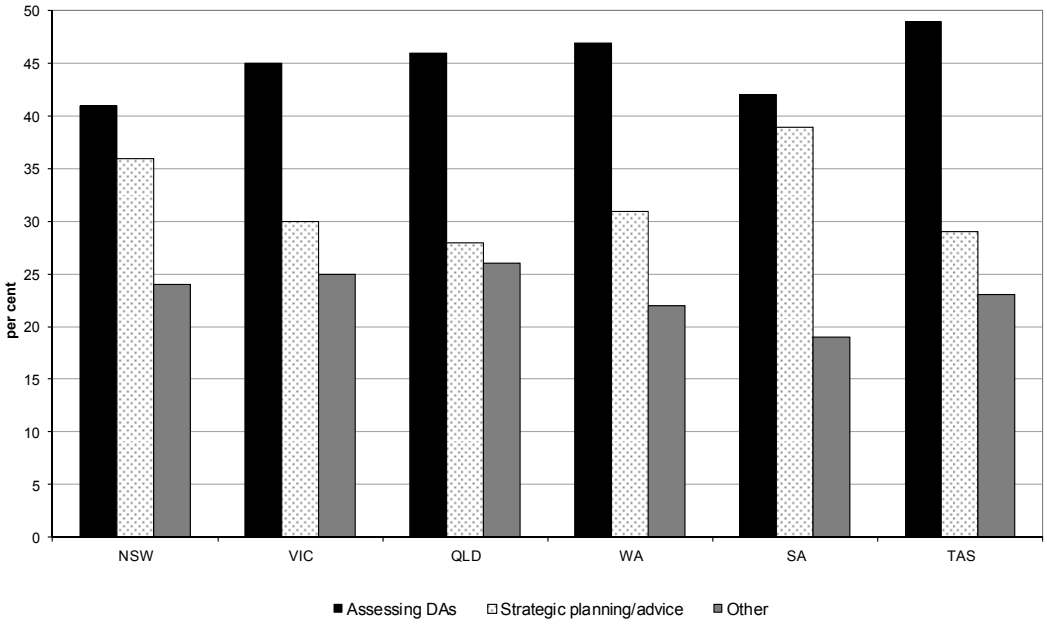
Source: Productivity Commission survey of local councils 2010, question 8 (unpublished).

It is unsurprising that staffing is the most significant expenditure component, generally accounting for over 70 per cent of local government planning expenditure. The relatively low figure for Queensland appears to be the corollary of the very high proportion of 'other expenses' incurred by councils in the state. Other expenses include travel expenses and costs incurred in stakeholder consultation/liaison. There does not appear to be a strong relationship in any jurisdiction between council size and the proportion of expenditure spent on staff salaries.

Figure 8.1 reveals how council staff allocated their time to different planning-related activities in 2009-10. Assessment of development applications is the most time-consuming task across all states, although council staff in South Australia and New South Wales devote almost as much of their time to strategic planning and general planning advice. Other planning activities, mainly comprising enforcement and follow-up work after development approval, accounted for around 20 per cent of staff time across all states. A New South Wales council, commenting on how resources devoted to development assessment had increased in the last 2 years, noted that more assessment staff had been employed and improved procedures implemented to meet the challenge. However, if extra staff is not an option then other choices have to be made. A council in Western Australia, for example, indicated that the growth in development applications was taking away resources required for strategic planning.

Figure 8.1 **Proportion of staff time devoted to types of planning activities, local councils [a] [b]**

2009-10



a FTE staff employed in planning, zoning and development assessment roles. **b** Differences in the way jurisdictions structure their councils need to be taken into account when interpreting these data.

Source: Productivity Commission survey of local councils 2010, question 5 (unpublished).

Performance of planning agencies

The performance of planning agencies in handling their various planning functions is difficult to measure with any precision. However, in broad terms, it relates to the outcomes achieved, how these outcomes related to resources used, and how effective the agencies were in undertaking their various tasks.

At the local government level, the key planning output is the number of development applications determined by councils. Accordingly, the performance indicators selected for local councils were the amount of planning-related expenditure per DA and the number of DAs processed per FTE planning staff (table 8.11). [6]

6 Another local council performance indicator is the gross determination time for development application approvals. This is discussed as part of compliance costs in chapter 6. In addition, the Commonwealth suggested that the National Affordable Housing Agreement efficiency interim indicator 9, 'supply meeting underlying demand for housing' might also serve as a performance indicator for planning agencies.

Table 8.11 **Performance indicators, local councils** [a]

2009-10

		NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*
Planning expenditure[b] / DA							
Mean	$	3 022	2 650	10 477	1 613	900	1 775
Lowest	$	767	1 434	5 066	858	417	387
Highest	$	10 084	7 140	14 569	4 401	2 471	4 461
DAs/FTE planning staff[c]							
Mean	no.	40	40	12	59	130	69
Lowest	no.	15	16	6	21	59	40
Highest	no.	226	80	25	154	228	230

[a] Differences in the way states structure their councils need to be taken into account when interpreting these data. [b] Planning expenditure incorporates spending on all planning, zoning and development assessment related activities. [c] Staff employed in planning, zoning and development assessment roles in local councils.

Source: Productivity Commission survey of local councils 2010, questions 4, 8 and 13 (unpublished).

The data suggest that, in 2009-10, councils in Queensland spent significantly more than other jurisdictions for each DA approved. Queensland councils also recorded the lowest number of DAs processed per staff member. At the other end of the spectrum, councils in South Australia incurred the lowest expenditure per DA and recorded the largest number of DAs approved per FTE staff. Australia-wide, the three councils with the lowest expenditure per DA were a mixture of one small council (less than 25 000 population) and two of medium size (75 000 — 100 000). In contrast, the three councils recording the highest output of DAs per staff were composed of one medium-sized council and two at the lower end of the LGA population range.

Care is required in interpreting these performance data. Some of the differences between jurisdictions may be explained in part by the resources dedicated to development assessment tasks. Although the proportion of staff time allocated to DAs does not vary a great deal between states (figure 8.1), the proportion of planning expenditure dedicated to development assessment and strategic planning may well vary significantly. Furthermore, the results may also reflect, to some extent, the way development assessment processes are organised differently across jurisdictions. For example Queensland has a sophisticated risk-based approach to development assessment whereby fewer development applications require assessment against a planning scheme. In South Australia, on the other hand, all development applications have to be assessed by councils. Moreover, within South Australian residential zones, the majority of applications are 'complying' forms of

developments and hence the planning assessment process is more straight forward.[7] Another factor to consider is that low expenditure per DA might not always be a desirable outcome for LGA residents. It may, for example, indicate that too little is being spent on planning processes with the consequence that development applications are not receiving full and appropriate consideration.

Effectiveness is a measure of the ability of the planning task to produce a specific desired effect. In the state/territory survey, one of the questions posed to regulators was the extent to which they thought governments could use the planning, zoning and development assessment system to influence a number of challenges (23 in all). These results were reported in chapter 2 (table 2.1). In cases where the answer was 'to a major extent', the answers provided an indication of *potential* if not necessarily *actual* effectiveness. 'Major' in this context is likely to mean that planning can play a lead role, as opposed to being a junior partner or assistant. As shown in table 2.1, all jurisdictions other than Tasmania (which did not record any 'major' extents) agreed that three key challenges for which governments can use the planning system to exert a major positive influence were accommodating population growth, making the transition to higher population densities, and managing greenfield development. Providing diverse and appropriate housing, and protecting biodiversity were other factors where governments thought they could make a major difference by use of the planning system.

At the local government level, the council survey requested councils to outline some of the factors that assisted in making the planning process more effective and other factors that hindered its effectiveness. On the positive side, table 8.12 shows the extent of the impact of certain features in expediting development assessment processes in 2009-10. These can be broadly split into technological factors (electronic applications, ePlanning, track-based assessment) and other features of the planning process (limited/prohibited third-party appeals, private certification, appeal fees/costs).

[7] The introduction of the South Australian Ministerial Code for Residential Development in 2009 also increased the number of 'complying' types of development applications.

Table 8.12 **Impact of features expediting the development assessment process, local councils** [a]

2009-10

		NSW	VIC	QLD	WA	SA	TAS	ACT	NT
Electronic applications									
Major/Moderate	%	7	19	33	11	8	0	100	100
Minor	%	17	43	22	0	23	20	0	0
None	%	76	38	44	89	69	80	0	0
ePlanning									
Major/Moderate	%	7	15	11	0	0	0	100	50
Minor	%	17	40	44	0	9	25	0	50
None	%	76	45	44	100	91	75	0	0
Track-based assessment									
Major/Moderate	%	41	0	50	22	50	0	100	0
Minor	%	14	12	10	0	8	50	0	50
None	%	45	88	40	78	42	50	0	50
Limited/prohibited third- party appeals									
Major/Moderate	%	7	20	33	13	25	25	0	0
Minor	%	25	40	11	0	67	0	100	100
None	%	68	40	56	87	8	75	0	0
Private certification									
Major/Moderate	%	40	11	11	0	33	0	100	0
Minor	%	43	0	22	0	33	0	0	0
None	%	17	89	67	100	33	100	0	100
Appeal fees/costs									
Major/Moderate	%	20	5	56	10	8	0	0	50
Minor	%	53	21	33	40	46	50	100	0
None	%	27	74	11	50	46	50	0	50

[a] Not all of the listed features were available in some jurisdictions.

Source: Productivity Commission survey of local councils 2010, question 21 (unpublished).

The results suggest two main findings. First, there was no significant difference in the impact of technological and non-technological features — in both cases around 20 per cent of councils indicated these factors had a major or moderate impact. Second, and subsequently, the majority of the impacts were either of a minor nature or no effect at all. In the latter case, the large number of 'no effect' ratings can be partially explained by the fact that some of the listed features were not available to all councils.[8]

8 These results may also simply reflect the experience of the people who completed the survey and may not represent a proper evaluation of, for example, the potential to improve the DA process via the use of online services.

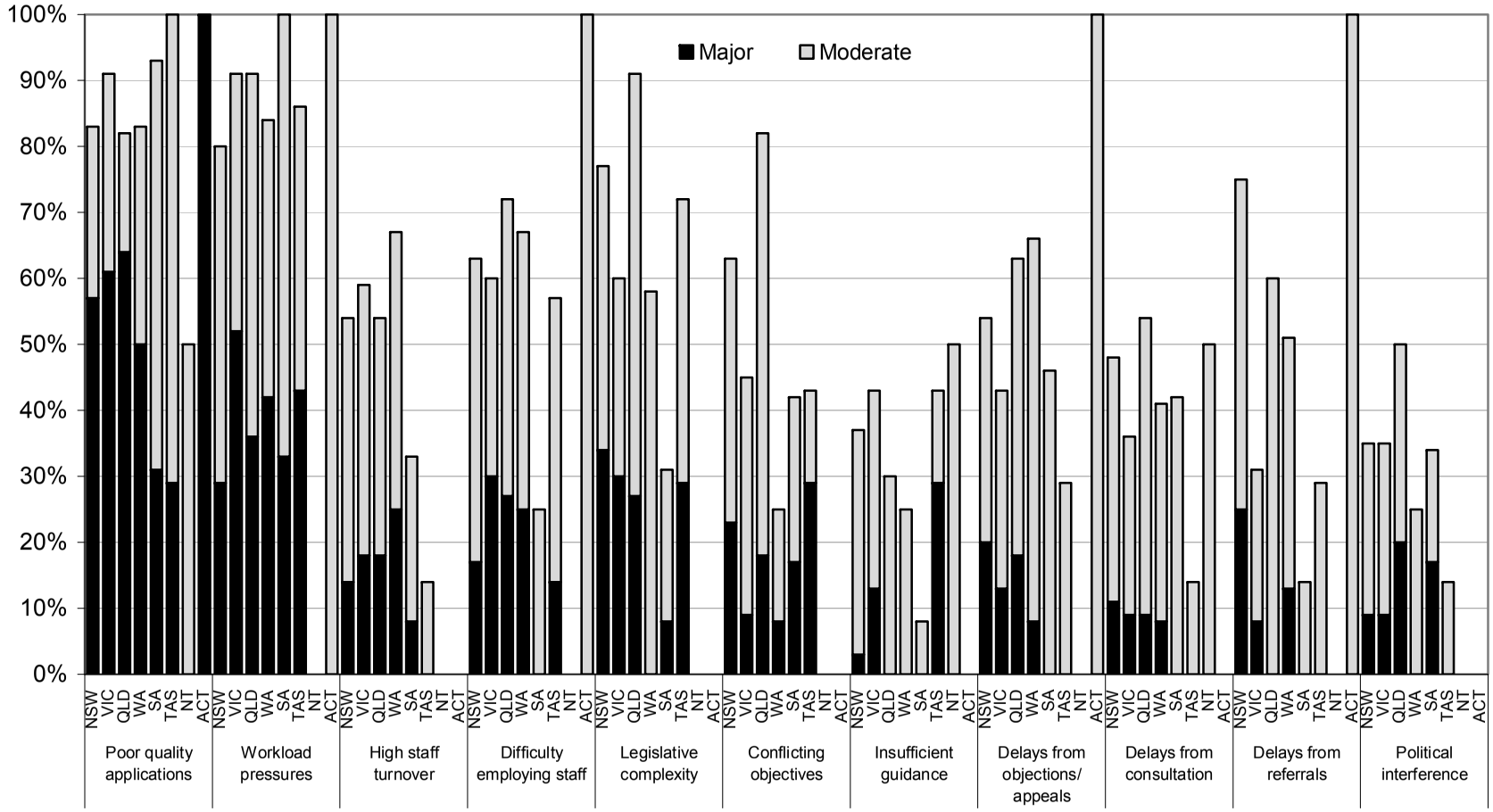
The impact of track-based assessments was interesting as councils were required to indicate elsewhere in the survey whether or not they used a track-based system (see chapter 6). Many councils indicated that they do not use such a system. Of the councils who do use this system, many considered it to have had a positive effect in expediting development assessment processes. Of the other features in table 8.12, private certification appears to have been slightly more valued in New South Wales and South Australia in assisting the planning process, while appeal fees and costs had a significant impact in Queensland.

Turning to constraints, the factors most hindering councils in effectively managing their planning, zoning and development assessment processes are shown in figure 8.2. In 2009-10, the two most prominent constraints were poor quality/incomplete development applications and workload pressures. In both cases, over 80 per cent of councils in each jurisdiction considered these factors had a major or moderate impact and with a significant proportion nominating the former (particularly in the case of poor quality applications).

Higher workloads are likely to be the consequence of the growth in development applications, staffing constraints, or both. A council in Western Australia, for example, noted that more development generally was placing a strain on staffing resources, with a 30 per cent increase in development applications between 2008-09 and 2009-10 not being matched by any staff increases. The decision not to employ more personnel may be a budgetary one, but it may also reflect difficulties by councils in recruiting suitably qualified staff. Indeed, as shown in figure 8.2, recruitment problems were a significant factor in all jurisdictions except South Australia.

Legislative complexity and conflicting objectives appeared to be particularly troublesome in Queensland and New South Wales. One New South Wales council observed that a significant increase in resources had been required over last 10 years to deal with the increased complexity and expectations of the planning system. Another pointed to the link between complexity and costs, noting that the increased complexity of planning issues had led to a requirement for additional technical specialists which created greater costs for council and development applicants. Councils in Queensland and New South Wales (along with Western Australia) were also more likely to nominate delays arising from objections/appeals, consultation and referrals as a significant factor impacting on their ability to manage the planning process.

Figure 8.2 **Factors impacting on local councils' ability to manage the planning process**



Data source: Productivity Commission survey of local councils 2010, question 9 (unpublished).

8.4 Mediating national, state and local interests

"Metropolitan planning is primarily a government exercise involving coordination within and between different levels of government" (Gleeson et al, 2004, p. 348).

Planning and its implementation through zoning, re-zoning and development assessment requires effective cooperation among governments. For example, with regard to infrastructure funding, most state governments consider delivery of funding from the Commonwealth and, to a lesser extent from councils, to be an important element on which the success of their strategic plans depends (table 8.1).

This section looks at the overarching attempts to bring more consistency and rationality to planning, zoning and development assessment, as well as the nature and quality of the relationship between the different levels of government. Other parts of this report (chapters 10 and 11) address particular areas (including referrals, environmental assessments and airports) where interaction between different levels of government is required.

The relationship between Commonwealth and other levels of government

Commonwealth government activities

With the exception of the creation of the ACT and Canberra in the early 1990s, the Department of Urban and Regional Development in the Whitlam Government and the sporadic inclusion of housing in a minister's portfolio over the last 60 years (such as occurred in the early 1990s (Orchard 1999)), the Commonwealth has generally kept a distance from direct involvement in planning and approval issues. Australian Government policies in numerous other fields (such as heritage, health, environment and tourism) and its extensive property holdings in many cities, nevertheless provide an indirect route by which Commonwealth government policies may impact on the planning and zoning outcomes of Australian cities. These impacts and policies are often not coordinated or even focussed on the state and local planning systems and may consequently deliver mixed messages to the community on key planning policy issues.

There is a growing momentum for national coordination to help address some significant Australia-wide challenges, including:

- housing around 14 million extra people by 2050

- an ageing population
- the predicted doubling of the avoidable costs of congestion in capital cities over this decade to $20 billion in 2020 (unless addressed)
- ensuring adequate energy and water supplies
- capacity constraints on ports and airports and complex connections to land-based forms of transport
- adapting to climate change — currently states are planning for different sea level rises ranging from 38 cm in Western Australia to 100 cm in South Australia, with the Commonwealth predicting 110 cm (Stokes 2010).

In addition to national issues which require Commonwealth coordination, many challenges need to be addressed at a city level. While under the Australian Constitution the state and territory governments have the principal responsibility for planning cities, the Commonwealth Government can influence outcomes through a number of channels including when and where it invests in transport networks of national importance and funds social infrastructure such as hospitals, schools and universities.

In particular, the Commonwealth Government can use incentive payments to encourage reform and influence planning priorities. A particularly important use of this mechanism is the Commonwealth making its funding of road, rail and port infrastructure (currently $37 billion through the Nation Building Program) conditional on city strategic plans meeting the key planning requirements agreed by COAG in December 2009 (see box 8.4 in next section).

The goal is to ensure consistency between infrastructure investment and the priorities identified by the city's planning system and that, in addition to existing local and state/territory objectives, city strategic plans address a range of national objectives by coordinating across different levels of government; different government departments and agencies; and different topic areas and disciplines (urban design, transport planning, the housing industry, health and education, community development and social services).

There are a number of other initiatives currently underway by the Australian Government that will influence how cities are planned. They include:

- development of a *Sustainable Population Strategy* scheduled for release in 2011 looking at how population size, distribution, composition and growth rate affect sustainability. The focus will be on ensuring policies for natural and built environments, infrastructure provision and use, immigration, and fiscal sustainability address associated challenges while making the most of the opportunities of population changes (Department of Sustainability, Environment, Water, Population and Communities 2010)

- the *National Urban Policy* and the role of Australia's cities (see below) (Department of Infrastructure and Transport 2010a)
- the *Nation Building Program* as described above, including significant intra city rail links (Department of Infrastructure and Transport 2010b)
- the preparation of a *National Ports Strategy* to reduce truck queues at ports, to minimise the potential for urban encroachment, and to improve and sustain the competitive position of international trade gateways (Infrastructure Australia 2010d)
- the preparation of a *National Freight Strategy* aimed at the network of freight movement across the nation, including where it interacts with urban areas (Infrastructure Australia 2010e)
- the Commonwealth Government has regulatory control of planning at Australia's 22 federally leased airports and through the *National Aviation Policy White Paper* (Department of Infrastructure and Transport 2009) the Government committed to working with airports, state, territory and local governments to achieve a more balanced airport planning framework and to support more integrated planning outcomes.

In terms of bodies involved in these reforms, Infrastructure Australia plays a key role in forwarding the Commonwealth Government's agenda for infrastructure reform and investment (further details are provided in chapter 5). The Major Cities Unit of Infrastructure Australia has been charged by the Commonwealth Government with identifying opportunities for a systems approach to thinking, policy decisions and allocation of resources in Australia's major cities and, based on its findings, developing a national urban policy. The unit's overriding goal is to facilitate more sustainable, productive and liveable cities across the nation.

The Commonwealth is also giving attention to its relationship with local governments, reflected in the establishment of the Australian Council of Local Government in 2008.

COAG activities

COAG provides the prime means by which Commonwealth and state and territory governments agree on broad policy objectives and coordinate their implementation. Improving coordination and cooperation amongst governments in regard to planning is crucial to ensuring that some core policy objectives (such as housing affordability) can be delivered smoothly and without creating bottlenecks. In particular, COAG made the planning of cities a key focus (COAG 2009).

Box 8.4 **COAG capital city strategic planning systems criteria**

Capital city strategic planning systems should:

1. *be integrated across functions, including land-use and transport planning, economic and infrastructure development, environmental assessment and urban development, and across government agencies;*

2. *provide for a consistent hierarchy of future oriented and publicly available plans:*
   a) long term (for example, 15-30 year) integrated strategic plans,
   b) medium term (for example, 5-15 year) prioritised infrastructure and land-use plans, and
   c) near term prioritised infrastructure project pipeline backed by appropriately detailed project plans.

3. *provide for nationally-significant economic infrastructure including:*
   a) transport corridors,
   b) international gateways,
   c) intermodal connections,
   d) major communications and utilities infrastructure, and
   e) reservation of appropriate lands to support future expansion;

4. *address nationally-significant policy issues including:*
   a) population growth and demographic change,
   b) productivity and global competitiveness,
   c) climate change mitigation and adaptation,
   d) efficient development and use of existing and new infrastructure and other public assets,
   e) connectivity of people to jobs and businesses to markets,
   f) development of major urban corridors,
   g) social inclusion,
   h) health, liveability, and community wellbeing,
   i) housing affordability, and
   j) matters of national environmental significance;

5. *consider and strengthen the networks between capital cities and major regional centres, and other important domestic and international connections;*

6. *provide for planned, sequenced and evidence-based land release and an appropriate balance of infill and greenfields development;*

7. *clearly identify priorities for investment and policy effort by governments, and provide an effective framework for private sector investment and innovation;*

8. *encourage world-class urban design and architecture; and*

9. *provide effective implementation arrangements and supporting mechanisms including*
   a) clear accountabilities, timelines and appropriate performance measures,
   b) coordination between three levels of government, opportunities for Commonwealth and local government input, and linked, streamlined and efficient approval processes including under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999
   c) evaluation and review cycles that support the need for balance between flexibility and certainty, including trigger points that identify the need for change in policy settings, and
   d) appropriate consultation with external stakeholders, experts and the community.

Source: COAG 2009

The COAG capital city strategic planning systems criteria (box 8.4) point to the need for 'coordination between three levels of government, opportunities for Commonwealth and local government input, and linked, streamlined and efficient approval processes' (item 9b in box 8.4). Similarly, the Secretary of the Department of Prime Minister and Cabinet stated: 'capital city strategic planning will only work well if there is an effective partnership, with trust and respect, between all three levels of Government involved in our major cities' (Moran 2010).

Other recent COAG initiatives which impact on planning, zoning and development assessments include:

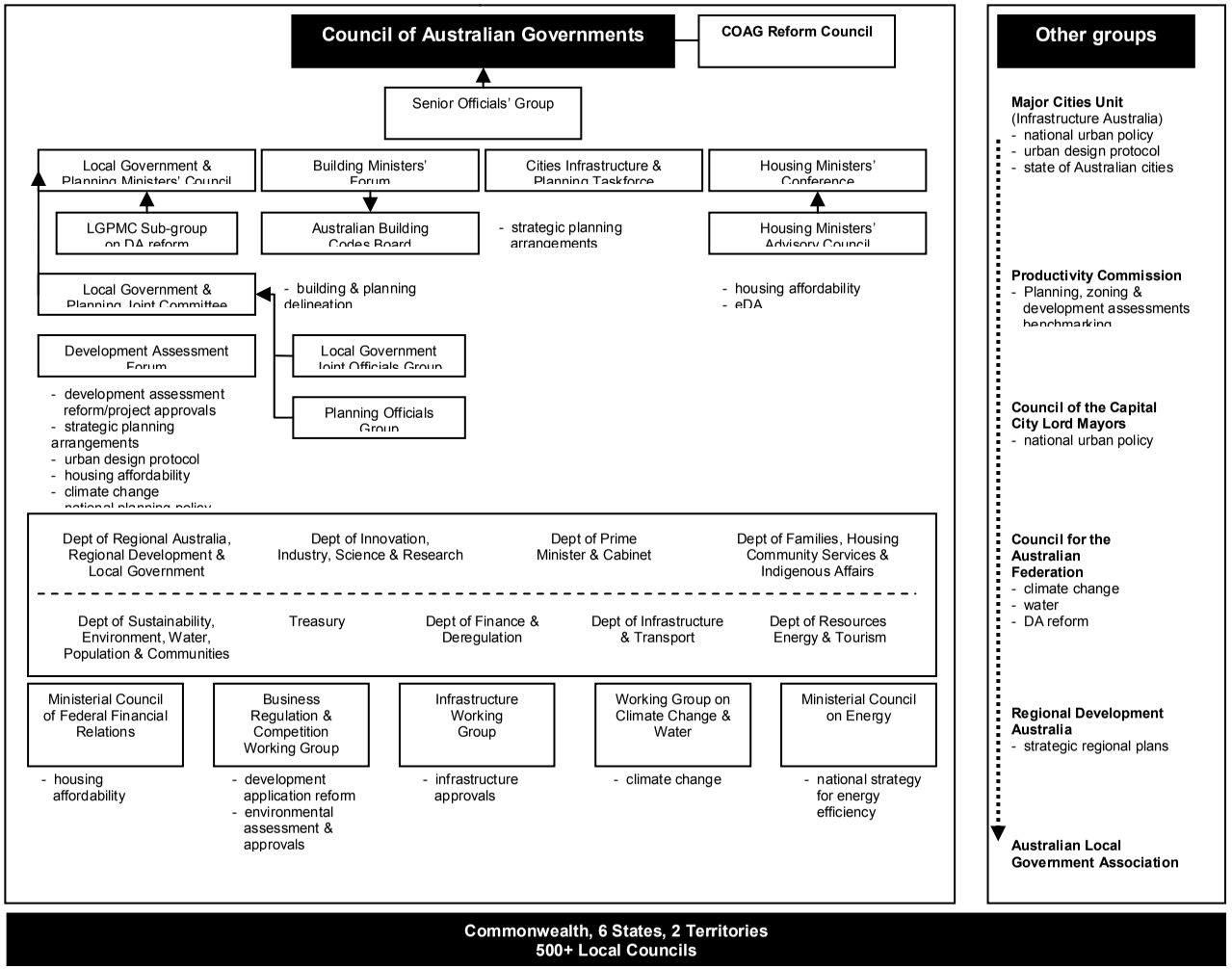
- the *National Water Initiative Planning Principles* were adopted by COAG in 2008 and endorsed by the Natural Resource Management Ministerial Council in April 2010 to provide governments and water utilities with the tools to better plan the development of urban water and wastewater service delivery sustainably and efficiently
- the Australian Government proposes to work through COAG to develop a national agenda to adapt to climate change particularly working on the national priorities identified in the position paper *Adapting to Climate Change in Australia* (2010)
- COAG agreed in April 2010 to a housing supply and affordability reform agenda which includes an examination of zoning and planning approval processes, infrastructure charges, environmental regulations and the identification of underutilised land. In addition, the National Housing Supply Council will focus on the impacts of the planning system and the difficulties and merits of infill developments
- the *Healthy Spaces and Places* project provides information and guidelines on how to create environments that support physical activity based on the premise that the quality and design of the urban environment plays an important role in facilitating exercise
- two of the 27 agreed priority areas for regulation reform under the National Partnership Agreement to Deliver a Seamless National Economy are environmental and development assessment reform (COAG 2008).

While COAG and its many ministerial councils may provide the best option for improving coordination, the challenge is major for both harmonisation of planning and its implementation. There are at least six ministerial councils, plus COAG and the Council of the Capital City Lord Mayors (CCCLM), which impact on planning, zoning and development assessments, supported by a range of working groups, advisory councils and the Development Assessment Forum (which brings together both government and industry groups) (see figure 8.3).

Furthermore, many planning policy areas require not only coordination among the three levels of government but also among intermediate decision-making and implementation groups and programs, cascading down from national to site specific. For example, for infrastructure planning and implementation, coordination must range across national infrastructure policies and priorities to those of the states and territories to regional delivery programs to local infrastructure planning and delivery programs to neighbourhood infrastructure programs to collaborative location-specific infrastructure planning to area and then site-specific standards of service requiring certification. Integration may be 'vertical' (the rationalising of structures, content or processes between higher-order and lower-order systems) or 'horizontal' (the integrating of like aspects of a single system), (figure 8.4).

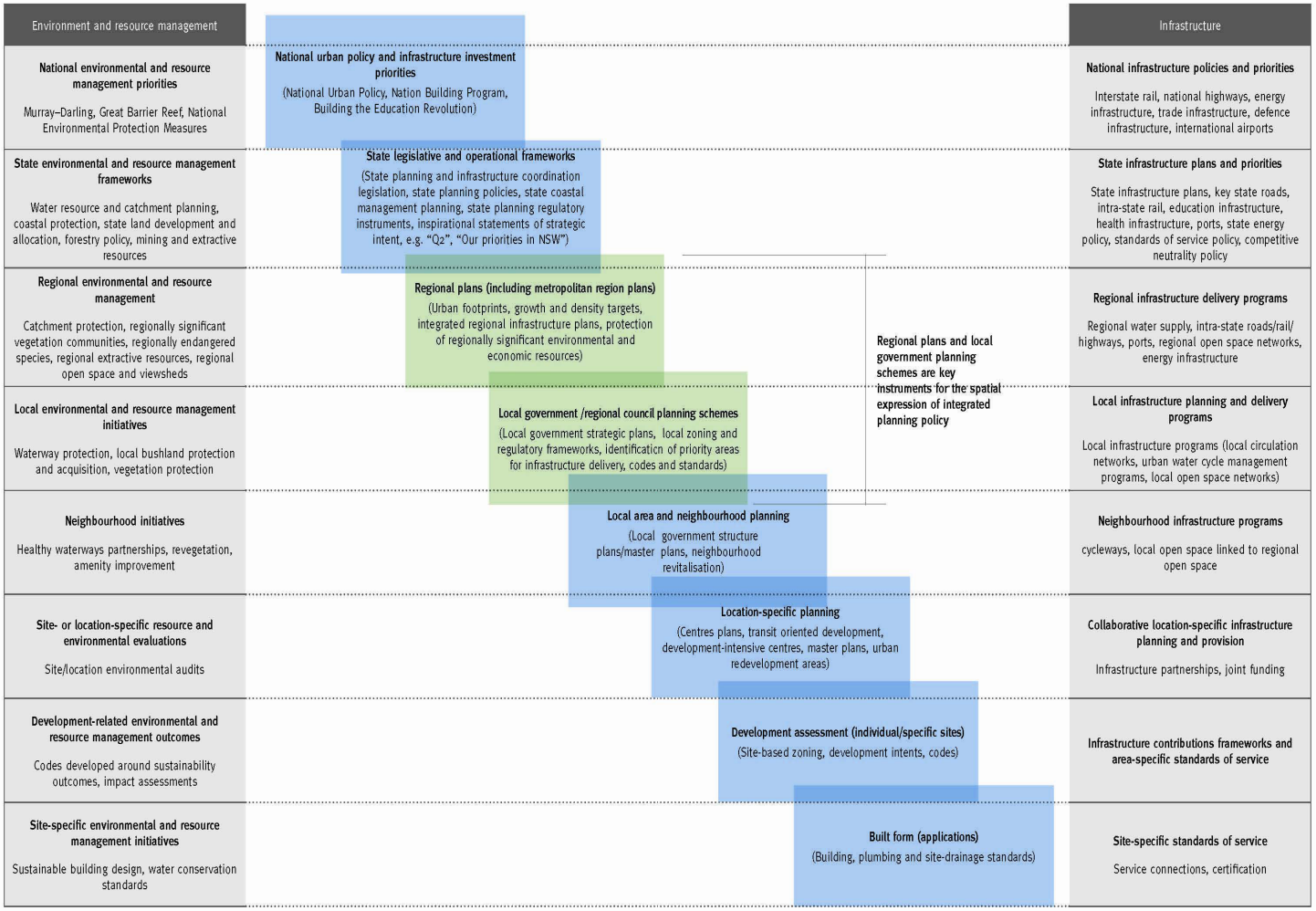
Apart from COAG and related activity, the Commonwealth Government's primary interactions with planning decision making is discussed in Chapter 11.

Figure 8.3 **COAG and planning**



Source: Updated from ACTPLA (2010a).

Figure 8.4 **Integration (vertical and horizontal)**



Source: LGPMC, December 2009, p. 14.

The relationship between state and local governments

As discussed in chapter 3 and section 8.3, there are substantial differences between the states and territories in terms of where planning roles and responsibilities sit, and the number and type of government agencies involved. In particular, while planning in some cities is handled by a single local council, in other cities, the same physical urban area may be represented by (and therefore require coordination amongst) as many as 43 local councils.[9]

As stated by the Council of Capital City Lord Mayors (CCCLM, sub. 31, p. 4), as well as local governments being 'responsible for planning their local communities by ensuring appropriate planning controls exist for land use and development through the preparation and administration of local planning schemes and strategies' they are also 'required to ensure their local planning schemes and policies are consistent with State and regional planning objectives and requirements.'

The proportion of DAs assessed at non-council level, either by the state planning agency itself, through independent structures such as local or regional panels, or as a result of projects called-in by the Minister (see chapters 3 and 6), varies considerably. The Victorian and South Australian state governments consider the greatest proportion of DAs at a state level.

Specific inter-government relation issues which have arisen

There is a common perception among stakeholders that if coordination between state and local governments were improved better planning outcomes would result (CCCLM (sub. 31); Wyalla City Council (sub. 55); ALGA (sub. 33); NSW Business Chamber (sub. 25). The CCCLM (sub. 31), for example, reports cases where better coordination may have avoided problems such as:

- the development at Buckland Park, South Australia not being serviced by public transport and not well linked to existing infrastructure or urban development so that it will be largely car dependent as it is
- growth in Hobart's south east beaches placing increased pressure on the road network

[9] As noted in chapter 3, while the states and territories have legal power in planning, zoning and development assessment, they delegate much of this power to local councils — especially with regard to development assessment. Local governments are established under State legislation and their structures, powers and functions are determined by that legislation.

- the Western Australian Department of Education closing a number of high schools without considering the long term impact on the affected local communities.

Similarly, the Environmental Defenders Office (Tasmania) reports that while considerable information has been collated across Tasmania in relation to issues such as water quality and flow data, threatened species habitat and vegetation clearance, this information is often not readily available to council officers assessing development applications (sub. 12, p. 2). Given their inter-dependent responsibilities, there is plenty of scope for local councils and state governments to be in conflict. For example, over infill policies:

> For many of the other policy motivations, however, there are clear trade-offs that need to balance concerns of competing groups who can benefit or be harmed by the maintenance of housing restrictions. One such trade-off is reflected in the governance issues that affect development. In general, State governments are responsible for determining the plans for a city, as these require coordination across a number of local councils and the provision of large-scale infrastructure, for which they are responsible. Local governments often control the zoning or approvals that put broader plans into effect, such as by allowing higher-density housing in the areas designated by the plan. This can result in tension between the wider objectives, which can often include objectives for higher-density housing, and the decisions of local government, which reflect the concerns of their citizens who are most strongly affected by change. It can therefore be difficult for State governments to implement urban infill strategies. There appears to be scope for reforms to planning governance to achieve greater clarity in the roles of institutional policy-setting and decision-making between levels of government (National Housing Supply Council 2009, p. 26).

The Commission was advised repeatedly during consultations that although there are often tensions in planning decisions between local and state governments, relations in New South Wales are the least workable at the current time. Consistent with these views, there are a number of reported examples of such tensions in the media (box 8.5).

Box 8.5 **Inter-government planning conflicts**

- NSW resumption of planning powers from councils

In 2009, councils around Australia agreed to suspend normal planning approval processes, including public consultation, to enable rapid use of Commonwealth funding for public housing and school construction. The NSW government subsequently announced the potential for extending such planning powers beyond the purposes agreed by councils (Moore 2010a). In October 2010, the NSW premier was reportedly jeered by mayors and councillors during her address to the Local Government Association conference. The premier defended the state's resumption of planning powers from councils (in particular, related to Part 3A DAs which give the state power to determine all major projects) by noting that returning planning powers to communities would mean 'more work' for councils (Tovey 2010a).

More generally, there are three councils in New South Wales which have had their planning powers suspended by the state government due to alleged incapacity to perform their planning functions.

- The first of these, Wagga Wagga, had a planning panel appointed in November 2007 to address a number of outstanding planning matters (Sartor 2007).
- In March 2006, Ku-ring-gai was placed under a panel to take over most of the councils' planning powers. A court challenge to the panel by the council failed in May 2008. The panel developed an LEP for Ku-ring-gai, which the New South Wales Government approved in May 2010. The opposition announced that in the event that the a Liberal/National government wins the New South Wales election, Ku-ring-gai Council will have the powers to suspend its LEP (Marr 2009; Local Government and Shires Association of NSW 2008).
- In August 2010, a planning panel was appointed for Cessnock council for a period of 5 years. The panel is to determine all rezoning proposals, DAs over $1 million and DAs over $100 000 which are undetermined after 90 days. Appointment of the panel was despite council claims that it would be illegal for it to comply with a ministerial directive on a particular DA and NSW department advice that the council's performance was broadly satisfactory (McCarthy 2010a; Grennan 2010)

- Parramatta and signage on developments

In September 2010, Parramatta Council erected 40 large signs in its local area to advise the public of unpopular projects which it had refused but which the state government had subsequently approved (Campion 2010b)

- Blacktown refusing to process DAs

In June 2010, Councils in Sydney growth centres refused to process major development applications in a dispute with the state government over its decision to impose a $20 000 cap on developer levies. The cap would potentially mean that councils would have to borrow to fund infrastructure or request IPART for large rate rises (Moore 2010b).

- Caloundra South development

In October 2010, a large area of land in Caloundra South was removed from council decision making processes to the Urban Land Development Authority (ULDA). The Sunshine Coast Regional Council had already been working on a structure plan for the area, but the premier argued the development process was taking too long and the ULDA needed to take charge (Hurst 2010).

(continued next page)

Box 8.5 **(continued)**

- Brisbane, Melbourne and heights of buildings

In August 2010, Brisbane City Council approved a 12-storey building in a riverside precinct despite a state legal directive to reduce the maximum height of new development in the area from 12 stories down to 7 stories (Vogler 2010a). Although Queensland's performance-based planning assessment process enables councils to approve developments outside the state recommended criteria, use of this provision appears to be contentious.

Earlier in 2010, the City of Melbourne lodged an appeal against a development permit issued by the state planning minister for a 62 storey residential and retail development at Southbank which was more than double the City of Melbourne's height guidelines for the area (Cooke 2010b).

- Ad hoc planning in the ACT

The community of councils of Canberra have reported that planning in the ACT does not always fit in with other government policies such as transport and sustainable energy and have called on the ACT government to address the current fragmentation of planning; the absence of an overarching plan for the territory; a lack of transparency and accountability of planning and development process in the ACT; and inadequacies of the current system of community engagement (Reynolds 2010).

Some of these tensions arise because of inconsistencies between state and local government planning priorities.

Consistency of state and local government planning priorities

It could be expected that in reflection of their different constituencies and responsibilities, local and state governments would have different planning agendas, perspectives and priorities. However, at a broad level, there is some consistency in planning priorities. For example, most councils and states and territories agreed (in their responses to the Commission's survey) that accommodating higher population growth is a top priority along with the accompanying need to transition to higher population densities via infill (table 8.13).

Other objectives noted as priorities, but by fewer states, included reducing traffic congestion (in the larger populated states), maintaining the viability of retail and commercial centres (in the smaller populated states) and emphasising broad environmental objectives such as protecting biodiversity and adjusting to climate change.

For the local councils, traffic congestion was also important amongst those councils in the more populated states and environmental objectives were priorities for councils in these states and Tasmania (table 8.14). However, maintaining existing infrastructure and provision of new infrastructure are considered high priorities for

many councils. Apart from fostering a stronger sense of community (a priority for around 20 per cent of surveyed councils), Tasmanian local councils are among the few to rank social objectives as top priorities for their planning.

Table 8.13 **State and territory planning priorities for capital cities** [a]
Selection by planning agencies of five key priorities

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
City structure and services								
Maintaining a vibrant city centre					✓	✓	✓	
Improving mobility within the city						✓		
Reducing traffic congestion	✓	✓	✓					
Maintaining existing infrastructure								
Improving accessibility of services								
Managing new greenfield development						✓		✓
Providing new economic & social infrastructure			✓					✓
Securing adequate urban water supply		✓						
Attracting new industries	✓				✓			
Attracting skilled labour								
City housing and population issues								
Accommodating population growth	✓	✓	✓		✓			✓
Providing affordable housing					✓		✓	
Making transition to higher urban pop densities	✓		✓		✓	✓	✓	
Providing diverse and appropriate housing	✓	✓						
City connectedness								
Enhancing connections with other Aus cities								
Enhancing connections with regional centres								
Enhancing connections with overseas cities								
City environment								
Ensuring efficient waste management								
Adapting to climate change						✓	✓	✓
Protecting biodiversity			✓				✓	✓
Improving air quality								
City lifestyle and social progression								
Promoting healthy lifestyles								
Reducing socio-economic disparities		✓						
Addressing problems of crime and violence								
Maintaining/improving social cohesion								

a Five key planning priorities nominated by state and territory planning departments or key planning agency. Western Australia did not nominate its five highest priorities for Perth.

Source: PC state and territory surveys

Table 8.14 **Council planning priorities for capital cities**

Per cent of councils nominating each issue as one of their top five priorities [a]

	Aust	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*
City structure and services							
Maintaining the viability of local retail and commercial centres	32	42	17	40	31	31	50
Addressing regional or metropolitan level development challenges (such as gaps in essential regional or metropolitan transport links)	30	42	17	60	23	15	17
Re-developing unused industrial, retail or commercial sites	7	3	13	0	8	8	17
Redeveloping land along key transport corridors	18	17	17	20	31	23	0
Reducing traffic congestion	20	33	21	30	8	0	0
Maintaining existing roads and water and sewerage infrastructure	25	31	8	20	8	46	50
Providing new economic and social infrastructure	25	14	29	30	38	38	0
Providing more and/or different local government services as a result of changing demographics	6	0	4	10	8	15	17
Improving the accessibility of local government services for an ageing population	8	6	4	0	15	23	0
Providing the amenities and infrastructure needed to support-a growing tourism industry	4	3	0	10	0	15	0
Protecting local business	3	3	4	0	0	0	17
Attracting new businesses	12	11	17	30	15	15	17
City housing and population issues							
Accommodating population growth	54	53	46	80	62	62	33
Providing affordable housing	17	14	17	30	0	15	17
Providing diverse and appropriate housing	28	25	38	30	38	8	33
Integrating new medium or high density housing developments into existing suburbs	41	36	50	40	46	31	33
City environment							
Ensuring efficient waste management and/or recycling	7	3	0	0	23	15	17
Adapting to climate change	26	28	29	30	8	15	33
Protecting biodiversity	24	25	25	40	15	0	33
Promoting water conservation and/or recycling	7	6	4	10	0	23	0
Maintaining existing parks, gardens and green spaces	20	19	21	20	38	15	0
Providing new parks, gardens and green space	11	11	17	10	0	15	0
City lifestyle and social progression							
Promoting healthy lifestyles	4	3	4	0	0	0	33
Enhancing economic and social integration with neighbouring local council areas	5	0	8	0	0	15	17
Addressing problems of crime and violence	7	8	4	0	15	0	17
Improving the aesthetics of local retail and commercial centres	10	17	0	0	15	8	17
Fostering a stronger sense of community	20	17	29	20	15	8	33

a 35 per cent of local councils nominated fewer than five priority areas and 7 per cent nominated more than five priority areas.

Source: Productivity Commission survey of local councils 2010, question 51 (unpublished).

All state government bodies indicated that the relationship between them and local governments is positive — having a two-way sharing of information, being collaborative, outcome focused (table 8.15). In contrast to these views, local councils have a much more mixed view of the relationship with more than a third considering the relationship is negative for most of these criteria (table 8.16). New South Wales councils appear to be the least happy about the quality of their relationship with state government, noting in particular that engagement is considered to be based on a poor understanding by state government of challenges facing the local area and is not collaborative. Queensland, Western Australian and Tasmanian councils appear to be the most positive about relationships with their state governments.

Table 8.15 **State planning agency views on relations with local governments**[a]

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*
Engagement is based on a good understanding of the challenges in the local council area	■	■	■	■	■	■
Engagement is based on a common view about broader regional or metropolitan planning objectives and priorities	■	■	■	■	■	■
Engagement is collaborative	■	■	■	■	■	■
Engagement is outcome focussed	■	■	■	■	■	■
Engagement involves the two way flow of knowledge and information	■	■	■	■	■	■
Engenders a sense of trust	■	■	■	■	■	■
Engagement exerts a strong influence on your government's ability to effectively bring about change at a regional or metropolitan level through the planning, zoning and development assessment system	■	■	■	■	■	■

■ *Agree*
■ *Neither agree nor disagree*
□ *Disagree*

a The ACT and NT have been excluded from this table as the territory governments perform the planning functions.

Source: Productivity Commission survey of state agencies 2010, (unpublished).

Table 8.16 **Council perceptions of the engagement between councils and their state government**

Per cent of councils which agree with statement

	Aust	*NSW*	*Vic*	*QLD*	*WA*	*SA*	*TAS*
Council response rate (per cent of surveyed councils which responded to this question)	*61*	*65*	*73*	*77*	*41*	*48*	*45*
Engagement is based on a good understanding of challenges facing local area	50	29	63	70	62	46	60
Engagement is based on a common view about planning objectives or priorities	59	50	63	80	77	62	20
Engagement is collaborative	47	31	48	60	69	54	40
Engagement is outcome focussed	57	49	46	60	69	77	80
Engagement involves a two way flow of knowledge and information	47	37	46	50	62	54	40
Engenders a sense of trust	33	26	29	40	38	38	40
Engagement exerts a strong influence on council's ability to manage planning processes	51	62	46	70	31	46	20

Source: Productivity Commission survey of local councils 2010, questions 51 (unpublished).

State government management of the relationship among local governments

The states undertake a number of specific actions to encourage local councils to cooperate with each other in tackling regional or metropolitan level planning, zoning or development assessment related challenges.[10] Most of these approaches centre on regional and subregional planning strategies (including the capital city plans) which provide a framework for the relevant councils to work together beyond their local boundaries. These are employed in one way or another in each jurisdiction (table 8.17). In Victoria, the Department of Planning and Community Development has facilitated agreements between individual councils (such as Geelong and Hume) to guide development in their areas. In contrast, the Tasmanian Planning Commission has entered into Memoranda of Understanding with local councils to guide the preparation of the three regional land use strategies that will be employed in Tasmania (Regional Planning Initiative Memorandums of Understanding).

10 This excludes the Northern Territory and the ACT as planning is solely the responsibility of the respective territory governments.

Table 8.17 **Measures to promote cooperation between councils in planning matters**

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*
Regional and sub-regional planning strategies and approaches	✓	✓	✓	✓	✓	✓[a]
Local plans to be aligned to regional plan	✓		✓	✓	✓	
Department facilitated collaborative planning across and near council boundaries		✓[b]	✓	✓		
Regional planning committees or forums			✓	✓	✓	
Cooperative agreements between local councils (including Memoranda of Understanding)		✓				✓

[a] These plans are currently being prepared. [b] Facilitated through the Growth Areas Authority.

Source: Productivity Commission survey of state agencies 2010, (unpublished).

Where New South Wales councils cannot agree, or fail to cooperate, on development applications that cross council boundaries, it is said common practice is for those councils to engage an external consultant to assess the application (Productivity Commission survey of state agencies 2010, (unpublished)). This is costly to councils, but also for the applicant who has likely waited while councils have sought to reconcile their differences and then has to wait for an external consultant to complete a further assessment of the application.

9 Transparency, accountability and community involvement

Key Points

- Accountability in planning decisions is promoted by:
  - access to rules and regulations such as the location and restrictiveness of certain zones — all state councils and territory agencies publish these but Queensland's and New South Wales' rules are the most difficult to find and use, while the councils in Victoria and South Australia format this information consistently and clearly so that it is easier to find;
  - publishing comparable data on council outcomes — only New South Wales, Victoria and Queensland publish comprehensive data;
  - the availability of applicant appeals and appropriate third party appeals — Victoria has the widest basis for appeals, closely followed by Tasmania and this is reflected in the rate at which appeals are used.
- To promote probity in planning decisions, all jurisdictions have whistle blowing protection and all address public integrity although only New South Wales, Queensland, Western Australia and Tasmania have dedicated anti-corruption commissions. All jurisdictions, except Tasmania, have provisions in their planning Acts to address conflict of interest. In South Australia and the Northern Territory, the minister can investigate and discharge planning officers; and the key planning agencies in Victoria, Tasmania and the ACT have statutory powers to promote integrity in planning and zoning systems.
- While active community engagement was selected as a motivation for some state agencies in New South Wales, Victoria and Tasmania, most state agencies interact with the community through information dissemination and consultation.
- Local governments generally appear to place more emphasis on ensuring that community concerns are considered and less emphasis on simply minimising the potential for community opposition. City councils in South Australia are most likely to be motivated to engage for active community participation.
- Consultation during the development of state level planning instruments is legislated (consistent with the Local Government and Planning Ministers' agreed leading practices) only in Queensland.

Planning systems can significantly impact on the rights, investments, lifestyle and general wellbeing of individuals and communities. Accordingly, local government

and planning ministers across Australia have agreed that transparency, accountability and accessibility are important principles for the way in which planning systems should operate (LGPMC 2009). This chapter compares the extent to which planning systems across Australia are open and comprehensible to stakeholders (transparency) and provide clear and appropriate lines of accountability for key planning structures and decisions. It then describes the ways in which governments engage with communities and business and the views of these groups as to the success of community interaction and accessibility of planning systems in each jurisdiction. While interactions of governments with proponents of developments were discussed in chapters 5 and 6, the current discussion focuses on government involvement with the broader community and business groups throughout the planning process. Where possible, leading practices for transparency, accountability and community interaction are noted, as are those practices which are likely to be deficient.

9.1 Transparency and accountability

The transparency and accountability of regulators is important not only to provide clarity around the way particular laws are enforced but also to ensure businesses do not consider that enforcement decisions are arbitrary and without recourse. Where administrators have incorrectly penalised a business, appeal mechanisms increase the likelihood that businesses can avoid costs that should not be imposed on them.

Access to planning rules and information

An effective and efficient system needs to be accessible to the public, open and transparent. Many users and interest groups have a stake in the state and territory planning systems, and some are more informed than others. For example, developers deal with the system on a daily basis, whereas members of the community or owner-builders might have significant dealings with it once in a lifetime. Full and accessible information creates a level playing field at least initially, such that anyone who is sufficiently motivated can navigate the system, know their responsibilities and defend their rights. Full information includes rules, processes and information about current happenings (for example, development applications lodged).

A widely accessible medium to make information accessible is the internet, but other sources also enhance availability. The information provided is more readily understood by people who are not planning professionals when documents are clear, language is straightforward and jargon is minimised.

Tables 9.1 and 9.2 indicate the accessibility of some of the planning, zoning and development assessment information made available by regulators and councils. The states and territories (table 9.1) are divided between those that are very open and others that are much less so. In particular, Victoria, South Australia and the ACT provide full access to information on strategic planning including submissions from the community and business, while New South Wales, Queensland, Western Australia and the Northern Territory do not provide all of this information.

Table 9.1 **Information made available on the internet by state and territory agencies[a]**

	NSW[b]	*Vic[c]*	*Qld*	*WA*	*SA*	*Tas[d]*	*ACT[e]*	*NT*
supporting commissioned research	×	✓	✓	✓	✓	-	✓	×
advice of expert advisory panels	✓	✓	×	✓	✓	-	✓	×
submissions received from local government	×	✓	×	×	✓	-	na	×
submissions received from residents	×	✓	×	×	✓	-	✓	×
submissions received from the business sector	×	✓	×	×	✓	-	✓	×
assumptions and results of modelling exercises	✓	✓	✓	✓	✓	-	✓	×

a Information relates to the development of strategic or spatial plans by state agencies. **b** Individual submissions are not published but reports on the submissions are available on request. **c** This information relates to both the Melbourne 2030 Plan and the Precinct Structure Plans administered by the Growth Areas Authority. Information relevant to the Melbourne 2030 plan is available on the internet and hard copy in bookshops; the GAA publishes information on its website. This information is not made public in regard to the Geelong Regional Plan or the Hume Strategy. **d** Tasmania does not have a strategic plan. **e** This information was made available on the ACTPLA website, public information displays, as booklets, and written publications were mailed out to anyone who had expressed an interest and also made available at the Government Shopfronts.

Source: PC state and territory surveys 2010, question 19.

In relation to DA data (table 9.2, from council and territory websites), the Northern Territory and New South Wales provide information on the internet in six out of eight items assessed, Queensland, the ACT and Victoria being not far behind (average of five items). Tasmanian councils provide the least information to the public via the internet.

Table 9.2 **Information made available on the internet by local councils[a]**

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Planning scheme	100	100	70	85	100	100	100	100
Fees and charges	94	100	80	100	100	100	100	100
Infrastructure levies	78	13	70	23	31	0	0	100
Electronic development application	28	50	30	31	8	33	100	100
DA proposals	78	58	70	54	38	33	100	100
DA submissions	50	17	50	31	8	0	100	0
DA progress	64	42	60	31	8	0	0	0
DA decisions	89	75	80	62	85	0	0	100

a Response rate (per cent) based on number of councils that have answered this survey question compared to the total number who responded to the survey. Local councils in the Northern Territory and ACT do not have planning functions, so responses here are in relation to the territory agencies.

Source: PC local council survey 2010, question 31.

The lists of information that stakeholders might need are subjective and the above tables assesses only certain key elements of the total information that might be required to navigate the planning system.

However, the state and territory planning department or agency websites are a good source of planning information, which is generally easy to find and simply explained. The Tasmanian Planning Commission website at July 2010 was part of the Department of Justice website and was significantly less reliable and user friendly than websites of other jurisdictions.[1]

Council websites, on the other hand, are of much more varied quality and it is sometimes challenging to find information such as local planning schemes, which are essential to determining what can be developed where, box 9.1.

1 The TPC is in the process of developing a new website (February 2011).

Box 9.1 Examples of difficulties accessing local planning schemes and zones

Poor practice and leading practice:

Queensland council plans were often difficult to find and more difficult to download because they are uploaded in dozens of parts. Furthermore, some councils have not updated their plans since amalgamation in 2007, so they have multiple plans in force. For example, Scenic Rim has three planning schemes (Beaudesert, Boonah and Scenic Rim), each available on the internet not as one document to download but in many parts, and the parts do not incorporate subsequent amendments which must also be taken into account.

The New South Wales LEPs were also very difficult to negotiate. They are slowly being updated to a standard instrument, but in the meantime many councils have multiple planning schemes, making it difficult to assess which zones and controls apply in different areas.

Western Australian planning schemes are all available on the Planning Department website, which makes them easier to find, however the Department uploads them in a format such that the text cannot be copied or printed. They are therefore not very user-friendly.

Local councils in South Australia, Victoria and Tasmania have only one planning scheme each, and they follow the same outline, making them much easier to navigate, (although many plans in Tasmania are quite old and not as consistent)

The Territories have only one (Northern Territory) or two (ACT) plans containing zones and are therefore also relatively user-friendly.

Source: PC research.

Access to decision-making processes

Meetings of public bodies - where contentious and discretionary decisions are being made — are more transparent when open to the public. Table 9.3 shows that most bodies listed have public meetings when considering development applications. The Tasmanian Planning Commission holds open meetings for rezoning, and all jurisdictions have consultation processes for various policy decisions.

Table 9.3 **Open meetings**

NSW	Joint Regional Planning Panels	✓
	Independent Planning Assessment and Review Panels	✓
	Planning Assessment Commission	✓
Vic	Planning Panels and Committees	✓
	Growth Areas Authority	× [a]
Qld	Board for Urban Places	× [a]
	Regional Committees	× [a]
	Urban Land Development Agency	✓ [b]
WA	Western Australian Planning Commission	×
	Regional Development Authorities	×
SA	Development Assessment Commission	× [c]
	Council Development Assessment Panels	✓ [d]
Tas	Tasmanian Planning Commission	✓ [e]
ACT	ACT Planning and Land Authority	✓ [f]
NT	Development Consent Authority	✓ [g]
	Urban Design Advisory Panel	×

[a] Body does not do development assessments. [b] Public consultation processes involve meetings with the community. [c] Parts of Development Assessment Commission meetings are held in public. [d] At the discretion of the Council. [e] Only hearings held by the Commission (as part of determination of zonings etc) are open to the public. [f] Not internal meetings, but normal consultation processes are followed with respect to policy, projects and development applications. [g] Evidentiary sessions of all meetings are open to the public; deliberations are a closed session.

Source: PC state and territory surveys 2010.

Public provision of information on performance

An important aspect of planning and zoning systems which facilitates transparency and accountability in processes and decisions is the provision of information about performance to those involved with development decisions and the public more generally. While all jurisdictions provide some information, there is considerable variability in the scope, form and clarity of what is provided.

Examples of comparable, publicly available data on council outcomes are provided by New South Wales, Victoria and Queensland. Planning bodies in these states compile and publicly release measures on many local government development assessment activities (time and costs) in their jurisdictions — providing high transparency and enabling an evidentiary analysis to be undertaken more easily by interested parties. The ACT provides some data which is considerably less detailed. Other states and territories do not publish this data.

Appeals and review of development assessments

As discussed in chapter 3, all jurisdictions allow an applicant to appeal the merits of a development assessment decision, and most allow the conditions imposed on development approval to be appealed (not Queensland or ACT). These are heard by an independent court or tribunal. Many planning decisions are not appealable. Rezoning decisions cannot be appealed in any jurisdiction, nor can other planning scheme amendments.[2]

The ability to appeal a decision promotes accountability and enables courts to create a benchmark for future decisions. Consistency of outcome and confidence in the system are just two of the benefits. However, as discussed in chapter 6, they can also be used to reduce competition especially where third party appeals are possible, and they also increase time and costs.

Third party appeals

As discussed in chapter 3 (table 3.13), third party appeals are allowed on development decisions in all jurisdictions except Western Australia. However, there is a wide range of restrictions placed on such appeals, except in Victoria and Tasmania where third parties can generally appeal. It is interesting to note that when Tasmania canvassed public opinion there was overwhelming support for third party appeal provisions.

Integrity

Allegations or perceptions of corruption destroy community and business confidence that decisions are being made according to the rules and in the best interests of society. Lack of confidence can lead to increased litigation, reduced compliance, higher cost of finance and unhappy communities. Transparent and accountable public decisions help to maintain confidence in the system.

Actual cases of corruption

There are investigated and proven examples of corruption in planning and development. While these problems are inherently difficult to measure, risk factors

[2] The Victorian system includes public hearings by Planning Panels Victoria where there are unresolved submissions in relation to a rezoning or other scheme amendment. These hearings provide an opportunity for independent assessment of a proposal before a decision is made, and off-set the implications of the decision not being appealable.

arise because planning decisions can confer huge significant gains for those involved, and there is a large amount of discretion in development decision making.

The Wollongong corruption scandal provides an illustration involving alleged bribes, sexual relations between developers and the town planner, and blackmail. The case was investigated by the Independent Commission Against Corruption (ICAC) and findings of corruption were made in relation to 10 individuals in October 2008 (ICAC 2008).

Perceptions of corruption: political donations and media attention

All states and territories have measures in place to reduce the risk of corruption, however suggestions of conflicts of interest (often unsubstantiated) are frequently aired in the media. While there may prove to be no substance to such allegations, the coverage inevitably creates undesirable perceptions (box 9.2).

Box 9.2 **Adverse media attention**

When a planning law was changed to close a loophole, the media suggested it was because the New South Wales Environment Minister objected to a neighbouring development.

> The Opposition has referred [the then Environment Minister] to ICAC over the change to the law. The change resulted in plans for a four-storey building — to have been built behind his home — being dumped (Daily Telegraph 2010).

Adelaide City Council says major project call-in criteria are too broad; and political donations need more parameters.

> There has also been commentary in the local media over the last one to two years regarding the lack of transparency of developers payments to political parties, and how this may or may not influence the approval process for development projects, particularly when linked to subsequent major projects and rezoning for large projects. (sub 23 p 11)
>
> A perceived ``grease the wheels'' culture in the state, whereby developers are linked to the planning process through political donations and high profile lobbyists, is exacerbating concerns about unfettered population growth in the state's regional centres. (The Advertiser 2010)

In Victoria, in February 2010, an internal memo was inadvertently sent to the media suggesting that public consultation should be held to provide a reason to turn down a development application.

> The Government yesterday accidentally released an internal strategy document to the ABC. It included plans to engage in a sham consultation process for a major development in central Melbourne. (ABC 2010)

A scan of land planning issues in Australian newspapers reveals that adverse articles are run most weeks in New South Wales, less than half as often in Victoria and infrequently in other jurisdictions. For its final report, the Commission intends to use community survey data to report on perceptions of developer influence over DA outcomes in each jurisdiction. ICAC suggested in a recent report on the system of assessing Part 3A projects in New South Wales that, "…the loose criteria for calling in projects via Ministerial Order create a broad discretion that is potentially open to perceptions of undue influence." (ICAC, 2010 p. 27). While it may be coincidental, Victoria and New South Wales are also the states where the planning ministers are more active in calling in developments. Table 6.11 shows 245 call-ins for New South Wales, 528 for Victoria and less than five for each other jurisdiction that reported Ministerial call-ins. The significantly greater number of projects called-in for those states may be fuelling perceptions of a lack of transparency.

Measures to promote integrity

The states and territories aim to promote probity of official conduct in a variety of ways. The key measures which improve integrity in the implementation of planning and zoning systems are measures that are in place more broadly within each jurisdiction. Specifically these are whistle blowing provisions; legislative provisions on conflict of interest in public decision making and special agencies with investigative powers; such as anti-corruption commissions.

Whistle blowing or public interest disclosure legislation allows individuals to report activities which may be corrupt or negligent, without fear of reprisal. All jurisdictions have legislated whistle blower protection (table 9.4). South Australia was the first to introduce it, in 1993, and Northern Territory the last, in 2010.

In addition, all jurisdictions except Tasmania have legislative provisions in their planning Acts to prevent decisions being made by a person with a private interest in the outcome of the decision.[3]

[3] Australian Capital Territory (Planning and Land Management) Act 1988 (Cwlth) s 42, Environmental Planning and Assessment Act 1979 (NSW) s 147, Planning and Environment Act 1987 (Vic) Part 4AA div 5 subdiv 4, Sustainable Planning Act 2009 (Qld) s 505, Development Act 1993 (SA) s 20, Planning and Development Act 2005 (WA) s 266, Land Use Planning and Approvals Act 1993 (Tas) *check with Tas*, Planning Act 2009 (NT) s 97, Planning and Development Act 2007 (ACT) s 426.

Table 9.4 **Public interest disclosure legislation**
in order of introduction

South Australia	Whistleblowers Protection Act 1993
Queensland	Whistleblowers Protection Act 1994
New South Wales	Protected Disclosures Act 1994
Australian Capital Territory	Public Interest Disclosure Act 1994
Commonwealth	Public Service Act 1999 [a]
Victoria	Whistleblowers Protection Act 2001
Tasmania	Public Interest Disclosures Act 2002
Western Australia	Public Interest Disclosure Act 2003
Northern Territory	Public Interest Disclosure Act 2010

[a] Section 16 'Protection for whistleblowers'.

Source: Commonwealth, State and territory legislation.

All states and territories have agencies to investigate and deal with public integrity (table 9.5). Since 2009, four states have dedicated anti-corruption commissions (New South Wales, Queensland, Western Australia and Tasmania) while the other jurisdictions do not, although the Victorian government has made a public commitment to create one. Dedicated and independent corruption commissions ideally have more powers and resources to conduct investigations.

Table 9.5 **State and territory anti-corruption bodies**

New South Wales	Independent Commission Against Corruption
Victoria	Ombudsman
	Office of Police Integrity
Queensland	Crime and Misconduct Commission
	Integrity Commissioner
Western Australia	Corruption and Crime Commission
South Australia	Police Anti-Corruption Branch
	Police Complaints Authority
	Ombudsman
Tasmania	Integrity Commission
ACT	Australian Federal Police
Northern Territory	Office of the Information Commissioner (who is also appointed as the Commissioner for Public Disclosures)

Source: State planning agency and commission websites.

Other measures to improve integrity

As well as the three measures described above, the states and territories also use codes of conduct (New South Wales and South Australia), powers of the minister to investigate or discharge planning officers (South Australia and Northern Territory)

and similar powers of the state or territory agency (Victoria, Tasmania and ACT) to improve or maintain the integrity of planning and zoning systems (table 9.6).

Table 9.6 **Provisions to reduce corruption**

NSW **Body**: Independent Commission Against Corruption (ICAC)

Role: investigate corrupt conduct; advice and education to prevents corruption; recommendations to Director of Public Prosecutions regarding prosecution

Reports: ICAC's report *Investigation into Corruption Risks involved in Lobbying* (2010a) endorsed the Department of Planning's Code of Practice for Meeting and Telephone Communications as a useful guide for the public sector as a whole. ICAC found that a lack of transparency in the current lobbying regulatory system in NSW is a major corruption risk, and contributes significantly to public distrust. The report recommended a new lobbying regulatory scheme for New South Wales to improve transparency.

ICAC's report *The Exercise of Discretion Under Part 3A of the Environmental Planning and Assessment Act 1979 and the State Environmental Planning Policy (Major Development) 2005 (*2010b) found no examples of inappropriate use of Part 3A but called for the powers of the independent Planning Assessment Commission to be widened (PAC handled fewer than 10 per cent of Part 3A cases in 2009-10).

Processes: the Planning Assessment Commission has authority to assess Major Projects:

- with reportable political donations; or
- within the Minister's electorate; or
- where the Minister has a pecuniary interest.

Policies: Department of Planning Code of Conduct, including conflict of interest, acceptance of gift or benefits and reporting corrupt conduct

Gifts and Benefits Policy

Meetings and Telephone Communications Code of Practice (under the Lobbyist Code of Conduct)

Vic **Body**: Local Government Investigations and Compliance Inspectorate

Role: focuses on compliance with the Local Government Act by investigating alleged breaches of the Act and conducting spot audits of councils.

Processes: the *Public Administration Act 2004* and regulations set out procedures for dealing with unsatisfactory performance and misconduct by public service employees.

Policies:

- provisions for the disclosure and conduct of councillors and council staff when performing duties which involve conflicts of interest;
- procedures for investigating and deciding on the conduct of councillors and council staff (*Local Government Act* 1989).

Qld **Body**: Crime and Misconduct Commission

Role: investigate public sector misconduct, including fraud, bribery, misuse of powers and corruption.

WA **Body**: Corruption and Crime Commission

Role: undertake a 'misconduct function' to ensure that an allegation about, or information or matter involving, misconduct is dealt with in an appropriate way.

(continued next page)

Table 9.6 **continued**

SA	**Body**: Anti-Corruption Branch of the South Australian Police **Role**: receives and investigates complaints regarding corruption
	Processes: State agencies and local government must appoint 'responsible officers' ensures that there is an safe avenue for whistleblowers to have their concerns acted upon (*Whistleblowers Protection Act* 1993) Minister has the power to appoint an investigator or to investigate should he or she have reason to believe that a council has failed to efficiently or effectively discharge its responsibilities regarding the amendment of a Development Plan or a Strategic Directions Report or execution of development assessment functions, or other misconduct or irregularity (*Development Act* and *Local Government Act* 1999).
	Policy: Code of Ethics (*Public Sector Act* 2009) Code of Conduct (*Local Government Act* 1999) applies to local government employees
Tas	**Body**: Integrity Commission
	Process: the Tasmanian Planning Commission can investigate local governments for procedural matters for rezoning, and can investigate councils and whether they are complying.
ACT	**Policy**: the ACT Integrity Policy imposes obligations on ACTPLA to protect its organisational assets, its reputation and interests; to detect acts of fraud and corruption where preventative strategies have failed; to investigate and try to recover property that has been dishonestly acquired; to put in place protective measures to prevent the undesirable consequences of fraud and corruption and to ensure that reporting obligations are met.
	Processes: to ensure staff are aware of fraud and fraud prevention, ACTPLA conducts an internal risk assessment and prepares a Fraud and Corruption Prevention Plan every two years. Such measures allow it to continually assess its vulnerability as an organisation and to put in place the necessary changes to help prevent, detect, report, escalate and manage any incidences of fraud and corruption. ACTPLA is subject to external audit by the Auditor General, and internal audit by the Internal Audit committee: both routinely review ACTPLA's risk management and fraud prevention activities.
NT	**Body**: the Ombudsman NT receives and considers complaints from members of the public about Northern Territory Government departments and statutory authorities such as the Development Consent Authority
	Policy: Minister can remove members of the Development Consent Authority for misbehaviour (*Planning Act* 2009 s. 100)

Source: PC state and territory surveys 2010, question 29.

In New South Wales, major projects are decided by the Planning Assessment Commission rather than the Minister if reportable political donations are involved, the project is in the Minister's electorate, or the Minister has a pecuniary interest.

This would seem to be a practice likely to enhance the transparency and accountability of planning system outcomes.

Other measures primarily aimed at increasing transparency as discussed above also work to increase accountability and integrity.

9.2 Government involvement with community and business

Interaction with community, including business, in the various stages of planning through to development assessment is a major challenge facing all governments. Planning authorities have attempted to address this challenge by creating opportunities (to varying extent at the different stages of the planning processes) for stakeholder involvement. This section reports on the key motivations — as reported by the jurisdictions — for community and business involvement, notes the stages at which this occurs and the approaches taken in different jurisdictions. The success of this involvement is considered in light of community and business perceptions of government efforts to interact with them. Finally, the relative expenditure on consultation and engagement in each jurisdiction is used as a benchmark for involvement. For the purposes of this report, it is assumed that where the community and business are involved effectively, it provides net benefits to the planning processes. In the final report, the Commission will draw on its surveys of communities across Australia to inform the discussion of government success in, and outcomes from, community involvement in planning processes.

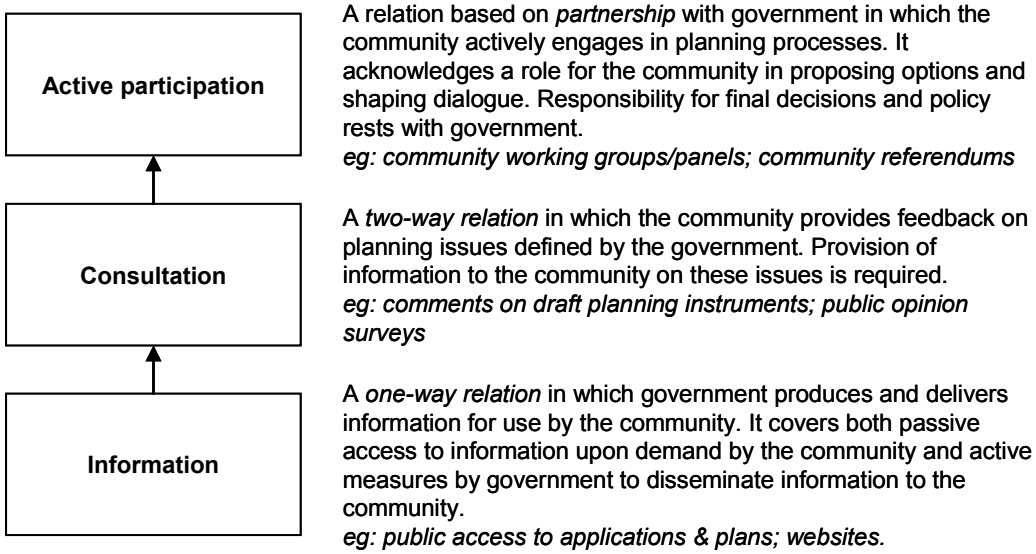
What are governments trying to achieve with community involvement?

Community involvement can mean something different to each government and stakeholder involved, depending on perceptions of influence or control in the planning process and the purpose of the interaction. There are typically gradations of interaction with the community possible and significant differences for planning outcomes are likely to result from these. For example, a government planning agency which views its primary community interaction approach to be education of the community could expect considerably less community ownership of its plans than an agency which provides for its community to negotiate outcomes with planners. Furthermore, some of these approaches to community interaction may be more useful at some stages than others in achieving desired outcomes. For example, discovering community preferences may be more appropriately undertaken early in the planning process in order to seek consensus and obtain community 'buy-in',

rather than finding out at the development assessment stage that there is active resistance to an underlying planning concept.

While most planning systems around Australia provide 'information' on planning and development processes and proposals (see for example, table 9.2), this form of community interaction (on its own) suggests a passive or reactive role for the community. 'Consultation' with communities is indicative of greater community involvement but does not necessarily imply acceptance or support for the process or its outcomes. Most models of government-community interaction have some form of active participation as the highest level of interaction (figure 9.1). Interaction between governments and the community which is based on active participation provides scope for greater community engagement and input into the shaping of planning options and development outcomes.

Figure 9.1 **Levels of community interaction**[a]



a Arnstein (1969) describes a similar structure of citizen participation with a ladder of eight steps that cover the spectrum from non-participation of citizens to token consultation to citizen power.

Data sources: Based on OECD (2001) and Queensland Department of Communities (2005).

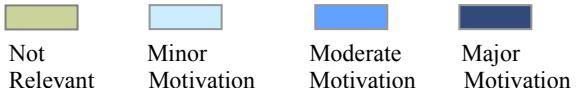
The Local Government and Planning Ministers' Council (LGPMC 2009) reported that planning systems should seek to promote a process of community engagement that involves not only participation, but also an understanding of, and support for, planning processes (notwithstanding that widespread community agreement on all outcomes is unlikely). Accordingly, the following principles were agreed by governments to represent best practice on community interaction:

- legislative and governance arrangements facilitate community engagement — not merely consultation or passive participation

- there are legislative guarantees of community engagement in planning processes
- community engagement commences as early as practicable in the relevant planning process
- strategic outcomes in planning instruments are expressed in positive and aspirational terms designed to engage stakeholders in achieving them.

Table 9.7 **Motivations of governments for community interaction**

Importance of each factor, as nominated by governments



Motivations of state planning departments [a]	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT* [b]	*NT* [b]
To minimise the potential for community opposition and avoid delays								
To help the community understand the implications of proposed developments								
To ensure community concerns are considered								
To discover community preferences								
To empower the community in the decision -making process								

Motivations of local councils *(proportion of councils in each state which reported factor)*	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*
To minimise the potential for community opposition and avoid delays						
To help the community understand the implications of proposed developments						
To ensure community concerns are considered						
To discover community preferences						
To empower the community in the decision -making process						

[a] In some states, there are multiple agencies with planning functions. Accordingly, the Commission received responses to its survey questions which reflected differences in agency roles and obligations to engage with communities and business. [b] ACT and NT do not have councils with a planning role and are therefore not represented in the lower half of the table.

Source: PC State agency survey 2010, Q37; PC local govt survey 2010, Q46.

The reported motivations for seeking community interaction by state/territory agencies and city local governments within each state/territory are detailed in table 9.7. Interestingly, the state planning agencies in New South Wales, Victoria, Western Australia and Tasmania denoted every one of the five motivations listed to be 'major' motivations, suggesting really broad approaches to their community interaction. The Commission, in its final report, intends to compare these results with those from a community survey on aspects of planning.

Of the motivations for community interaction provided in table 9.7, the first (to minimise potential for community opposition) potentially involves the least amount of active community participation. This less participatory approach is adopted in all jurisdictions, but agencies reported mixed success:

- In New South Wales, to the extent that community consultation can provide accurate information to the community to facilitate informed discussion and result in better site selection, it can lead to less local opposition (NSW Department of Planning survey response).
- Victoria noted that 'community expectations can be such that no amount of consultation or information will deliver an acceptable development outcome — though this can be mitigated post-completion, when initial community concerns are not realised' (VicUrban survey response).
- In Queensland, despite being motivated to help the community understand the implications of proposed DAs, the Department reported that 'broader understanding and dialogue does not always translate to an understanding or appreciation of site level development or impacts' (Queensland Department of Infrastructure and Planning survey response).
- In the ACT, community interaction 'allows us to let the community know about proposed policies and actions…' but ACTPLA consider that 'public consultation at the strategic planning level only mitigates community opposition to individual development proposals to a limited extent' (ACTPLA survey response).
- In the Northern Territory, 'public consultation in the Darwin Region has not mitigated community opposition to development proposals at the site level to any great extent because the connection between the two is not readily apparent to the general public' (NT Department of Planning survey response).

Across the jurisdictions, the most commonly reported motivation for community interaction was 'to ensure community concerns are considered'. Agencies in all jurisdictions reported this as being a moderate or major motivation for their community interaction.

Empowering the community in the decision making process has the potential for the

most active engagement of the community in planning processes. Only South Australia reported empowering the community in state planning processes as not relevant to their community interaction.

Local governments broadly appear to place more relevance on ensuring community concerns are considered and less relevance on simply minimising the potential for community opposition (table 9.7). In general, city councils in South Australia appear to be most likely to have community interaction which is motivated by a desire for active participation of the community. Combined with the state agency results reported above, this would suggest that empowering the community is practiced at the DA rather than strategic planning stage in South Australia (more so than other jurisdictions).

In reporting on these survey results, the Commission recognises the substantial challenges in achieving effective community consultation — in part, because of wide divergences in views in most communities but also because of the difficulties in getting community groups to focus on broad or strategic planning issues.

When does the community get involved?

Stages at which interaction occurs

For governments, there is underlying tension between easing the regulatory path for businesses to undertake development and ensuring an open and transparent opportunity for the community to have its say on these developments. At the strategic planning end of the process, there is potentially much to be gained and few downsides from governments engaging with community and business. Time spent on early community input into a strategic plan may sustain community support for that plan through later changes to the government or economic environment. Lower levels of community participation are less resource intensive and lessen 'interference' with political or bureaucratic goals, but may weaken a plan in the face of community protest.

However, despite often considerable consultation undertaken at the planning stage, most governments seem to find that it is only once a development is proposed for a particular site that communities are interested in engaging and that conflicts arise. At that point, attitudes to development tend to become polarised.

The stages of planning processes at which each state/territory consults with their communities are listed in table 9.8. There is considerable variation as to whether consultation is mandated or discretionary in each case. For example, consultation

during the development of state level planning instruments is legislated only in Queensland (consistent with the LGPMC agreed best practices discussed earlier) but at the discretion of the Minister and/or planning department in other jurisdictions.

Consultation requirements embedded in legislation provide support to Queensland's reforms of recent years. Specifically (in an attempt to streamline approval processes), Queensland is striving to refocus planning and consultation at the state and regional levels (Queensland Department of Infrastructure and Planning 2009). In practice, this would mean, for example, that a regional plan would identify those areas where the state government expects to see particular activities (such as higher density housing) and then councils determine how to give effect to this. While this is the practice in most states, the extent and nature of community consultation at this strategic planning stage can have important consequences for plan implementation and planning issues which can then be queried again by communities at the development assessment stage. Thus, community engagement on a regional plan should focus on the location and broad nature of activities proposed. At the local level, the issue for community consultation (where it is undertaken) is not whether those activities are desirable in those locations (as this has been determined by the regional plan) but, rather, what particular form those activities might take.

Such an approach potentially avoids the situation common in many jurisdictions whereby strategic plans are amended 'on-the-fly' at the project approval stage, with all the consequent uncertainties, inconsistencies and delays. The Commission was advised during visits that not all Queensland governments have, as yet, transitioned to the new approach for planning and consultation. Nevertheless, this new approach has the potential to be a leading practice for government interaction with communities on planning issues.

While every jurisdiction consults at most key stages, the amount of time in the process allowed for community response, the approaches taken to consultation and therefore, the likely outcomes, differ substantially.

At a local government level, the majority of city councils in each state reported having a formal community consultation strategy, although councils in NSW and South Australia were most likely to report such a strategy (PC local government survey 2010). Most councils also reported undertaking consultation during the development of the council's strategic plan, with those in NSW, Victoria and Queensland the most likely to report consultation at this stage of the planning process (PC local government survey 2010,). A number of city councils noted that consultation occurred at multiple points throughout the planning process. In contrast, a small but significant number of councils reported that first consultation

with the community did not occur until either a rezoning occurred or a DA was being processed.

Table 9.8 **Stages at which community interaction occurs**

✓ interaction required by legislation and/or agency guidelines
~ interaction is optional/discretionary or occurs only in some cases
Blank cells reflect a lack of information on community interaction requirements

	State planning instruments	*Metropolitan /Regional Plans*	*Local /Precinct Plans*	*Rezonings /Plan amendments*	*State significant sites*	*Major projects*	*Other DAs*
NSW[a]	~	✓	✓		✓	✓	✓
Vic[b]	~	✓	✓	✓	~	✓	✓
Qld[c]	✓	✓	✓	✓		✓	~
WA[d]		~	~	~			
SA[e]			~	✓		✓	~
Tas[f]		✓				✓	
ACT[g]	~	~	~	~			~
NT	~	✓	✓	✓	~	~	✓

[a] Consultation for state level planning instruments is at the discretion of the Minister. Recent practice has been to provide a discussion paper and/or draft SEPP for public comment. Councils set their own consultation guidelines which apply to majority of DAs. [b] DAs and related information must be available for free public inspection. Panel reports must be available for public inspection within 28 days of receipt by government. GAA has provided guidelines for engaging the public and private sectors in the preparation of precinct structure plans. VicUrban does not currently have any formal guidelines for community consultation. Under the proposed changes to the *Planning and Environment Act (Vic) 1987* it will be compulsory to consult with the community on sites of state significance. [c] Queensland legislates both the requirement for consultation and its duration. [d] Changes to state planning policy in WA require consultation with affected local governments, otherwise with WALGA. For changes to local planning policy, local government must make 'reasonable endeavours' to consult public authorites and persons likely to be affected. [e] In South Australia, category 1 developments require no community consultation. Consultation with neighbours only is required for category 2 developments. Community consultation is required for category 3 developments. [f] For DA's and Zoning, requirements for community interaction are specified under Act. DEDTA's interaction on Planning, Zoning and DA issues is not based on any statutory requirement and does not directly involve community interaction by the agency. DIER conducts extensive community consultation in regard to its major infrastructure planning and projects. This consultation is not mandated in legislation but specified in its Corporate Plan. [g] Variations to the territory plan require consultation with the National Capital Authority, conservator of flora and fauna, the environment protection authority, the heritage council and each custodian of affected land. While the ACT is required to consult on both policy and development matters, the National Capital Authority is obliged to consult only on policy matters.

Source: PC state agency survey 2010 Q36, Q39, Q43; planning legislation.

Methods of community interaction

Usually the first approach to interacting with the community in a planning process is notification of the proposed plan amendment, rezoning or development. Each jurisdiction provides different notification requirements and notification periods — either in legislation or state agency guidelines — which are to apply for different types of planning activities (table 9.9). What is an appropriate amount of notification given to communities of a proposed development or suitable period for plan inspection will be related to the complexity of the proposal and the likely costs and benefits associated with its quick progression through planning processes. While short notification periods may be advantageous to developers and project progression in the short term, there may also be forgone benefits from missed opportunities for greater community input into developments that will have community impact.

There is a huge variation in the minimum notification times required in each jurisdiction and to some extent, the notification times reflect the significance of planning changes involved and the likely impacts. For example, notification times are shortest (14 days) for low impact Local Environment Plan variations in NSW and for DAs which require notification in the Northern Territory. Variations to the Territory Plan in the ACT could potentially have a substantial impact on the community, but the minimum notification period for these is also very short at 15 business days. In most other jurisdictions, a variation to a local plan or rezoning is accompanied by a notification and plan inspection period of around one month. Notification times are longest (60 days) for changes to state planning policy in Western Australia and changes to regional plans in Queensland.

Table 9.9 Public notification, consultation and inspection duration requirements

	Required consultation at various planning steps	*Minimum period*
NSW	SEPPs: any consultation considered necessary	28 days
	LEPs: consultation required and proposal must be publicly available	14 days (low impact proposals) 28 days (other proposals)
	Major projects	30 days (concept plan)
	Designated development	30 days
Vic	Panel reports (available within 28 days of receipt)	60 days
	Submissions on planning scheme amendments and rezonings	1 month
	Planning permit application (DA)	14 days
Qld	Structure plan	30 business days
	State planning regulatory provision	30 business days
	Regional plan	60 business days
	Other state planning instrument	40 business days
	Master plan	20 business days
WA	State planning policy: consultation with affected local governments or otherwise, WALGA.	60 days
	Local planning policy: local government required to make reasonable endeavours to consult public authorities and persons likely to be affected by the scheme or amendment	
SA	Category 1 development — consultation not permitted	
	Category 2 and 2A developments — notification to owners of adjoining land required	10 business days
	Category 3 development — public notification required	10 business days
	Development plan amendment — public consultation required	
Tas	Projects of regional significance	28 days
ACT	Variations to territory plan	15 business days
	Merit track DAs	
	Code track DAs — no public notification requirement	
NT	Rezoning or planning scheme amendment — must be exhibited publicly; published in newspaper and Gazette	28 days
	DAs not requiring public notification include those for consolidation of land; establishment of, or a change in, use of land for accommodation and developments that will not have a significant impact on the existing and future amenity of the relevant area	
	Other DAs which require notification	14 days

Sources: *Environmental Planning and Assessment Act (NSW) 1979; Sustainable Planning Act (Qld) 2009; Planning and Environment Act (Vic) 1987; Planning and Development Act (WA) 2005; Development Act (SA) 1993; Planning and Development Act (ACT) 2007; Planning Act (NT) 2009; NSW Department of Planning* Guideline for Major Project Community Consultation, 200; state agency responses to PC questionnaire.

For development proposals, notification policies of the states and territories were evaluated recently against agreed leading practices (box 9.3). Broadly, this evaluation concluded that based on policies (that is, not considering the on-the-ground implementation of these), no jurisdiction fully meets leading practice

criteria. Notification policies in Queensland and South Australia were assessed to be the closest to leading practice while, based on measures in place during 2009, Western Australia was assessed to be furthest from leading practice on notification.

Box 9.3 **Leading practice on notification**

The DAF leading practice model provided that where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided (leading practice 6). In particular:

- The extent of public notification should reflect the zoning policies, encouraging development in the appropriate zones by having less notification.
- The lists of public notification requirements for different forms of development should be uniform between council areas while enabling minor local variations on justified planning grounds. Such lists should be located in the same document for ease of reference by applicants and the community.
- The public notification requirements and procedures should be consistent within each jurisdiction and clearly understood by applicants, neighbours and the community.
- Applicants should have the right to provide a response within a short specified period to the public submissions so that the decision making body is informed and to enable a variation to an application to be made to address any submissions.

In evaluating the states and territories on notification, the Property Council found that no jurisdiction fully met best practice criteria, but Queensland and South Australia were the closest. Based on performance of current measures, Western Australia was assessed to have practices furthest from ideal.

Sources: DAF 2005; Property Council 2010.

Most state and territory agencies use as methods of notification and interaction: newsletters and/or fact sheets; notices in the public media such as newspapers; notices on the planning authority's website; and stakeholder meetings and/or public forums (table 9.10). Signage on property was reported to be used only by Victoria and the territories and notification direct to neighbours and key stakeholders by state-level bodies was an approach adopted only by agencies in Victoria and the ACT.

Table 9.10 **Notification and interaction approaches used by state level planning agencies**

	Newsletters/ Fact sheets	*Notice(s) in newspaper*	*Notice in authority's office/website*	*Sign on property*	*Letter to neighbours /stakeholders*	*Stakeholder/public forum/meeting*
NSW [a]	✓	✓	✓			✓
Vic	✓	✓	✓	✓	✓	✓
Qld	✓	✓	✓			✓
WA	✓		✓			✓
SA	✓	✓	✓			✓
Tas [b]						
ACT [c]	✓	✓	✓	✓	✓	✓
NT	✓	✓	✓	✓		✓

[a] NSW Department of Planning decides on a case by case basis whether or not to send letters to neighbours/stakeholders for part 3A assessments. The Department is currently developing a policy that will specify the extent of notification required in different situation. [b] Tasmania did not identify specific approaches to its interaction. [c] In recent years, he National Capital Authority has increased its commitment to consultation through the adoption and publication of its Consultation Protocol and its conduct of an annual public forum.

Source: PC State survey 2010 Q40; Department of Lands and Planning (NT) 2010; *Sustainable Planning Act 2009* (Qld); Planning and Environment Act (Vic) 1987.

There is a plethora of approaches that have been adopted by city councils around Australia in an attempt to engage their communities in planning processes (table 9.11). The most widely used (and some of the lower cost) approaches are advertisements in local newspapers, signage on sites of relevance and provision of information on council websites. However, city councils reported mixed experiences in effectiveness of these commonly used approaches. A Tasmanian council reported to the Commission that 'few people appear to use the internet to look for advertised development applications. Most rely on notices to adjacent owners, site notices, and newspaper notices (in that order)' (PC Local government survey 2010).

Approaches which were widely used by city councils and considered to be effective were: letter box drops; council use of 'plain English' in its documentation; display of plans for the proposal and community access to plans; council written responses to community questions and community information forums. For example, one NSW council reported an effective town hall style meeting for a key planning project; a Victorian council reported successfully holding planning consultation meetings with an applicant and objectors, chaired by councillors; and a Western Australian council reported having convened community workshops and forums to discuss the town's future development path (sub. no. 2).

Approaches which were not widely used but were largely found to be effective where they had been adopted included: direct contact with interested groups and requiring developers to describe their proposals in 'plain English'.

Table 9.11 Forms of notification and interaction used by local government

Per cent of city councils in each state which responded to the relevant questions

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Forms of notification/interaction & their effectiveness								
Local newspaper advertising	65	64[a]	54	34	44[a]	55	100[a]	100
Letter box drops	46	55	23	38	33	9	100	0
Signage erected at site	59	67	46	38	4	55[a]	100	100
Contact with interested community groups	46	48	15	34	19	9	100	0
Information on council website	59	61	54	34	37	27[a]	100	100
Dedicated shopfront setup	13[a]	6	0	9	11	9[a]	0	0
Community information forums	48	52	15	31	22	18	100	0
Nature & effectiveness of measures to assist community understanding of projects								
Council descriptions of project to be in 'plain English'	57	58	31	31	37	45	100	100
Developer descriptions of project to be in 'plain English'	22	15	15	13	0	0	0	0
Council written responses to community questions	52	55	46	31	37	18	100	0
Community access to plans for proposal	57	67	62	31	48	45	100	100
Plans for proposal displayed	56	52	69	34	33	45	100	100
Plans and artist impression for proposal displayed	52	33	54	31	19	36	100	0
Model for proposal displayed	37	21	8	0	7[a]	18	100	0
Presentations by council officials at community forums	46	45	31	28	22	9	100	0

[a] Approach was found to be effective by fewer than 80 per cent of those councils which used it.

Sources: PC Local govt survey 2010, Q48; PC Local govt survey 2010, Q49.

It should be noted that even where several jurisdictions report using particular approaches to community interaction, the effectiveness of these can vary substantially with factors such as: the manner in which a proposal is described; the openness of questions posed to the community; and the context of a proposal. For example, the ACT government's recent community survey (*Canberra 2030 Time to Talk*) — contained loaded questions, blended together multiple complex topics and

could have conveyed an impression to participants that some key decisions had already been made prior to the consultation. In contrast, one Queensland council informed the Commission that interaction with their community included use of zoning maps on which members of the community could pin comments related to particular sites; another noted extensive analysis done on the issues raised in thousands of submissions.

How successful is interaction seen to be?

The success of community interaction in strategic planning processes is typically very difficult to gauge. Agreement by community groups to a strategic plan can be very different to agreement by neighbours to a proposed development that is a consequence of the plan. Furthermore, with most plans set for a horizon of several decades, even consultation which is thought to be successful at the time the plan is developed may prove deficient over time with changing community structures and attitudes. These tensions are common throughout Australia to the point that attitudes to development in some communities are variously categorised, pejoratively, by the development industry and media as NIMBYs (not in my backyard), NOTEs (not over there either) and at the most extreme, BANANAs (build absolutely nothing anywhere near anything).

State agencies with planning responsibilities generally consider that the quality of their interaction with community and business is reasonably good (table 9.12). In particular, most state and territory agencies agreed that officials adopt a collaborative approach to interaction (the exception to this was ACT). Views of interaction which were least endorsed by state and territory agencies were that officials have a good understanding of community preferences and that interaction with business engenders a sense of trust.

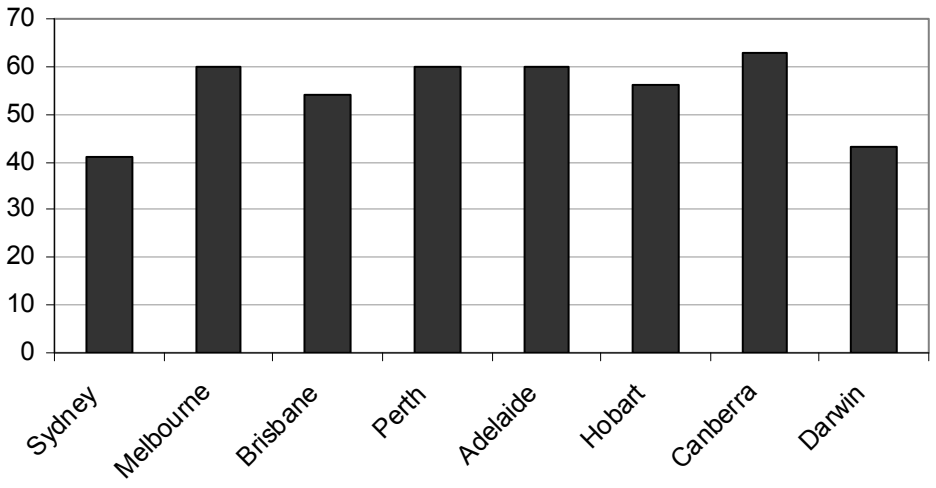
The ACT reported that:

> Invariably it is difficult to get the community to engage in the strategic planning exercise and more often than not, when development proposals occur in accordance with agreed/approved strategy, elements within the community who oppose such outcomes will question the extent to which community consultation has occurred. It is also common place that those who have participated in community interaction at the strategic planning stage, but don't support the outcomes, will claim that consultation has not occurred (ACT response to PC surveys of state and territory agencies, 2010).

Community views on the success of state and territory governments in planning were elicited in a recent survey commissioned by the Property Council of Australia (figure 9.2). Specifically, it was reported that respondents in New South Wales and Northern Territory were least likely to consider that their governments performed

well in planning for and managing urban growth (although the proportion who considered their government to be 'good' or 'excellent' was similar across all jurisdictions).

Figure 9.2 **Community perceptions of government planning**
Per cent[a]



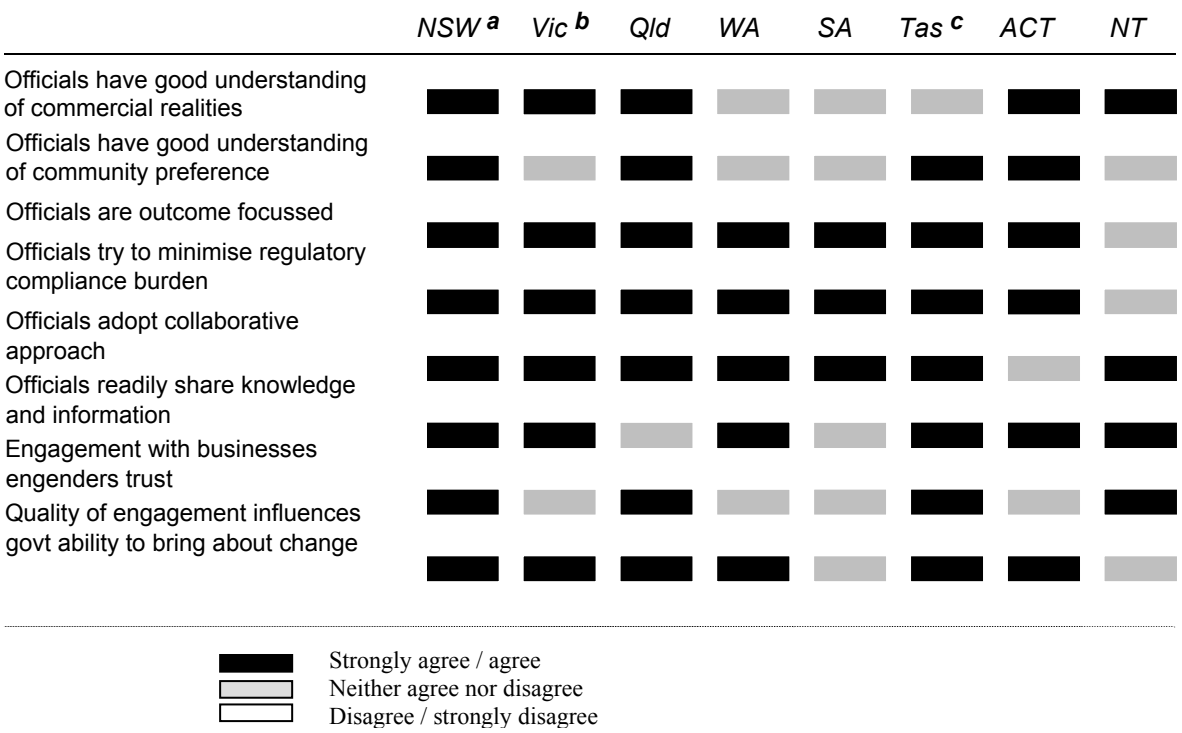
[a] Per cent of residents who rate their state/territory government as 'excellent', 'good' or 'fair' on planning and managing urban growth.

Data source: Auspoll 2011.

Particular planning issues which have involved community interaction of varying degrees and/or have elicited community concerns during 2010 are noted in box 9.4. Community concerns with planning system operation and development proposals are not confined to any one jurisdiction but are widespread. Importantly though, these reported cases are perhaps more indicative of planning areas that have attracted a lot of community attention rather than of instances in which government interaction with communities has been either problematic or successful.

For its final report, the Commission will draw on its extensive survey of communities in each of the cities in this study to inform the discussion on the success of government interaction with communities on planning issues.

Table 9.12 **Views of state planning agencies on the quality of interaction with communities**



a In contrast to the views of NSW Department of Planning, NSW Heritage Office, Landcom and NSW Housing, the Rural Fire Service neither agreed nor disagreed that officials understand community preferences, are outcome focussed and that engagement engenders trust. **b** In contrast to the views of the Victorian Department of Planning and Community Development, the Growth Areas Authority and VicUrban agreed that officials understand community preferences and VicUrban agreed that engagement engenders trust. **c** In contrast to the views of the Tasmanian Planning Commission, the Tasmanian Department of Economic Development, Tourism and the Arts agreed that officials understand commercial realities of business and neither agreed nor disagreed that officials understand community preferences, are outcome focussed and try to minimise compliance burdens. The Tasmanian Department of Infrastructure, Energy and Resources neither agreed nor disagreed that engagement engenders trust and disagreed that the quality of engagement influences government ability to bring about change.

Source: Productivity Commission State survey 2010 Q44.

Box 9.4 **Community interaction examples during 2010**

New South Wales

A council plan to put 20-storey apartment towers on Sydney's northern fringe has been dropped after 'a strong local backlash against it.' Hornsby Shire Council received thousands of submissions from residents after it released a draft housing strategy that proposed 20-storey high-rise towers in Hornsby town centre and five-storey apartment blocks in three precincts. A committee member of the residents action group stated 'our concerns were acted upon and we are extremely relieved about that.' (Tovey 2010b)

Councillors from three councils have joined a residents action group to stop the $6 billion Barangaroo urban renewal project. The Barangaroo Authority has begun a new round of public meetings to discuss the project amid mounting criticism of the project's scope. The authority was reported to be 'pleased with the breadth of questions and contributions' at the community forum. But councillors have 'dismissed this consultation as meaningless and criticised the way approvals for the development have been granted.' One 'complained of a "secret process" … By the time it comes to the community it is already a fait accompli … It's not a process where you can make submissions and have public debates to hammer out better outcomes.' (Moore 2010c)

Following a court appeal which failed to stop Stockland's McCauleys Beach subdivision, the company has launched a public relations campaign to 'build better relationships with the local community'. This campaign includes newsletters in letterboxes to provide updates on the subdivision, a local office to 'provide information to the commuity about what the development actually is' and the appointment of community consultation experts 'to develop and implement best practice community relationships.' (Arnold 2010)

In Sydney's eastern suburbs, plans to add more than 2000 higher-density dwellings in order to meet growth targets have caused considerable community concern. Woollahra council mayor reported that over 300 submissions have come in since the draft plan was released in the previous month and 'his phone was running hot … There has been considerable opposition, as much as I've seen on any given subject … We are going through the process required of us, we are consulting to death.' (Chandler and Hurley 2010)

A public consultation process on the NSW planning system in 2009-10 resulted in only 84 people attending the six workshops held across the state and a further 36 people completing an online survey. The resulting report *Planning in NSW: Reconnecting the Community with the Planning System*, concluded 'that people were "deeply cynical about whether it is worthwhile to engage, and extremely frustrated about the current system". Consultation had come to mean a community being told what was going to happen to it, rather than being listened to, despite - on paper - opportunities to have a say…' (McCarthy 2010b) The NSW Department of Planning is currently developing an action plan to address the issues raised.

Victoria

Moreland Council has approved a 185-apartment complex near Sydney Road, Brunswick, but locals have no rights to appeal under a development plan for the area signed in the 1990s. The development overlay from 1994 recognised the site's 'strategic importance' and thereby removed the right of third parties to appeal to the Victorian Civil and Administrative Tribunal. It was reported that 'Residents can feel rightly disenfranchised because very few of them will have been involved in the initial consultation in 1994.' (Cooke 2010c)

The fast tracking of projects in Victoria (for example, social housing initiatives, and a number of Aldi stores and Woolworths home improvement stores in 2010) has led to concerns that communities are not being adequately consulted on developments which they must live with for decades (The Age 110310).

Queensland

The Organisation Sunshine Coast Association of Residents reported that 'Plans can be and are changed after the public consultation process, more often than not to remove the incentives added to get the agreement of the community. This is perhaps the other side of "gaming".' (sub. no. 21, p.9)

Tingalpa residents are 'lining up for their fifth tilt at stopping one of the last remaining parcels of land in their area from being developed … residents had been fending off advances of developers towards the Manly Rd block for more than 10 years. Brisbane City Council had refused each application until May'. A community spokesman said that their 'pleas had fallen on deaf ears' and residents were 'scrambling to find the funds to launch an appeal.' (Vogler 2010b)

(continued next page)

Box 9.4 continued

Western Australia

Residents of older Perth suburbs 'have emerged victorious from a stoush with the State Government over a proposal to can 100-year-old covenants that protect the low-density character of their neighbourhoods.' After the council re-advertised District Planning Scheme 3 with the removal of an exclusion zone that covered three particular suburbs, the affected residents responded to the draft scheme 'first with irate phone calls, petitions, a Save the Covenants Action Group and finally with threats of legal action.' (Saunders 2010)

A proposal for a hotel in the Town of Vincent Council was recommended for approval by town planners (despite around 30 points of non-compliance) and after protests from nearby residents, was rejected by councillors. The protesting adjacent residents, who live in an eight storey tower have been termed NIMBYs and the council has been criticised as being shortsighted, given the need for increased short stay accommodation and increased density in inner city areas. (Thomas 2010)

South Australia

'The eastern suburbs are rising up against State Government plans for high-density housing, fearing apartment buildings would overshadow leafy streets and rob residents of privacy … Under the State Government's planning strategy there is no guarantee that nearby residents will even be consulted when these towers are built.' (Holderhead 2010)

Mt Barker residents are reported as saying that 'public consultation on the area's expansion has been a 'farce' after the state government barely changed its plans despite overwhelming opposition.' Around 98 per cent of the 600 submissions on the proposed plan were in opposition to it. In response, the government removed 29ha from the 1265ha of rural land to be rezoned and deferred development on 200ha while current intensive agricultural production remains operational. (Todd 2010)

Tasmania

In a Hobart suburb, neighbours of a proposed public housing complex are 'simply unhappy because they feel the development has been rammed through without consultation ... State Government, local council and private sectors were celebrating this development and concreting a sign into the footpath about its forecast success six months before the planning approval was even applied for … At best it's an obnoxious way for governments to treat ratepayers, at worst it was a pre-signed deal. The victory was celebrated before the game was played.' (Killick 2010)

ACT

Narrabundah and Griffith residents have formed the South Canberra Community Association to fight plans to turn a golf course and oval into high density residential development sites. A spokesman said 'a public meeting next month would mobilise hundreds of people to show the depth of feeling against developing on public open space and poorly conceived redevelopment projects …. ACT Planning and Land Authority did not have the staff to do inspections, or talk to the people and discuss residents' concerns.' (Thistleton 2010a)

When one resident initially received notification of a proposed development in the mail he contacted ACTPLA who reportedly told him that he 'needed to study the Territory Plan and if the application didn't fit within those guidelines let them know.' The resident noted that 'The rights and interests of the existing residents are substandard to the developers … There is a huge imbalance in the resources of the developers and those of residents… There is not someone to advocate on behalf of the community interest …' (The Chronicle 2010)

'ACTPLA's staff don't have the expertise to appreciate the damage their proposals would do to suburban areas in older parts of the city … residents were not opposed to urban intensification, but wanted a clearer picture, such as where it should occur, and three dimensional models…. the draft variation's language was so vague it made a mockery of public consultation and so misleading it hid the fact protection of residential amenity would be swept away.' (Thistleton 2010b)

Northern Territory

'Alice needs planning autonomy; that the CBD plans had been talked about for years and nothing has happened. … the lack of local planning controls makes our leading town planner … a lame duck … not seen any solid evidence to support a subdivision on AZRI land … the subdivision had become a fait accompli within the first 10 minutes of the 2008 forum ...' (Finnane 2010)

How much expenditure goes into involving the community?

To the extent that community involvement is considered to be an important part of planning processes, expenditure on community involvement by the relevant government agencies can be a useful indicator in some circumstances of the scale of interaction. However, it is important to note that expenditure on consultation will reflect not simply the importance placed on it by the government agency, but other factors such as the particular methods of interaction adopted as well as the proportion of significant/controversial projects in the jurisdiction which necessitate higher levels of community engagement.

At a state/territory level, little comparable information was available from government agencies for expenditure on involving the community (table 9.13). Reported information variously included expenditure on factors such as advertising, costs associated with consultation staff and other administrative costs associated with public notification of DAs. Generally, reported expenditure on community interaction forms a higher proportion of total expenditure on planning, zoning and development assessment activities in those jurisdictions with fewer developments (Tasmania, the ACT and the Northern Territory) than in those jurisdictions with a greater number of developments (New South Wales and South Australia).

Expenditure by local governments on community involvement varied considerably between jurisdictions (table 9.14). The majority of local governments reported expenditure on community interaction of no more than 5 per cent of total expenditure on planning, zoning and DA activities. However, 27 per cent of NSW councils reported expenditure on community interaction in excess of 10 per cent of total council planning expenditure.

Table 9.13 **Expenditure on community consultation by state planning agencies**

2009-10

NSW	Statutory advertising budget: $1.1 million (1% of the Dept expenditure on planning, zoning and DA activities)
	Department of Planning Community and Stakeholder Relations Directorate expenditure: $1.056 million (1% of the Dept's total expenditure on planning, zoning and DA activities)
	Parramatta based community liaison & precinct-specific consultation team $400 000
Vic	Not available
Qld	Not available
WA	WAPC: Community consultation is not separately costed.
	Redevelopment authorities for specific areas spend an estimated $326 000 on community consultation
SA	$242 000 in operating expenses plus staff time and resources (approx 1.5% of state expenditure on planning, zoning and DA activities)
Tas	Tasmanian Planning Commission: $41 238 for advertising hearings, calling for public comment in relation to Planning Directives and Projects of State Significance (approx 4.5% of expenditure on planning, zoning and DA activities)
ACT	ACTPLA figures not available.
	LDA: estimated $50 000 to $100 000 per annum (approx 4.5% of LDA expenditure on planning, zoning and DA activities)
NT	Department of Lands and Planning: $101 740 (approx 1.5% of Dept expenditure on planning, zoning and DA activities)
	Development Consent Authority: community consultation consists of statutory notification of DAs only, at a cost of $141 000 (65% of DCA expenditure on planning, zoning and DA activities)

Source: State agency survey Q38.

Table 9.14 **Council expenditure on involving the community**

Per cent of councils in each state which responded to this survey question

		Per cent of total council planning expenditure			
	Response rate %	*<1%*	*2–5%*	*6–10%*	*>10%*
NSW	56	10	53	10	27
Vic	58	21	58	5	16
Qld	77	20	60	10	10
WA	38	25	58	17	0
SA	48	15	69	8	8
Tas	36	50	25	25	0

Data source: PC local government survey 2010, Q50.

10 Referrals to state and territory government departments and agencies

Key points

- The jurisdictions have differing bases for how referrals are triggered and the nature of the legal instruments containing the referral provisions. New South Wales has the most variation in the bases for referral with provisions contained in over 220 local and state statutory instruments. In contrast, all of South Australia's referral requirements are contained in its planning legislation.
- The number of departments/agencies to which referrals are made varies greatly across the jurisdictions. South Australia has the most referral departments/agencies (19), whereas Tasmania (2 departments/agencies) and the Northern Territory (1 department) have the fewest departments/agencies.
- Jurisdictions, such as New South Wales and Queensland, which take an 'integrated approach' to their planning systems typically require referral of a broader range of matters compared to other jurisdictions.
- New South Wales, Victoria, Queensland, South Australia and the ACT all have established, but different, timeframes in which referral departments/agencies must respond to referrals. The ACT is the only jurisdiction that does not allow referral departments/agencies to 'stop the clock' and assumes the referral departments/agencies support an application if no response is received within the statutory timeframe.
- A number of jurisdictions, most notably Western Australia, are trying to improve the coordination between planning authorities and referral departments/agencies through measures such as drafting mutually agreed, clear and concise pro-forma conditions that address recurring referral department/agency requirements.
- Some leading practice approaches to addressing the coordination issues inherent in the land use planning areas are apparent and include:
  - as part of the strategic planning and higher order planning processes (such as local planning schemes), planning and planning-related decision makers agree to:
    - the type of development that will be permitted in each planning area; and
    - the requirements future developments in those areas will need to comply with. Having set these requirements in the higher order planning processes, there should be no need to refer lower order planning decisions (such as subdivision approvals and development applications) for matters that are compliant with the agreed requirements
  - applying binding timeframes, with limited 'stop the clock' provisions, to the decisions made by referral departments/agencies.

Within any jurisdiction, different branches of government have different responsibilities for matters that ultimately affect other land use planning and development. The interpretations, decisions and actions of individual government departments/agencies (and their regulators) can have flow on effects beyond the planning matters about which a decision is being made. For example:

- while a single decision to approve higher density housing in a particular area may have minimal impact on that area and surrounding areas, the overall impact of many similar decisions can have a substantial effect on the traffic flows on arterial roads (Planning Institute of Australia, sub. 27)

In addition, simply due to their inherent responsibilities, the focus and interests of an individual department/agency responsible for particular matters of importance to a state or territory will not necessarily coincide with the focus and interests of other departments/agencies. For example:

- in responding to a referral for a development application, a jurisdiction's fire fighting services may require certain trees to be cut down to reduce the potential fire hazard but, in response to the a referral for the same development, the jurisdiction's environment agency may require those same trees to be retained and protected in order to further environmental objectives.

As such, the greater the number of departments and agencies to which planning matters are to be referred, and the wider the basis on which those matters are referred, the greater the chance that competing policy objectives will need to be resolved as part of the planning process. This makes the coordination of the interpretations, decisions and actions of governments and regulators integral to ensuring the intended benefits of a given planning system are delivered in a timely manner. Further, failures in coordination can detract from the efficient and effective functioning of cities; create unnecessary costs for both business and government; and lead to delays in the planning process and in the release of completed developments (which can result in increased costs to businesses and disruptions to the supply of dwellings, for example).

The Issues Paper (PC 2010) listed a range of areas where the coordination of government decisions may be required. Also, the coordination of the interpretations, decisions and actions governments and regulators were raised as important issues in a wide range of submissions.

This chapter focuses on the extent of coordination and cooperation within state/territory governments in relation to land use planning. Specifically, it considers:

- the scope and nature of the involvement in the overall planning system of state and territory departments/agencies responsible for the environment, heritage, transport and fire fighting services (section 10.1). Based on consultations and submissions, these departments/agencies are considered to interact the most frequently and intensely with the planning system and are also where the tensions of translating department/agency objectives into land use requirements can be the greatest
- the requirements and processes involved in the referral of development applications within government for consideration of a range of matters including environmental and heritage issues (section 10.2).

Section 10.3 draws on the analysis in sections 10.1 and 10.2 to highlight leading practice approaches to addressing land use planning coordination issues in areas of state and territory responsibility.

Coordinating the delivery of infrastructure with land use planning is an important planning issue and is considered in chapter 5. The governance arrangements to facilitate cooperation and coordination between local councils in cities are considered in chapter 8. Coordination in areas of Commonwealth responsibility is considered in chapter 11.

10.1 Involvement in the planning system of departments/agencies responsible for the environment, heritage, transport and fire fighting services

The departments and agencies responsible for the environment, heritage, transport and fire fighting services in all jurisdictions are involved in the planning system of their respective state or territory. The detail of their involvement, and the complexity of their interactions with the planning system, is outlined in detail in the tables contained in appendix G and is summarised in table 10.1.

Table 10.1 **Number of departments and agencies responsible for the environment, heritage, transport and fire fighting services involved in the planning system**

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Environment	3	3	1	4	3	2	2	2
Heritage	2	1	1	3	1	1	1	1
Transport	1	2[a]	1	4	1	1	1	1
Fire fighting services	2	3	1	1	2	1	1	2

a In December 2010, the integrated transport unit from the Department of Transport became part of the Department of Planning and Community Development (DPCD) — in part this was to enhance the role of strategic land use planning in setting the objectives and framework for transport planning in Victoria. *Source*: EPA (SA) 2009; Productivity Commission survey of state planning departments and agencies (2010, unpublished); Victorian Government, pers. comm., 19 January 2011.

While the widest consultation within government may help to deliver better overall planning outcomes for all stakeholders, there is an inherent tension between wide consultation and the goals of efficiency. The greater the number of departments and agencies with involvement in the planning system, the more the potential exists for overlap and duplication in the input to planning decisions (and, of course, the greater the likelihood that a delay in a decision may arise from a delay in receiving the input of these departments/agencies). For example, planning authorities in New South Wales must consult and give weight to the advice of three separate environmental departments/agencies in their rezoning and planning scheme amendment decisions. In Western Australia, planners may need to refer such matters to up to four departments/agencies for consideration of the impacts on the environment and all four departments/agencies can refuse the rezoning or planning scheme amendment.

Duplication is also a feature of the complexity of these systems. Take, for example, a piece of rural land on a city fringe that is considered suitable for future residential development. Actions on that land will be subject to the considerations of the environment department/agencies as it progresses from being rural land to residential block with a house on it. Depending on the jurisdiction, the environment department/agencies may have to consider actions on the block on five different occasions — those occasions being:

- at the strategic planning stage when the land is included within the urban growth footprint/boundary (urban growth footprints and boundaries are discussed in chapter 4)
- when the land is rezoned from rural to residential use
- when the land is structure planned and amendments are made to local planning schemes
- when the land is subdivided into individual rural allotments

- when the development application is lodged for the construction of a house on an individual lot.

Involvement of agencies in strategic planning and higher order planning functions

To address the duplication above, the strategic land use planning and higher order planning processes have become increasingly concerned with planning and planning-related decision makers (including referral agencies) agreeing on:

- the type of development permitted that will be permitted in each planning area and
- the requirements future developments in those areas will need to comply with.

The strategic assessments conducted under the EPBC Act are an example of this trend (these assessments are discussed further in chapter 11). These initiatives are aimed at providing greater upfront clarity and certainty to developers, landholders, planners, industry, government and the community, and should help overcome a range of related issues emphasised by stakeholders. As examples:

> The Committee was advised that 87 per cent of the applications referred by local councils are unnecessary as they meet the Planning for Bushfire Protection guidelines. Assistant Commissioner Rogers said he did not know if this was because councils were adopting a risk management strategy, but it did cause an unnecessary overload of referrals for the RFS [Rural Fire Service]. (Standing Committee on State Development (NSW) 2009. p. 143)

and

> A key challenge with Indigenous heritage in Western Australia is the absence of a documented approval process and defined list of Indigenous family groups that are to be consulted for specific locations or regions. The consultation and approvals process could be significantly improved if these gaps were to be addressed (Fremantle Ports, sub. 14, p.2).[1]

However, these initiatives are not without their challenges, as noted by New South Wales Aboriginal Land Council (2009, p. 8):

> The different levels of planning and environmental laws and instruments in NSW often have conflicting requirements, or may be confusing or unclear, which means that Aboriginal culture and heritage issues may not be identified at early stages of planning.

Queensland is the only jurisdiction where the departments/agencies responsible for the environment, heritage, transport and fire fighting services all provide advice into

[1] Similar issues were raised with the Commission in its consultations in Tasmania.

the strategic planning process for capital cities and where planners have a statutory obligation to at least consider that advice in their decision making. This level of involvement provides greater scope for Queensland's land use plans to be framed with the requirements of these agencies in mind. As a result, any development applications that are in compliance with the land use plans should also meet the requirements of these agencies and so provide for a smoother and more timely referral decision making process.

In Queensland, Victoria, Western Australia, South Australia and the ACT, the departments/agencies responsible for the environment, heritage, transport and fire fighting services are all consulted on strategic plans, rezonings and planning scheme amendments — even if in some instances there is no statutory compulsion for the planners to give weight to their input.

Involvement of departments/agencies in development and subdivision applications

Queensland and South Australia departments/agencies have the power to refuse certain subdivision and development applications or to require conditions be included in any approval granted by planning authorities for those subdivisions and applications. In some cases, they are also decision makers under non-planning legislation — for example, a separate approval may be required from the department/agency under environmental legislation.

New South Wales and the Northern Territory are notable for their environment departments/agencies having a limited scope for decision making in respect to subdivision and development applications — in most other jurisdictions, the relevant departments/agencies are decision makers or at least have the power to refuse an application. The role of New South Wales and Northern Territory departments/agencies is also similarly limited in relation to matters of heritage, transport and fire fighting services. The Tasmanian departments/agencies also have a limited role in most stages of the planning process.

10.2 Referral of development applications

All jurisdictions refer applications for developments and subdivisions to other state and territory departments and agencies within their territorial boundaries. The basis

for requiring referrals[2] varies across the jurisdictions (table 10.2) and, depending on the jurisdiction, referral requirements can arise based on:

- whether the proposed development might affect certain matters (such as an Aboriginal heritage site or the environment) or take place in proximity to a prescribed feature (for example, development which occurs near waterways) — referred to in this section as 'development that affects a prescribed matter'
- either the activity for which the development site will ultimately be used (for example where the site will be used as a quarry or for chemical production) or an action that will occur in completing the development (for example, the treatment of contaminated soil or the erection of signage) — referred to in this section as 'prescribed activities' and 'prescribed actions', respectively
- the type of development proposed (such as a subdivision).

Table 10.2 **Basis for referrals and number of referral departments/agencies: June 2010**

	Development that affects a prescribed matter ***(table 10.4)***	*Prescribed actions or activities* ***(table 10.5)***	*Prescribed development type or assessment track*	*Decision maker's discretion*	*Number of referral departments/ agencies*
NSW	✓	✓			15
Vic	✓	✓	✓**a**		14
Qld	✓	✓			13
WA	✓			✓	Council's discretion
SA	✓	✓			19
Tas	✓				2
ACT			✓**b**		8**c**
NT	✓				1

a For subdivisions only. **b** For assessments under the 'impact' and 'merit' tracks. **c** For assessments under the 'impact' track.

Source: Department of Planning (NSW) (2010); *Development Regulations 2008* (SA); *Environmental Management and Pollution Control Act 1994* (Tas); *Environmental Planning and Assessment Act 1979* (NSW); *Environmental Protection Act 1986* (WA); *Environmental Protection Regulation 2008* (Qld); *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007* (Vic); *Northern Territory Planning Scheme*; *Planning and Development Regulations 2008* (ACT); RPDC (2003); *Sustainable Planning Regulation 2009* (Qld); *Town Planning Regulations 1967* (WA); *Victorian Planning Provisions*.

2 Referrals is used as a generic term in this chapter to capture both 'concurrences' and 'general referrals'. In simple terms, a 'concurrence' is a requirement that the planning authority obtain the agreement of the relevant state/territory department or agency before approving a development application. A referral requirement, on the other hand, compels a planning authority to obtain the input of the relevant state/territory department or agency but the planning authority is not bound to follow that advice and may be able to approve a development without a response or support from the referral agency.

Only the ACT base their referral requirements on the *type of assessment method* that is used in deciding an application in the ACT, development applications requiring assessment on the 'impact' or 'merit' tracks are referred to other specified departments/agencies.[3] In practice, certain types of development will trigger assessment under the merit and impact tracks and, in turn, trigger the referral provisions — for example, assessment under the impact track can be triggered by the construction of a correctional facility; the construction of a waste water processing facility; and a development that threatens a protected species (to name but three). Linking the referral provisions to application assessment method, rather than the matter affected or the activity to be conducted, can result in applications being referred to an agency even where those applications do not impact upon matters within the agency's ambit.

The jurisdictions also differ in the number of departments and agencies to which applications are referred (table 10.2) Some of the variation in the number of referral departments/agencies can be explained by the differing referral requirements of the jurisdictions (discussed below) — for example, Tasmania and the Northern Territory have few referral requirements when compared to the other jurisdictions. Different government portfolio structures across the jurisdictions also explains some of the variation — for example, as detailed appendix G, Queensland's Department of Environment and Resource Management is responsible for referrals relating to both environment and heritage matters, whereas in both New South Wales and Victoria these responsibilities are shared across four different departments and agencies.

In some cases, a development application may require referral for more than one reason. For example, an application might require a referral because it will take place near a waterway and because the ultimate use of the site will be a chemical works. This can add to the complexity of planning process for both the applicant and the planning authority — for the applicant, as they have to address a number of issues to satisfy the referral departments/agencies, and for the planning authority as they need to manage a number of referrals for different issues.

Jurisdictions also differ in the form of the legal instruments containing the referral provisions (table 10.3).

[3] The agencies include ACTEW Corporation Limited; ActewAGL Distribution; the conservator of flora and fauna; the emergency services commissioner; the Environment Protection Authority; the Heritage Council (Heritage ACT); the chief executives responsible for health policy and municipal services.

Table 10.3 **Instruments containing referral provisions: June 2010**

	Planning Act and/or Regulations	*Local planning schemes*	*Regional and state planning schemes and provisions*	*Development codes*	*Non-planning Act(s) and/or Regulation(s)*
NSW	✓	✓	✓		✓
Vic	✓	✓			✓
Qld	✓			✓	
WA	✓	✓	✓		✓
SA	✓				
Tas	✓				✓
ACT	✓				
NT	✓		✓		

Source: Department of Planning (NSW) (2010); *Development Regulations 2008* (SA); *Environmental Management and Pollution Control Act 1994* (Tas); *Environmental Planning and Assessment Act 1979* (NSW); *Environmental Protection Act 1986* (WA); *Environmental Protection Regulation 2008* (Qld); *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007* (Vic); *Northern Territory Planning Scheme*; *Planning and Development Regulations 2008* (ACT); RPDC (2003); *Town Planning Regulations 1967* (WA); *Victorian Planning Provisions*.

Some of the unique aspects of the jurisdictions' approaches to referrals include:

- the referral provisions in New South Wales are contained in over 220 local and state statutory instruments, including a number of planning and non-planning Acts. The basis for referral of a development application varies with each of these instruments
- the Victorian Planning Provisions (VPP) establish the parameters for many of the referrals required in Victoria. The VPP contains a standard set of referral provisions that are common across all councils, but also provide discretion for local councils to include further referral requirements
- Victoria is the only jurisdiction where applications of a specific type (subdivisions) are required to be referred. In Victoria, all subdivisions are referred to the relevant: water, drainage and sewerage authority; telecommunications authority; electricity supply and/or distribution authority; and the relevant gas supply authority
- Queensland is the only jurisdiction to have some of its referral requirements included in a 'code' (the *Queensland Development Code*)
- South Australia is the only jurisdiction where the referral requirements are located solely in planning legislation — this makes the task of identifying the referral requirements for an application a very straightforward exercise
- in Western Australia and Tasmania, local councils need not refer applications which may affect environmental matters where they are decision makers for

these environmental matters under their respective planning and environmental legislation

- in Western Australia, most of local councils' town planning schemes are based on the 'Model Scheme Text' contained in the *Town Planning Regulations 1967* (WA) which provides that:

  > In considering an application for planning approval the local government may consult with any other statutory, public or planning authority it considers appropriate.

  this is the key referral requirement in Western Australia.

- the ACT, as noted above, prescribes a set of referral departments/agencies for applications requiring assessment under its 'impact track'. A more limited range of referrals are also required for those applications requiring assessment under the ACT's 'merit track'. (The impact and merit tracks are discussed in chapter 3)

Common to most jurisdictions is the requirement to refer a development application where it affects a prescribed matter (table 10.4) or where it relates to a prescribed action or activity (table 10.5). There is a subtle, but significant, difference between these two bases for requiring a referral. For example, reconfiguring a lot within 100 metres of an electrical substation (electricity infrastructure in table 10.4) — which would affect a prescribed matter — will require a referral in Queensland, but not in South Australia. In contrast, the construction of a substation (electricity infrastructure in table 10.5) — which is a prescribed activity — will require a referral in South Australia, but not in Queensland.

Jurisdictions, such as New South Wales and Queensland, which take an 'integrated approach' to their planning systems, typically have a broader range of prescribed matters (table 10.4) requiring referral than other jurisdictions with 20 matters in New South Wales and 14 in Queensland requiring referral, compared to: 10 matters in South Australia; 7 in Victoria; 2 in both Tasmania and the Northern Territory; and 1 in Western Australia.

While developments affecting many of the matters listed in table 10.4 are not subject to referral in all jurisdictions, there may be approval processes outside of the planning system that proponents need to satisfy. For example, while developments affecting an aboriginal heritage area do not require referral in Western Australia, they may require approval outside the planning system under the *Aboriginal Heritage Act 1972* (WA). Similarly, in Victoria, while developments affecting an aboriginal heritage area do not require referral, outside of the planning system they may require a Cultural Heritage Management Plan in Victoria under the *Aboriginal Heritage Act 2006* (Vic). Needless to say, this complexity may makes a system more difficult for business and citizens to access easily.

Table 10.4 **Development assessment required to be referred — affects a prescribed matter: June 2010**[a]

Development relates to, has an effect on, or is in proximity to one or more of these matters:	*NSW*[b]	*Vic*	*Qld*[c]	*WA*	*SA*	*Tas*	*NT*
Aboriginal heritage	✓[d]						
Airports	✓		✓		✓		
Aquaculture	✓[d,e]						
Bushfire areas	✓[d]	✓			✓		
Catchment areas	✓						
Coastal development	✓		✓		✓		
Developments in Central Business District (CBD)					✓[h]		
Endangered species (flora and/or fauna)	✓						
Electricity infrastructure		✓	✓				
Environment	✓			✓	✓	✓	✓
Heritage	✓[d]		✓		✓	✓	✓
Historic shipwrecks					✓		
Koala habitat	✓		✓				
Marine vegetation	✓[d]		✓				
Mining	✓[d]				✓[i]		
Murray River and related areas[f]	✓				✓		
Occupational health and safety[g]		✓					
Main roads/transport	✓[d]	✓	✓		✓		
Rain forests	✓						
Vegetation		✓	✓				
Water catchment area	✓	✓	✓				
Floodplain	✓	✓	✓				
Fish habitat	✓		✓				
Conservation estates	✓		✓[j]				
Community infrastructure			✓				
Wetlands	✓		✓				
Total number of matters	**20**	**7**	**14**[c]	**1**	**10**	**2**	**2**

[a] The ACT has been excluded from this table as it does not require referral for prescribed matters. Rather, as outlined above, referrals are made to prescribed departments/agencies depending on the type of assessment required. [b] Based on referrals made in 2009-10 (Department of Planning (NSW) 2010), unless otherwise noted. A definitive schedule of all referral matters was not possible as it would require reference to over 200 local, regional and state environmental planning polices, as well as an array of non-planning legislation. [c] The matters listed here are based on legislation listed in the sources for this table. The Queensland Government (14 February 2011) advise that these sources alone do not capture the full scope of referrals required in Queensland. [d] In order for the development to be carried out, it requires approval from a separate authority under the integrated development provisions of the *Environmental Planning and Assessment Act 1979* (NSW). [e] Consultation with Director-General of Primary Industries also required under SEPP 62 — Sustainable aquaculture. [f] Including tributaries. [g] Buildings where the end use will be affected by OHS regulations (for example, major hazard facilities). [h] For developments of 10 000m^2 in Regional Centre Zone and over 5 000m^2 in District Centre Zone of Adelaide CBD. [i] Development within an area zoned for mining. [j] Including certain: protected forests and reserves; critical habitat areas; state forests and timber reserves; marine parks; recreation areas; and World Heritage listed areas.

Source: Department of Planning (NSW) 2010; *Development Regulations 2008* (SA); *Environmental Management and Pollution Control Act 1994* (Tas); *Environmental Planning and Assessment Act 1979* (NSW); *Environmental Protection Act 1986* (WA); *Environmental Protection Regulation 2008* (Qld); *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007* (Vic); New South Wales Government, pers. comm., 17 January 2011; *Northern Territory Planning Scheme*; *Planning and Development Regulations 2008* (ACT); RPDC (2003); *Victorian Planning Provisions*.

Table 10.5 **Development assessment required to be referred — prescribed action or activity[a]: June 2010**

	NSW	*Vic*	*Qld*[b]	*SA*	*Tas*
Abrasive blasting					
Advertising and signage (erection of)		✓		✓	
Affordable housing (construction of)				✓	
Agricultural processing	✓[c]				
Airport land (change of use)			✓		
Alcohol production					
Aquaculture	✓[c]		✓	✓	
Asphalt/bitumen plant		✓			✓
Battery manufacturing and/or recycling			✓		
Boat maintenance and repair			✓		
Bottling and canning			✓		
Brewing, distilling or winery	✓[c]		✓	✓	✓
Carbon sequestration (including greenhouse gas sequestration)		✓			
Cement or lime works	✓[c]	✓	✓	✓	✓
Ceramic works	✓[c]		✓	✓	✓
Chemical production	✓[c]	✓	✓	✓	✓
Chemical storage	✓[c]	✓	✓	✓	✓
Child care centres			✓		
Coal works and/or handling	✓[c]	✓		✓	✓
Coke production					
Composting	✓[c]	✓	✓		
Concrete works	✓[c]			✓	
Container cleaning and/or reconditioning	✓[c]	✓	✓		
Contaminated soil treatment (including for acid sulphate soils)	✓[c]	✓	✓		
Crematoria (construction)				✓	
Dam (construction of or work on)	✓[c]		✓	✓	
Disabled persons (accommodation)	✓				
Dredging	✓[c]		✓		
Electricity generation	✓[c]	✓	✓		
Electricity infrastructure (construction)				✓	
Emergency services facility		✓			
Energy recovery	✓[c]	✓			
Engineering (including boilermaking)					
Fire safety systems (where a building includes certain systems)			✓[d]		
Food/livestock processing (including milk/dairy processing)	✓[c]	✓	✓	✓	✓
Fuel burning		✓			✓
Glass or glass fibre manufacturing			✓		
Higher risk personal appearance services			✓[f]		
Gaming activities				✓	

(Continued next page)

Table 10.5 **(continued)**

	NSW	*Vic*	*Qld*[b]	*SA*	*Tas*
Geothermal energy extraction		✓			
Glass works					
Helicopter use	✓[c]				
Irrigated agriculture	✓[c]				
Livestock intensive activities	✓[c]	✓		✓	
Logging	✓[c]				
Major hazard facilities (change of use)			✓		
Manufacturing				✓	
Marina and boat repairs	✓[c]			✓	
Metallurgical activities	✓[c]	✓	✓	✓	✓
Mine (construction of or work on)	✓[c]		✓		
Mineral processing	✓[c]		✓		✓
Mining	✓[c]	✓			✓
Motor vehicle workshop			✓		
Mushroom growing substrate manufacture			✓		
Oil or gas production and/or refining		✓	✓		
Paper or pulp production	✓[c]	✓	✓	✓	✓
Pastoral workers accommodation			✓		
Petroleum or fuel production	✓[c]			✓	✓
Plaster manufacturing			✓		
Plastics manufacture			✓		
Port land (change of use)			✓		
Printing, packaging and visual communications	✓[c]	✓	✓		
Private hospital (or day hospital)			✓		
Quarries	✓[c]	✓	✓	✓	✓
Railway systems activities	✓[c]			✓	
Removal of any building			✓[f]		
Rendering		✓		✓	✓
Residential care buildings[e]			✓		
Resource recovery	✓[c]				✓
Retail meat premises			✓		
Road construction (including road tunnels)	✓[c]	✓	✓		
Senior citizens (accommodation)	✓				
Sewage treatment	✓[c]	✓	✓	✓	
Spray painting			✓		
Sterilisation activities (equipment)	✓[c]				
Storage and/or shipping (bulk)	✓[c]	✓	✓	✓	
Surface coating		✓	✓	✓	
Tanneries or fellmongeries		✓	✓	✓	✓
Textile bleaching, dyeing and/or manufacture		✓	✓		✓

(Continued next page)

Table 10.5 **(continued)**

	NSW	*Vic*	*Qld*[b]	*SA*	*Tas*
Tyre manufacturing and/or recycling			✓		
Vehicle production				✓	
Waste disposal and/or storage	✓[c]	✓	✓	✓	✓
Waste producing activities (including emissions discharge)		✓		✓	
Waste transport	✓[c]	✓	✓	✓	✓
Waste treatment or recycling		✓	✓	✓	✓
Water supply or drainage (construction of)	✓[c]				
Water treatment and/or desalination plant		✓	✓		
Windfarm				✓	✓
Wood or timber milling or processing	✓[c]	✓	✓	✓	✓
Wood preservation	✓[c]	✓	✓		✓
Woodchip mills			✓		✓
Wool scouring or wool carbonising works				✓	✓
Workplace area less than 2.3m^2			✓		
Total number of activities or actions	**44**	**37**	**55**[b]	**36**	**25**

[a] Western Australia, the Northern Territory and the ACT have been excluded from this table as they do not have any referral requirements that are based on either the activity for which the development site will ultimately be used or an action that will occur in completing the development. [b] The matters listed here are based on legislation listed in the sources for this table. The Queensland Government (14 February 2011) advise that these sources alone do not capture the full scope of referrals required in Queensland. [c] In order for the development to be carried out, it requires approval from an additional authority under the integrated development provisions of the *Environmental Planning and Assessment Act 1979* (NSW). [d] There are also referral requirements for budget accommodation buildings which require fire safety systems. [e] A residential care building exists where 10% or more of persons residing there need physical assistance in conducting their daily activities and to evacuate the building during an emergency. [f] Local council is the concurrence authority.

Source: Environment Protection (Scheduled Premises and Exemptions) Regulations 2007 (Vic); *Development Regulations 2008* (SA); *Environmental Planning and Assessment Act 1979* (NSW); *Environmental Management and Pollution Control Act 1994* (Tas); *Environmental Protection Regulation 2008* (Qld); *Victorian Planning Provisions*, *Queensland Development Code*.

Of those jurisdictions requiring the referral of prescribed actions and activities (table 10.5), Queensland prescribes 55 such actions and activities, New South Wales 44, Victoria 37, South Australia 36 and Tasmania 25. There are a number of activities and actions, such as chemical works and milk/dairy processing, for which all jurisdictions listed in table 10.5 require a referral within the planning system. However, the jurisdictions differ in the thresholds for these activities and actions beyond which referral is required — table 10.6 provides some examples of these differences.

Outside of the planning system, both Western Australia and the ACT require approval for activities/actions listed in table 10.6 under their respective environmental acts. Western Australia and ACT also apply different thresholds to the requirements for the activities/actions to those in table 10.6 — for example, milk process activities must meet or exceed a production capacity of 100 tonnes per year

in Western Australia and a milking capacity of 800 animals per day in the ACT before they require approval.

Table 10.6 **Thresholds for prescribed actions or activities requiring referral required as part of a development assessment: 2009-10**
Selected examples

	Chemical works	*Brewing, distilling or winery*	*Milk/dairy processing*
NSW	Production capacity: > 1–5 000 tonnes per year (depending on the chemical)[a]	Production capacity: > 30 tonnes of alcohol (or alcoholic products) per day; or > 10 000 tonnes of alcohol (or alcoholic products) per year	Processing capacity: > 30 000 tonnes of dairy products per year
Vic	Production capacity: > 2 000 tonnes per year of chemical products	n.r,r	Production capacity: > 200 tonnes per year of product(s)
Qld	Producing: > 200 m^3 of coating, food additives, industrial polish, sealant, synthetic dye, pigment, ink, adhesives or paint in a year; or Producing: > 200 m^3 of chemicals a year; or Using: > 200 tonnes of chemicals as feedstock in a year	Producing: > 1 000 000 litres of alcoholic beverages per year	Manufacturing or processing: > 200 tonnes of dairy products per year
SA	**For prescribed substances**[b]: production capacity: > 100 tonnes per year **For salt production:** production capacity: >5 000 tonnes per year[c]	**For breweries:** production capacity: > 5 000 litres per day[c] **For wineries**[d]**:** > 500 tonnes grapes (or other produce) processed per year	Processing capacity: > 5 000 000 litres of milk per year
Tas	**For prescribed substances**[b]: production capacity: >200 tonnes per year	Capacity to consume >100 kilolitres of water in 8 hours	Processing capacity: > 3 000 litres of milk per 8 hours

n.r.r no referral requirement. [a] Applies across a range of 20 chemical products. Referral is required for any quantity of explosives. [b] For inorganic chemicals, including sulphuric acid, inorganic fertilisers, sodium silicate, lime or other calcium compound, petrochemical products. [c] Applies only to beer production. [d] A threshold of 50 tonnes of grapes (or other produce) applies to areas within the Mount Lofty Ranges Water Protection Area.

Source: *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007* (Vic); *Development Regulations 2008* (SA); *Environmental Planning and Assessment Regulation 2000* (NSW); *Environmental Management and Pollution Control Act 1994* (Tas); *Environmental Protection Regulation 2008* (Qld); *Victorian Planning Provisions*, *Queensland Development Code.*

Before a development application requires referral, it must first require approval under the planning system and it must also breach a referral trigger. In practice, the combination of planning approval requirements and the nature of development taking place in individual jurisdictions can lead to outcomes that would not be

foreseen based on the referral requirements detailed above. For example (as detailed in chapter 6) in 2009-10, 27 per cent of development applications in Victoria were referred compared to 7 per cent of applications in New South Wales.

Timeframes for departments/agencies to respond to referrals

New South Wales, Victoria, Queensland, South Australia and the ACT have all established timeframes in which referral departments/agencies must respond to referrals (table 10.7). Of these jurisdictions, the ACT is unique in not allowing referral departments/agencies scope to 'stop the clock'; an agency's support for an application is assumed if no response is received within the statutory timeframe (that is, there is 'deemed consent'). In Queensland, if a referral agency does not provide a response to a referral within the statutory timeframe, the person assessing the development application may proceed with the assessment as if that referral agency had supported the application and had no requirements.

Aside from referrals made at the discretion of local councils, the only matters formally requiring referral in Western Australia are environmental matters for which the Environmental Protection Authority of Western Australia (EPA (WA)) has 28 days in which to decide whether to assess any matters referred to it. However, the EPA (WA) is not time bound in its decision making where it chooses to make an assessment.

Statutory timeframes for referrals are an important inducement to encourage coordination and cooperation within and across levels of government. In Western Australia, for example, where there are no statutory timeframes around referrals, the time taken to action referrals can be a cause of friction. For example

> The City [of Armadale] attempts to expedite development applications well within the 60 day approval period established under its town planning scheme… However, where referral to other agencies is required the City encounters the following issues:
>
> • Swan River Trust – Minor developments can take months for the SRT to determine…;
>
> • DEC [Department of Environment and Conservation] – The slowest of all referrals and their response is very generic requiring local government to assess against DEC policies… (City of Armadale 2009, p. 3)

and

> … If the City [of Swan] is required under legislation to refer to government agencies then the response should be more timely and effective. (City of Swan 2009, p. 4)

Table 10.7 **Timeframes for referrals — 2009-10**

	Timeframe within which decision is to be made by referral agency	*Ability for referral agency to 'stop the clock'*	*Circumstances where the referral agency can stop the clock*
NSW	40 days of receiving application; **or** 21 days of receiving submissions (if application is publicly exhibited)	Yes	• To request more information[a]
Vic	28 days	Yes	• To request more information[b]
Qld	10–30 days (depending on the referral agency)[c]	Yes	• To request more information • A concurrence agency can extend the timeframe by up to 20 business days by providing notice to the applicant
WA	n.s[d]	n.a	n.a
SA	4-8 weeks (depending on nature of referral)	Yes	• To request more information
Tas	n.s	n.a	n.a
ACT	15 working days[c]	No	n.a
NT	n.s	n.a	n.a

n.a not applicable. **n.s** not specified. [a] Information request must be made within 25 days of receiving request. [b] Information request must be made within 21 days of receiving request. [c] If a referral agency does not provide advice within this time, the agency is taken to support the application (that is, there is 'deemed consent'). [d] The EPA (WA) has 28 days to decide whether to assess any matters referred to it, but is not time bound in its decision making where it chooses to make an assessment.

Source: *Development Regulations 2008* (SA); Department of Planning (NSW) 2010; *Environmental Planning and Assessment Act 1979* (NSW); *Environmental Protection Act 1986* (WA); *Planning and Development Regulations 2008* (ACT); *Planning and Environment Regulations 2005* (Vic); RPDC (2003); Standing Committee on State Development (NSW) (2009); *Sustainable Planning Act 2009* (Qld); *Town Planning Regulations 1967* (WA).

Timeliness and effectiveness of the involvement of the departments/agencies

There is scant comparable evidence as to the timeliness and effectiveness of the involvement of the departments/agencies in actioning referrals. Taking the environment departments/agencies as an example, and notwithstanding their ability to use 'stop the clock' provisions, it would seem that the processes are working well in most jurisdictions:

- in New South Wales in the 6 months to 31 December 2009, the Department of Environment, Climate Change and Water processed a total of 75 referrals with a 'net average processing time' of 21 days (Department of Planning (NSW) 2010)
- in Queensland in 2009-10, Queensland's Department of Environment and Resource Management assessed 100 per cent of concurrence applications within

statutory timeframes (Department of Environment and Resource Management (Qld) 2010)

- in South Australia in 2009-10, 96 per cent of the 364 planning referrals assessed by the EPA (SA) were completed within statutory time frames (EPA (SA) 2010).

Conditions attached to referral decisions

The City of Swan (2009, p. 4) has noted responses from referral departments/agencies can often be:

> …generic and lack commitment, simply referring the City to policy only. The response is not site or application specific.

Similar sentiments were expressed during consultations for this study by planning decision makers across most jurisdictions. Further, planning authorities were frustrated by conditions attached to referral decisions such as 'work is to be completed to the satisfaction of [the referral agency]'. The subjective nature of such conditions make them problematic for planning authorities to enforce and for developers to comply with.

On the other hand, a number of referral departments/agencies raised issues with the Commission in relation to planning authorities amending their conditions or ignoring their advice in issuing the final approval for a development application.

The Commission was advised of efforts in a number of jurisdictions, but most notably Western Australia, to improve the coordination between planning authorities and referral departments/agencies. These efforts include:

- drafting mutually agreed, clear and concise pro-forma conditions ('model conditions') that address recurring referral agency requirements
- having memoranda of understanding between referral departments/agencies and planning authorities regarding what advice will be provided by referral departments/agencies, how that advice will be dealt with by planning authorities and/or how conditions will be included in development application approvals.

10.3 Leading practice approaches to address state and territory coordination issues

Some leading practice approaches are apparent from the comparison of state and territory referral requirements and practices. These include:

- as part of the strategic planning and higher order planning processes (such as local planning schemes), planning and planning-related decision makers agree to:
  - the type of development that will be permitted in each planning area; and
  - the requirements future developments in those areas will need to comply with. Having set these requirements in the higher order planning processes, there should be no need to refer lower order planning decisions (such as subdivision approvals and development applications) for matters that are compliant with the agreed requirements
- South Australia's approach of having referral requirements collectively detailed and located in only 'one place' (the *Development Regulations 2008* (SA))
- applying binding timeframes, with limited 'stop the clock' provisions, to the decisions made by referral departments/agencies
- having clear and concise pro-forma development approval conditions ('model conditions') to be used by referral departments/agencies which have been mutually agreed with planning authorities
- having memoranda of understanding between referral departments/agencies and planning authorities regarding what advice will be provided by referral departments/agencies, how that advice will be dealt with by planning authorities and/or how conditions will be included in development application approvals.

11 Impact of the Commonwealth on planning

Key points

- Business can undertake a substantial amount of compliance work just to learn they are not required to take any specific actions (such as obtaining the Minister's approval or completing their actions in a certain way) under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act). In 2009-10, 36 per cent of referrals (137 referrals) required no further action.
  - Based on data supplied to the Commission by developers, the cost of the environment studies and flora and fauna assessments necessary for an EPBC Act referral can range from $30 000 to $100 000 per study.
  - Business would benefit from greater clarity from the Department of Sustainability, Environment, Water, Population and Communities, and within the EPBC Act, on what is likely to have a significant impact on a matter of National Environmental Significance (and what is not).
- For the period 2005-06 to 2009-10, the average amount of time taken from the lodgement of the EPBC Act referral to the Minister's final decision for 'controlled actions' was 1 year and 7 months for residential, commercial and industrial developments in urban areas. This was also the average for the 2009-10 year.
- Strategic assessments under the EPBC Act provide an alternative to assessing referrals on a one-by-one basis and are a possible solution to the timing mismatch of environmental assessments under Commonwealth and state/territory legislation. Strategic assessments will be of greatest benefit to all stakeholders where they are undertaken in conjunction with the broader strategic land use planning for an area and completed before anyone seeks to commence development in that area
- The need for all developers to consult two lists of threatened species (one Commonwealth list and one state/territory list) for each jurisdiction in which they operate creates unnecessary duplication and confusion.
- Successful implementation of the National Aviation White Paper reforms should facilitate airports and state/territory and local governments working through the likely impacts of future developments on Commonwealth owned airport land.

All three levels of government have different responsibilities for land use planning and other matters that impact upon land use planning and development. The interpretations, decisions and actions of individual governments (and their regulators), can have flow on effects beyond the planning matters for which those governments and regulators are responsible. While chapter 10 focused on coordination in areas of state and territory responsibility (and referrals in particular), this chapter focuses on those areas of Commonwealth responsibility identified in submissions and by stakeholders as being where the (unmet) need for coordination with the jurisdictions' planning systems is greatest, namely:

1. the administration and enforcement of the *Environment Protection and Biodiversity Conservation Act 1999* (section 11.1) and its interaction with state and territory environment legislation (section 11.2)
2. development on and around Commonwealth land (section 11.3)

Section 11.4 draws on the analysis in sections 11.1, 11.2 and 11.3 to highlight best practice approaches to addressing land use planning coordination issues in areas of Commonwealth responsibility.

11.1 *Environment Protection and Biodiversity Conservation Act 1999*

The *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) (EPBC Act) provides the legal framework for the protection and management of nationally and internationally important flora, fauna, ecological communities and heritage places. In doing so, it gives the Commonwealth Government jurisdiction over matters deemed to be of National Environmental Significance (NES). Currently there are eight NES matters: world heritage properties; national heritage places; wetlands of international importance; listed threatened species and ecological communities; migratory species protected under international agreements; Commonwealth marine areas; the Great Barrier Reef Marine Park; and nuclear actions (including uranium mines).

The EPBC Act, which is administered and enforced by the Department of Sustainability, Environment, Water, Population and Communities (DSEWPC),[1] also takes jurisdiction over actions which affect Commonwealth land or that are carried out by a Commonwealth agency.

[1] Prior to 14 September 2010, the EPBC Act was administered and enforced by the Department of Environment, Water, Heritage and the Arts (DEWHA).

Anyone taking an action that could have a significant impact on an NES matter is required to refer that action to the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities (the Minister) for a determination.[2] As detailed in the flow chart contained in figures 11.1a and 11.1b, when the Minister receives an EPBC referral there are four decisions that can be made:

1. find the proposed action clearly unacceptable and refuse the applicant permission to undertake the proposed action
2. find the proposed action requires the Minister's approval before it can proceed (that is, the action is a 'controlled action'). The referral then progresses through an assessment process that informs the Minister's final decision on whether to approve the action
3. find the proposed action does not require the Minister's approval, provided it is undertaken in a manner specified in the Minister's decision notice
4. find the proposed action does not require the Minister's approval.

In theory, as the EPBC Act applies equally across all states and territories, there should be no difference in how it is applied or how it affects business and development activity across Australia. In practice, however, differences arise due to duplications and inconsistency between the EPBC Act and state/territory legislation (discussed in section 11.2) and in the arrangements through which compliance with the EPBC Act is pursued — including the EPBC Act referral and approval processes (considered below).

These issues, among others, have been considered in one or more of the recent reviews of the EPBC Act and its administration, including:

- the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (Hawke Review) (Hawke 2009)
- an audit by the Australia National Audit Office (ANAO) of The Conservation and Protection of National Threatened Species and Ecological Communities (The Auditor General 2007)
- the Operational Review of the Threatened Species Conservation Act 1995 (NSW), the Environmental Planning and Assessment Act 1979 (NSW), and the Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth) (Commonwealth of Australia 2009b)

[2] Prior to 14 September 2010, referrals were made to the Minister for the Environment, Heritage and the Arts.

- a Senate Standing Committee report on The Operation of the Environment Protection and Biodiversity Conservation Act 1999 (Standing Committee on Environment, Communications and the Arts 2009).

Figure 11.1a **EPBC Act referral and assessment process**

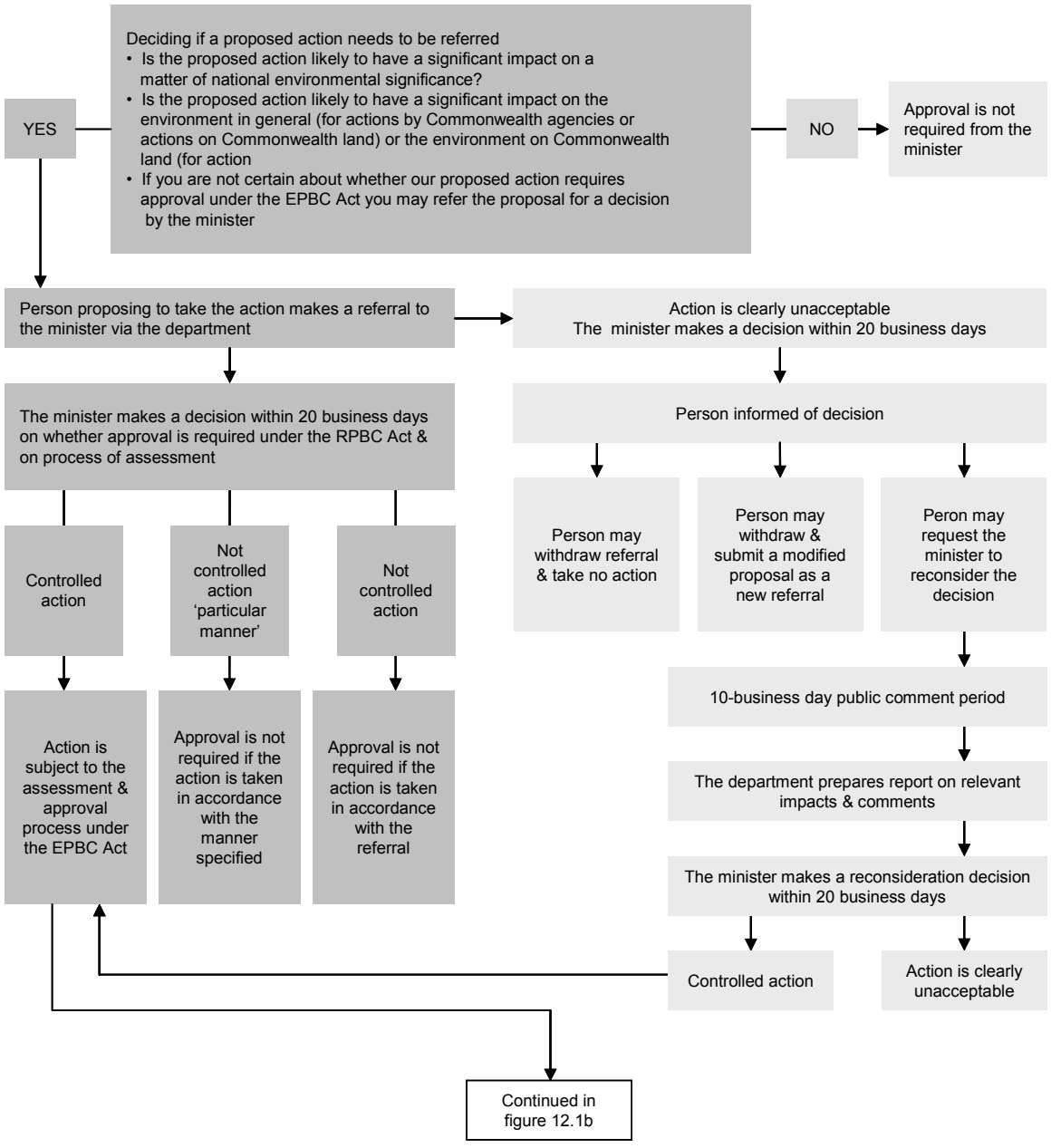
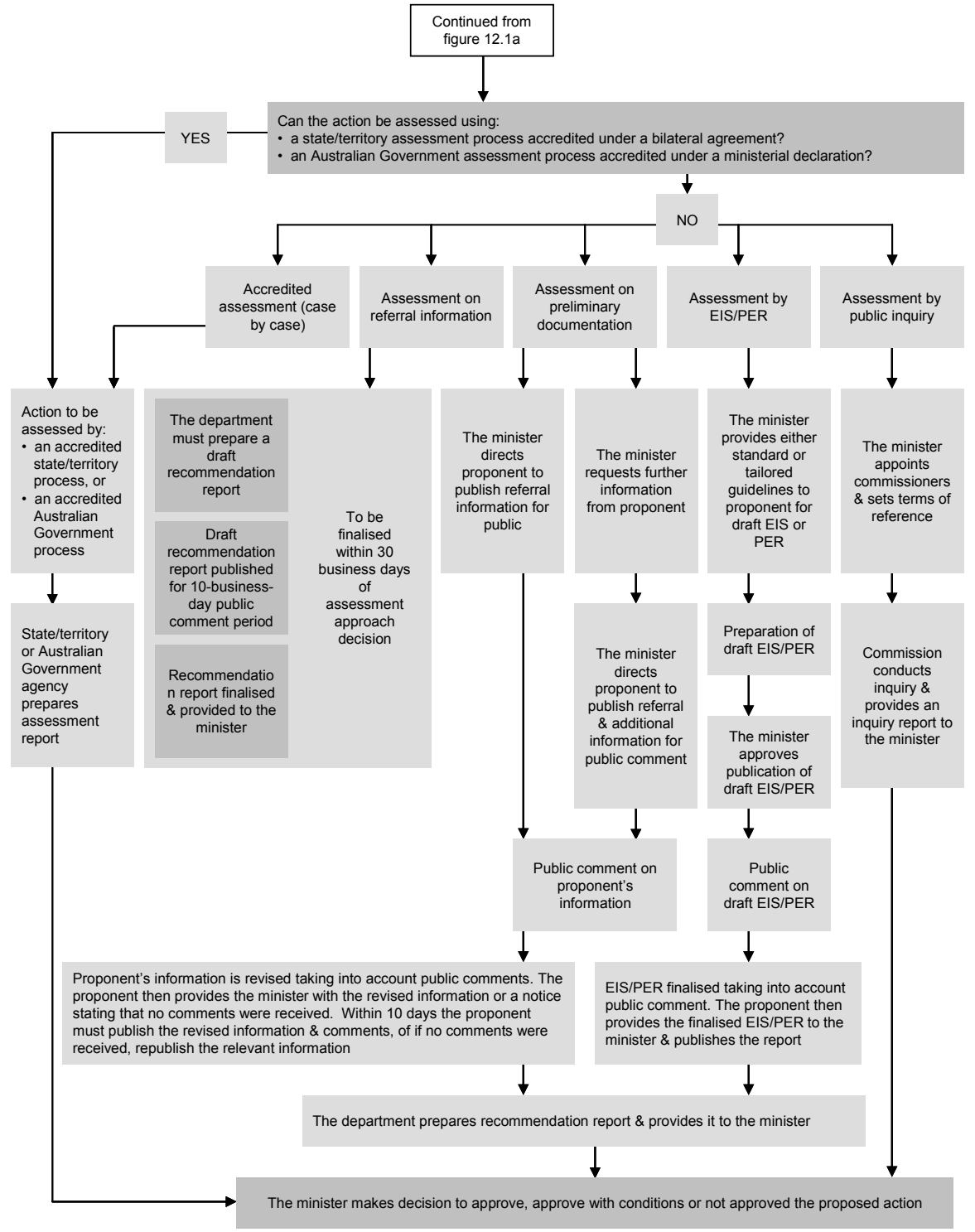


Figure 11.1b **EPBC Act referral and assessment process**
Continued



Data source: DEWHA (2010g).

The analysis in this section (and section 11.2) does not seek to revisit the findings and recommendations from these reviews, many of which remain under consideration. Rather, this analysis seeks to reiterate and reinforce the need for reform by highlighting those aspects of the EPBC Act and its administration and enforcement that have a material impact on land use planning and business and development activity in Australian cities.

Referral process

As detailed in the flow chart in figures 11.1a and 11.1b), making a referral to the Minister (via DSEWPC) is the first step a business takes when it is contemplating undertaking an action that may impact upon an NES matter. In making a referral, businesses are asked to provide 'sufficient information' to allow a decision to be made — including the provision of environmental reports, surveys and aerial photographs. Much of this information, particularly the environment reports and surveys, can be quite costly and take some time to prepare.[3] Based on data supplied to the Commission by developers, the cost of the environment studies and flora and fauna assessments necessary for an EPBC Act referral can range from $30 000 to $100 000 per study (Productivity Commission survey of greenfield developers (2010, unpublished)).

The information to be provided by business in support of a referral is akin to that required to make a final assessment on a controlled action — this is the case even though it is not known at the referral stage whether the action is, in fact, a controlled action and so requires approval. As a consequence, business can undertake a substantial amount of compliance work (and incur the associated costs) just to learn they are not required to take any specific actions under the EPBC Act (such as acquire the Minister's approval or complete their actions in a certain way) and may proceed with their development as they had originally intended.[4]

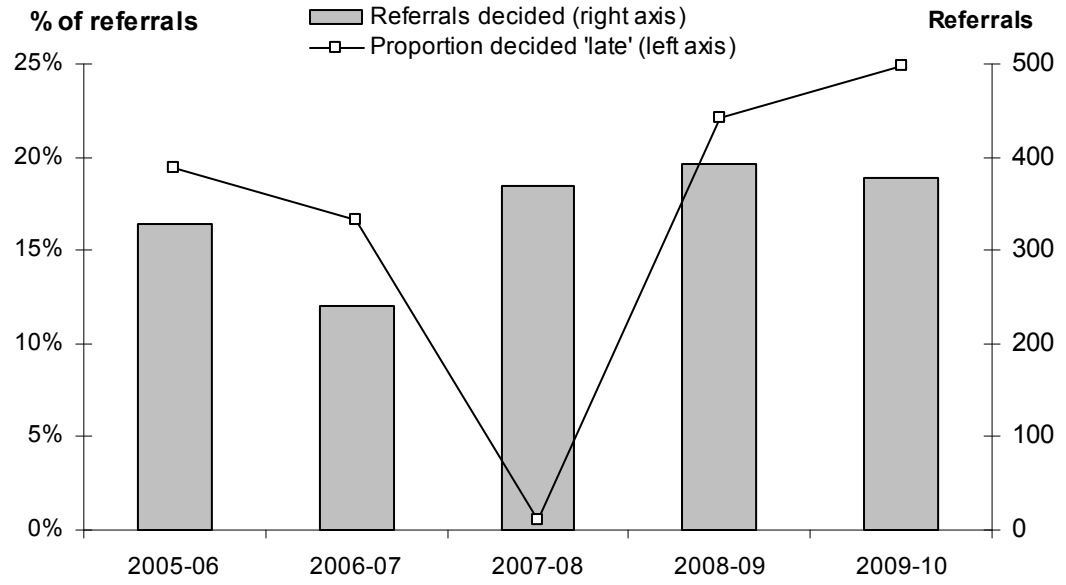
[3] While costly, environmental studies can help developers better understand the potential environmental impacts of their developments. By using this knowledge early in the life of a project, developers may be able to modify their project to avoid or limit the environmental impact of their project (thus potentially removing the need for approval under the EPBC Act (and state/territory environmental laws)). Such an outcome can be to the benefit of environmental outcomes.

[4] However, it should be noted that information collected by developers on the environmental impact of their developments can also inform decisions regarding state/territory environmental approval requirements.

Based on consultations and the survey of greenfield developers conducted by the Commission, there would seem to be a lack of certainty on the part of business as to what constitutes a significant impact on an NES matter. This uncertainty, when combined with penalties of $550 000 (5000 penalty units) for individuals and $5.5 million (50 000 penalty units) for body corporates undertaking a controlled action without approval, would seem to be a factor in businesses taking the precautionary measure of making an EPBC referral and incuring the cost of the supporting environmental reports and surveys (even for projects less likely to be a controlled action). In this regard, business would benefit from greater clarity from DSEWPC, and within the EPBC Act, on what is likely to be an NES matter (and what is not).

Once a referral has been lodged, the Minister has 20 business days to decide whether the action is: clearly unacceptable; a controlled action and so requires further assessment (and approval before it can proceed); does not require approval (provided the action proceeds in the manner specified by the Minister); or does not require approval. Aside from 2007-08 when only 1 per cent of referrals took longer than 20 days to decide, between 17–25 per cent of referrals made between 2005-06 and 2009-10 have not been decided within the 20 day period (figure 11.2). In 2009-10, the main reasons for referrals not being decided within the 20 day period were 'administrative delays' and 'further information and consultation was required' (DEWHA 2010h) — the EPBC Act allows the Minister to request further information on a referred action, in which case the 20 day statutory time period is suspended until the information is provided (effectively a 'stop the clock' provision).

Figure 11.2 **EPBC referral decisions within statutory timeframes: 2005-06 to 2009-10**
Controlled action determinations — 20 day statutory time limit

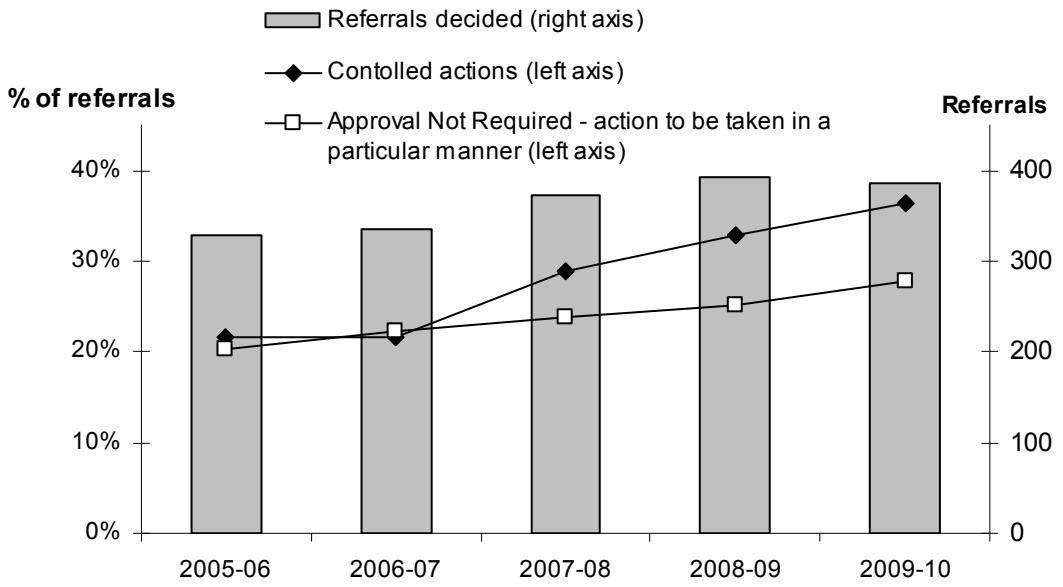


Data source: Department of the Environment and Heritage (2006); Department of the Environment and Water Resources (2007a); DEWHA (2008, 2009d and 2010h).

Approval process for controlled actions

As outlined above, not all matters referred to the Minister are determined to be controlled actions and so do not ultimately need approval under the EPBC Act. However, the proportion of referrals requiring approval has grown steadily from 22 per cent in 2005-06 to 36 per cent in 2009-10 (figure 11.3). Further, the proportion of referrals that did not require approval provided the subject action was undertaken in the manner specified by the Minister have also increased over this same period (from 20 per cent to 28 per cent). This means that in 2009-10, 36 per cent of referrals (or 137 referrals) did not require the Minister's approval or the Minister to specify how the action should be conducted in order to avoid the requirement for approval.Referrals deemed to be clearly unacceptable were one per cent or less of all referrals for the period 2005-06 to 2009-10.

Figure 11.3 **EPBC referral decisions: 2005-06 to 2009-10**

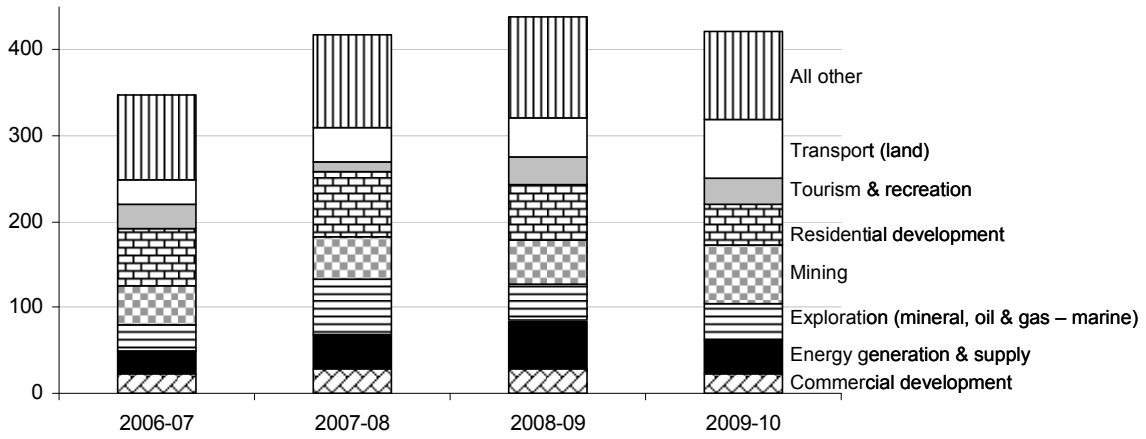


Data source: Department of the Environment and Heritage (2006); Department of the Environment and Water Resources (2007a); DEWHA (2008, 2009d and 2010h).

The nature and location of the actions being referred under the EPBC Act may be contributing to the rising trend in actions requiring approval — for example, commercial and residential development comprised over 35 per cent of referrals lodged in 2006-07, but their share has progressively fallen to just over 22 per cent in 2009-10 (figure 11.4). In comparison, the share of referrals generated by land transport activities has grown from 11 per cent of referrals lodged to 21 per cent over the same period. The share of mining activities has grown modestly from 18 per cent to 21 per cent. Many of the mining and transport projects take place in relatively untouched areas of the country and so would seem more likely to make a significant impact on the environment.

Figure 11.4 **Activities leading to EPBC Act referrals: 2006-07 to 2009-10[a]**

Number of referrals



a Data for 2005-06 was not presented in comparable categories to subsequent years.

Data source: Department of the Environment and Water Resources (2007a); DEWHA (2008, 2009d and 2010h).

Controlled actions arising from residential, commercial and industrial property developments in urban areas

Over the period 2005–06 to 2009-10 there were 88 controlled actions arising from urban development[5] on which the Minister made a final decision as to whether or not to approve the action (table 11.1). The large majority of these decisions related to actions in New South Wales, Victoria, Queensland and Western Australia.

For the decisions listed in table 11.1, the average amount of time taken from the lodgement of the EPBC Act referral to the Minister's final decision was 1 year and 7 months. In 2009-10, there were 21 decisions made on controlled actions arising from urban developments. For these decisions, the average amount of time from the lodgement of the EPBC Act referral to the Minister's final decision was also 1 year and 7 months (figure 11.5), with only 8 of the 21 matters being completed in 12 months or less.

As shown in figure 11.5, the time taken from the lodgement of the EPBC Act referral to the Minister's final decision can be as short as a few months. This can be the case even for major projects — for example, the time taken from the lodgement of the EPBC Act referral to the Minister's 5 July 2010 approval of the Satterley Property Group's development at Wandi was two months (EPBC referral reference

5 Specifically, residential, commercial and industrial property development in urban areas.

2010/5476).[6] This timeframe does not, however, reflect any time spent by the developer in consultation with DSEWPC (or DEWHA as it was then).

Table 11.1 **Location of controlled actions arising from property developments in urban areas[a]: 2005-06 to 2009-10[b]**

	2005-06	*2006-07*	*2007-08*	*2008-09*	*2009-10*	***Total***
NSW	0	3	1	5	5	**14**
Vic	3	4	6	6	6	**25**
Qld	1	3	8	9	5	**26**
SA	1	1	1	0	0	**3**
WA	0	0	7	4	4	**15**
Tas	1	0	0	0	1	**2**
NT	1	0	0	0	0	**1**
ACT	0	0	1	1	0	**2**
Total	**7**	**11**	**24**	**25**	**21**	**88**

a Residential, commercial and industrial property development in urban areas. **b** Figure relates to the Minister's final decision in the year they were made, not in the year the relevant referral was lodged.

Source: EPBC Act Public Notices (database), DEWHA, Canberra, daily updating.

While environmental assessments can be highly technical and therefore take some time to complete, not all of the time taken in completing an EPBC Act approval process can be attributed to such assessments or the actions of government or regulators. For example, some species (such as the Golden Sun Moth[7] and Graceful Sun Moth[8]) can only be observed for a few weeks of each year. This means that if a developer cannot secure the environmental experts necessary for the required assessments in that period, the project will need to be placed on hold for 12 months until the species can next be observed.

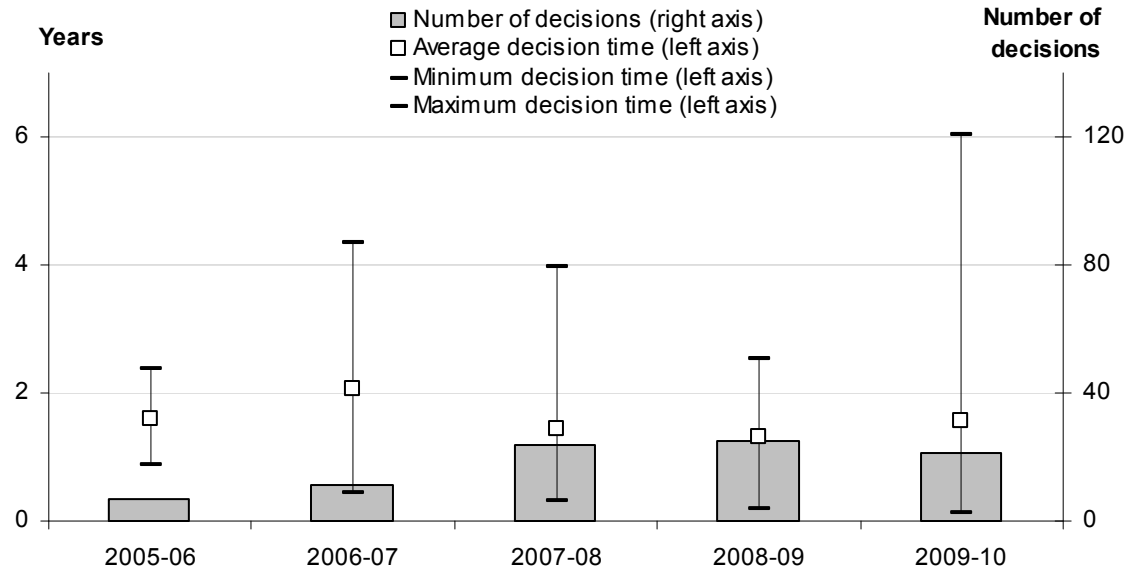
The actions of developers can also contribute to the time taken to obtain an approval under the EPBC Act. For example, one approval granted in 2009-10 took over five years to complete. However, it would seem that during that period the subject property was sold to a different developer and the new owner did not progress the assessment for nearly four years during which time the proposed development was modified and refined.

6 The development includes a town centre (including a mixed use commercial centre), low and medium density housing and a new train station.

7 Adult moths emerge from underground between mid October and early January (depending on climate and location) and only live for one to four days. The moths are only active during the hottest part of hot, sunny and relatively still days (DEWHA 2009c).

8 Adult moths appear for only a few weeks around March each year and only live for two to ten days. The moths are typically only active during the periods of bright sunshine during the hottest part of hot days (DEC (WA) 2010).

Figure 11.5 **Time taken to complete EPBC assessments on controlled actions and make a decision: 2005-06 to 2009-10[a]**
Residential, commercial and industrial property developments in urban areas



a Figure relates to the Minister's final decision in the year they were made, not in the year the relevant referral was lodged.

Data source: EPBC Act Public Notices (database), DEWHA, Canberra, daily updating.

11.2 Interaction of EPBC Act and state/territory environment legislation

The definition of a controlled action under the EPBC Act[9] prohibits the commencement of an assessment of the environmental implications of a project at the rezoning or structure planning stage (structure planning is discussed in chapter 4, box 4.6). This is in contrast, for example, to Western Australia where the state environment laws provide for an assessment of environmental issues at those stages.

Through its website, the DSEWPC emphasises that developers should engage with it on potential EPBC Act matters as soon as is practical. However, this does not always happen in practice. For example, developers in Western Australia might complete the state environmental referral/assessment processes at the rezoning or structure planning stage and even make allowances for matters such as the reservation of land for habitat protection and open public space in their development plans and then embark on the EPBC referral process once they are

9 The definition of an action includes: a project; a development; an undertaking; an activity or series of activities; or a variation to any one of these.

ready to commence the development work (which would constitute a controlled action under the EPBC Act). Box 11.1 provides an example of such a situation.

Box 11.1 **Satterley Property Group's Austin Cove development — case study**

The Town Planning Scheme Amendment for Satterley Property Group's Austin Cove development was referred to the Western Australian Environmental Protection Authority (WAEPA) by the Shire of Murray Council in February 2007. In May 2007, the WAEPA advised that it would not formally assess the amendment (that is, no approval was required under Western Australian environment laws). The Satterley Property Group then completed an EPBC referral in December 2007 for the development actions. The development was determined to be a controlled action in January 2008 and the Minister's approval to the action was granted in October 2008.

Source: EPBC Act Referral Reference 2007/3885, EPBC Act Public Notices (database), DEWHA, Canberra, daily updating)

In addition to the EPBC Act,[10] each state and territory has legislation that provides for the 'listing' of threatened species and the protection of those threatened species. The objectives of these state and territory Acts differ as do the species listed under the provisions of those Acts. The variation in categories and categorisation of species evident in table 11.2 can be attributed, in part, to the different assessment methodology employed by each jurisdiction for including species on its threatened species list. As a result of these different methodologies, the same species is often recommended for different categorisations by different jurisdictions, based on the same data set (Hawke 2009). In some cases, the species or habitat is at a significant risk at the state/territory level, but not nationally. For example, the brolga is listed as threatened under Victoria's *Flora and Fauna Guarantee Act 1988*, but is not listed nationally due to the brolga populations in northern Australia.

As each jurisdiction has its own threatened species list, all developers in Australia must consult two threatened species lists to determine whether their project may require approval under the EPBC Act, state/territory legislation or both. This creates a duplication of effort for developers — a duplication that may be compounded should approval be required under both the EPBC Act and state/territory legislation. (The issue of duplicated and overlapping threatened species lists has been considered in previous Government reviews — including some of those listed in

10 As at 30 June 2006, there were 1684 threatened species listed under the EPBC Act (The Auditor General 2007) and since 30 June 2006 there have been a further 382 species listed as threatened under the EPBC Act (DEWHA 2010c) and 57 species have been removed from the listing (DEHWA 2010d).

section 11.1. The Threatened Species Scientific Committee established under the EPBC Act is currently undertaking work on aligning threatened species listings).

Table 11.2 **Threatened species listings of the jurisdictions**
Examples drawn from selected species

	Cwlth	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Dingo	-	-	T	-	-	UN	n.n[c]	-	-
Golden Sun Moth	CE	E	T	n.n	n.n	-	n.n	E	n.n
Graceful Sun Moth	E	n.n	n.n	n.n	R	n.n	n.n	n.n	n.n
Koala[a]	-	V	-	LC	-	-	-	-	-
Long-nosed Potoroo	V	V	T	V	n.n	n.n	SP	n.n	n.n
Short-billed black cockatoo[b]	E	n.n	n.n	n.n	R	n.n	n.n	n.n	n.n
Striped legless lizard	V	V	T	n.n	n.n	-	n.n	V	n.n
Sugar glider	-	-	-	-	-	R	-	-	n.n
Superb parrot	V	V	T	n.n	n.n	n.n	n.n	V	n.n
Wombat (common)	V	-	-	NT	-	R	SP	-	-

- not listed. **n.n** not native. **CE** Critically endangered. **E** Endangered. **LC** Least concern. **NT** Near threatened. **R** Rare (and, in Western Australia, likely to become extinct). **SP** Specially protected. **T** Threatened. **UN** Unprotected. **V** Vulnerable. **a** The koala is also considered 'vulnerable wildlife' in the south-east Queensland bioregion and the koala populations of Hawks Nest, Tea Gardens and the Pittwater Local Government Area are considered to be 'endangered'. **b** Also known as Carnaby's Cockatoo. **c** Under the *Nature Conservation Act 2002* (Tas) there is a prohibition on the introduction of dingos into Tasmania.

Source: DEWHA (2009a); DEWHA (2010a); DNREAS (2007); *Nature Conservation (Wildlife) Regulation 2006* (Qld), *National Parks and Wildlife Act 1972* (SA);TAMS (2006); *Threatened Species Conservation Act 1995* (NSW); *Threatened Species Protection Act 1995* (Tas); Victorian Government Gazette (27 May 2010); *Wildlife Conservation (Specially Protected Fauna) Notice 2010(2)* (WA);

Differences in how the jurisdictions provide for the protection and management of threatened species also has an impact on development activity and on developers and other stakeholders. For example, New South Wales and Victorian legislation both have explicit provisions relating to the habitat of threatened species, while the ACT legislation is primarily focused on stopping the 'killing, taking, keeping and selling' of protected animals. Adding the requirements of the EPBC Act to this mix would seem to have created confusion for stakeholders — for example, during consultations, the Commission was advised in one jurisdiction that the EPBC Act protected the species while the state legislation protected its habitat, while the converse explanation was provided in another jurisdiction.[11] While these are simply the perceptions of stakeholders rather than factual assertions, they speak to how poorly understood these requirements are by some stakeholders and perhaps also to differing approaches to the administration and enforcement of threatened species legislation by different jurisdictions.

[11] In the greenfield developer survey completed by the Commission, some respondents also seem to have confused requirements under state environment laws with EPBC Act requirements.

'Strategic assessments' and 'bilateral agreements' (discussed below) provide alternatives to assessing controlled actions on a one-by-one basis and possible solutions to the mismatches of environmental assessments under Commonwealth and state/territory legislation. Separate to these alternatives, the alignment of the information requirements of the Commonwealth and states and territories through agreements can also be beneficial (such as the agreement of the *Australian Government and Victoria Relating to Environmental Impact Assessment*).

Strategic assessments

A 'strategic assessment' under the EPBC Act is an examination of an area to determine how the environmental, cultural and heritage aspects of that area can be best protected while still allowing for development. A strategic assessment is typically undertaken jointly by Commonwealth (DSEWPC) and the relevant state/territory government, although the Commonwealth can partner with local governments, members of the urban development industry and mining and resource companies to complete an assessment.

A strategic assessment is focused on the potential impacts across an entire landscape before development begins, rather than looking at individual projects one-by-one. Such an approach is intended to facilitate the concurrent consideration of Commonwealth and state/territory environmental concerns and give greater upfront clarity and certainty to developers, landholders, planners, industry, government and the community.

Once approved by the Minister, a strategic assessment removes the need for any further approvals under the EPBC Act for individual activities that are compliant with the land use plan endorsed under that strategic assessment (DEWHA 2010b and DEWHA 2010f).

Up to 30 June 2010, six strategic assessments had been commenced and one completed (table 11.3). While these assessments may provide for greater certainty for developers and business, they take time to complete — the Molonglo Valley assessment in the ACT is still in progress two years after its commencement.[12] The time taken in completing the Molonglo strategic assessment has been impacted by the fact that the relevant EPBC Act strategic assessment provisions were not in place when ACT Government was undertaking its initial land use planning for the

[12] The Molonglo development has passed through the requisite ACT planning processes and part of the development has been completed. However, the remaining portion of the development is awaiting satisfactory completion of the strategic assessment process before it can commence (ACTPLA 2010b, 2010c).

Molonglo area. As a result, the process was complicated by starting the strategic assessment some time after the land use planning had commenced. Accordingly, strategic assessments would seem to be of greatest benefit to all stakeholders where they are undertaken in a timely manner in conjunction with the broader strategic land use planning for an area and completed before anyone seeks to commence development in that area — as was the case with the strategic assessment conducted in conjunction with the Victorian Government's consideration of the expansion of Melbourne's Urban Growth Boundary. Otherwise a situation, such as that in Molonglo development, may arise whereby the land use planning for an area has been completed but development is being held up pending the completion of the EPBC Act strategic assessment — the outcome of which may require amendments to the previously determined land use plans. The timely completion of strategic assessments is an important consideration — an assessment that takes five or even ten years to complete may end up costing more than allowing the relevant area to be developed subject to individual EPBC Act approvals (although these two approaches may have different environmental outcomes).

Table 11.3 **Strategic assessments under the EPBC Act**
Assessments commenced to September 2010

Date commenced	*Jurisdiction*	*Strategic assessment*	*Status*
6 August 2008	WA	Browse Basin LNG Precinct (West Kimberley)	In progress
16 September 2008	ACT	Molonglo[a]	In progress
4 March 2009	Vic	New areas to be included in Melbourne's Urban Growth Boundary[a]	**Completed**: Approvals granted on 11 June 2010[b] and 8 July 2010[c]
11 November 2009	NSW	Western Sydney growth centres[a]	In progress
15 January 2010	SA	Fire management policy	In progress
5 February 2010	Tas	Midlands Water Scheme	In progress
25 February 2010	Qld	Mount Peter Master Planned Area[a]	In progress

[a] Assessment of an area for urban development. [b] Regional rail link project. [c] 28 precincts within Melbourne's urban growth boundary.

Source: DEWHA (2010f).

Strategic assessments shift the cost of environmental assessments from developers to government. Part of this 'cost shift' may be justified on the basis that strategic assessments are arguably the more efficient process — one holistic assessment for a potentially large region as opposed to a number of individual assessments that may not consider the cumulative impact on that region. While it would not be inappropriate for government to seek to recover some of the cost of strategic assessments from developers, the process of determining the share of benefits accruing to developers and then allocating that proportion of the total cost across

developers renders this task imprecise, impractical and unviable. The difficulties in undertaking any cost recovery are further compounded by the fact not all of the area assessed would be developed at once (if ever) and recovery from developers could only occur over time as individual development projects emerge and commence.

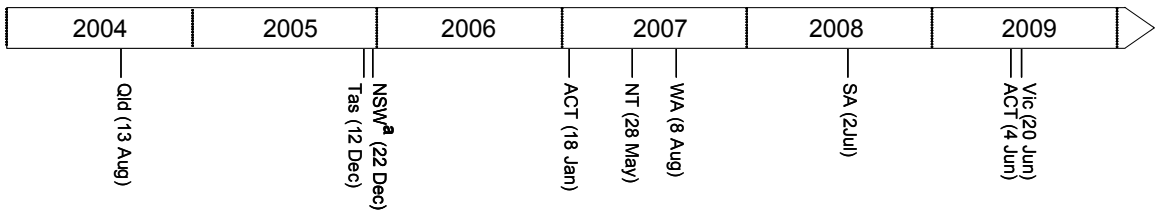
Bilateral agreements

Bilateral agreements between the Commonwealth and state and territory governments are one of the ways in which those governments have sought to limit the impact on business and development activity of having environment protection legislation (including threatened species legislation) from two different levels of government applying in each jurisdiction. The bilateral agreements can, but do not necessarily have to, come into effect where an action requires approval under both the EPBC Act and a state or territory environmental law. The EPBC Act allows the Commonwealth to enter into bilateral agreements with the states and territories that:

- delegate the conduct of environmental assessments under the EPBC Act to the states/territories — such assessments can only proceed under the state and territory processes accredited by the Commonwealth (that is, only one assessment process need be completed to inform decision makers under both Commonwealth and state/territory legislation)
- accredit the states and territories to make binding 'approval' decisions on EPBC Act matters after the completion of an accredited assessment process (applies where the EPBC Act matters fall within the scope of the bilateral agreement)..

All states and territories have a bilateral agreement with the Commonwealth that accredits some of their respective assessment processes to be applied to EPBC Act matters (figure 11.6). However, to date only one bilateral agreement (between the Commonwealth and New South Wales in relation to the Sydney Opera House) has been signed that accredits a state or territory to make binding decisions on EPBC Act matters (along with decisions required under their own legislation) following the completion of an accredited assessment process. As a result, even though the Commonwealth has accredited certain **assessment processes** in each state and territory, and signed bilateral agreements to that effect, the individual governments remain the **decision makers** for their respective environmental laws. The existence of two separate decision makers leaves open the possibility of conflicting decisions and/or conditions of approval, even though the decisions are based on common information derived from a single assessment process. In practice, the jurisdictions and Commonwealth rely on constant communication throughout the bilateral assessment process to limit any inconsistency in their conditions of approval.

Figure 11.6 **Implementation of bilateral agreements under the EPBC Act**



[a] A separate agreement applying only to the Sydney Opera House was signed by the Commonwealth and New South Wales Governments on 22 December 2005.

Data source: DEWHA (2009b).

Despite a five year lag between the signing of the first (Queensland in 2004)[13] and last (Victoria in 2009) bilateral agreements (figure 11.6), all agreements are very similar in their construction (table 11.4). However, there are some notable differences between the agreements, including:

- there are five possible approaches for assessing a matter under the Victorian bilateral agreement compared to a single assessment approach under the ACT's bilateral agreement. The bilateral agreements for New South Wales, Queensland, South Australia and the Northern Territory provide for three possible assessment approaches, while the Western Australian and Tasmanian bilateral agreements provide for two possible assessment approaches
- the Queensland agreement is the only one not to include a commitment to develop administrative arrangements to allow proponents to simultaneously satisfy the requirements of the state and Commonwealth[14]
- Western Australia and the Northern Territory have not agreed to consult with the Commonwealth over the conditions they will apply to their approvals. Their agreements are limited to observing the EPBC Act provisions requiring the Commonwealth Minister to consider any conditions of the state/territory when deciding whether or not to attach a condition to their approval, and a mutual commitment by the state/territory and Commonwealth to inform each other before varying any conditions attached to an action which has been already approved by both parties
- South Australia is the only jurisdiction to include local councils in its commitment to use its best endeavours to ensure that all EPBC Act matters are referred to the Commonwealth, while Queensland makes no such commitment at any level.

13 An updated bilateral agreement between the Commonwealth and Queensland was signed on 11 August 2009 following amendments to Queensland's planning laws.

14 Internal guidelines on bilateral agreements in Queensland's environmental agencies provide for administrative arrangements to facilitate proponents simultaneously satisfying the requirements of the state and Commonwealth (Queensland Government, pers. comm. 14 December 2010).

Table 11.4 **Terms of bilateral agreements assessments under the EPBC Act**

	NSW	*Vic*	*Qld*[a]	*WA*	*SA*	*Tas*	*ACT*	*NT*
Objectives:								
Protect the environment	✓	✓	✓	✓	✓	✓	✓	✓
Promote conservation and sustainable use of resources	✓	✓	✓	✓	✓	✓	✓	✓
Ensure efficient, timely and effective processes for environmental assessments	✓	✓	✓	✓	✓	✓	✓	✓
Minimise duplication between EPBC Act and state/territory legislation	✓	✓	✓	✓	✓	✓	✓	✓
State/territory assessment processes may apply to EPBC Act matters	✓	✓	✓	✓	✓	✓	✓	✓
Number of possible assessment approaches[b]	3	5	3	2	3	2	1	3
Minimum public consultation period (days)	30	nr-28[c]	nr-20[c]	28	28	28	28	nr-28[c]
State/territory will use its best endeavours to ensure that all EPBC Act matters are referred	✓	✓	×	✓	✓[d]	✓	✓	✓
Commonwealth and state/territory to develop administrative arrangements to allow proponents to simultaneously satisfy their respective requirements (wherever possible)	✓	✓	×[e]	✓	✓	✓	✓	✓
Commonwealth and state/territory to consult each other on the conditions they will apply to their respective approvals	✓	✓	✓	×	✓	✓	✓	×

nr no requirement. [a] Comparison is based on the updated bilateral agreement signed on 11 August 2009. [b] The assessment approaches specified in the bilateral agreements can include (but are not limited to details of: the state/territory legislation with which the process must comply (e.g. state environmental and/or planning laws); public consultation periods; requirements environmental impact studies (and equivalents); requirements for advisory panel and committees; and final documentation requirements. [c] Timeframe for public consultation depends upon the manner of assessment. [d] Commitment on behalf of the state extends to development applications dealt with by local councils. [e] Internal guidelines on bilateral agreements in Queensland's environmental agencies provide for administrative arrangements to facilitate proponents simultaneously satisfying the requirements of the state and Commonwealth.

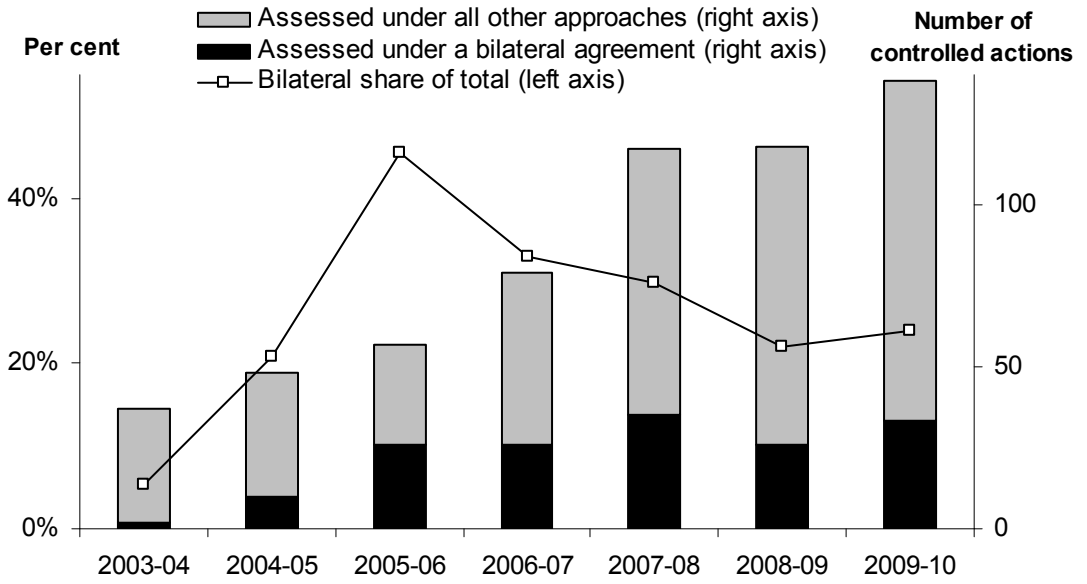
Source: Bilateral agreements between the Commonwealth and the states and territories; (Queensland Government, pers. comm. 14 December 2010).

The different possible assessment approaches under the bilateral agreements derive from the environmental laws of the respective states and territories. As a result, the EPBC Act has a different application depending upon the jurisdiction of the proponent (where the assessment is to proceed under bilateral agreement). In order for bilateral agreements to concurrently provide for a single assessment process within a jurisdiction and a consistent process across jurisdictions, the states and territories would need to accept the Commonwealth's assessment process for the purpose of making decisions under their respective environment laws.[15] Such a

[15] Some would argue that state/territory accreditation of the Commonwealth's EPBC Act assessment process would result in greater inefficiency as there are matters requiring consideration under state and territory planning and environment laws that do not require assessment under the EPBC Act. As such, the Commonwealth's assessment process would need

structure would benefit those developers who operate across jurisdictions as, where their projects were eligible for assessment under a process set out in a bilateral agreement, they would only need to understand one assessment process (the Commonwealth's) rather than the multiple assessment processes presently required. While the acceptance by the states and territories of Commonwealth assessments is provided for the November 1997 *Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment* agreed by the Council of Australian Governments (COAG), it has not been implemented in any of the bilateral agreements presently in place.

Figure 11.7 **Decisions on assessment approach to be taken for controlled actions under the EPBC Act**



Data source: DEWHA (2010e); DEWHA (2010h).

In practice, assessments under processes set out in bilateral agreements are not the predominant assessment approach employed in deciding actions referred under the EPBC Act (figure 11.7). In fact, for the year 2009-10 (the first full year in which all jurisdictions had a bilateral agreement in place) only 24 per cent of the matters determined to be controlled actions (and so requiring the Minister's approval) were to proceed under an assessment approach set out in a bilateral agreement. This share is further reduced when only residential, commercial and industrial property developments in urban areas are considered — only 2 of the 21 such referrals

to be expanded to accommodate these state and territory requirements. However, as the existing bilateral agreements have shown, it is possible for governments with differing requirements to agree to a mutually acceptable assessment process for matters falling within the scope of those agreements.

decided in 2009-10 were assessed under a process set out in bilateral agreements (both related to actions taken in New South Wales).

Box 11.2 **Assessments under a bilaterally agreed assessment process in practice**

The assessment of an action under a bilateral agreement can only proceed after an EPBC Act referral has been made, the action determined to be a controlled action and the Minister determining the controlled action deciding that an assessment approach agreed under a bilateral agreement can be used. This is no dedicated and separate process by which a proponent can seek to have their action assessed and decided where it triggers an approval requirement under both the EPBC Act and the relevant state/territory legislation.

As a result, the operation of (and access to) to bilaterally agreed assessment processes is dependent upon:

- the jurisdictions adhering to their commitments under the bilateral agreements to use their best endeavours to ensure that all EPBC Act matters are referred to the Commonwealth (table 11.4). To be effective, this means that officers in state and territory environment departments/agencies (and in some cases local councils) must have a good knowledge of EPBC Act requirements and be able to prompt a proponent seeking a state/territory approval to make an EPBC Act referral where a material impact on an NES matter is likely
  - the Satterley Property Group development at Austin Cove (discussed above) is one example where such a referral has been prompted by the local council. Reviewing recent EPBC referrals shows advice is being provided by state/territory environment departments/agencies that proponents should speak to the DSEWPC regarding their proposed action
- the proponent knowing a bilateral assessment process is available where it requires both EPBC and state/territory approvals and then acting on that knowledge
- the DSEWPC having a knowledge of state/territory approval requirements, using this knowledge to direct the proponent to the relevant state/territory environment departments/agencies and, if a state/territory approval is required, recommending assessment under a bilaterally agreed assessment process.

Source: DEWHA (2010a); EPBC Act Public Notices (database), DEWHA, Canberra, daily updating; Productivity Commission survey of greenfield developers (2010, unpublished).

Part of the reason for this relatively low rate of assessments under a bilateral agreement is that an action must trigger an approval requirement under both the EPBC Act and the relevant state/territory legislation in order for the assessment to proceed in this way. The divergent nature of these Acts means that not every action that triggers the requirement for an EPBC Act approval will also trigger the requirement for approval under state/territory legislation (and vice versa). Another possible reason for the comparatively low rate of assessments under a bilateral

agreement is the absence of a structured process by which business can seek such an assessment approach (box 11.2). The actions of developers also contribute to the comparatively few matters that proceed under a bilateral assessment. For example, during consultations the Commission's attention was drawn to instances where developers do not initiate an EPBC referral until the state/territory environmental application process is well advanced — even where the state/territory has prompted the developer to initiate an EPBC referral. In such cases, the advanced progress of the state/territory environmental process renders any gains from a bilateral process moot.

Environmental offsets

As well as the time taken to assess and make a decision on a controlled action, another of stakeholders' concerns are the conditions applied to approvals once they are forthcoming — the conditions relating to environmental offsets (box 11.3) being the most contentious. The Western Australia Government has previously expressed concern that the Commonwealth's approach to offsets results in 'delays, uncertainty and higher development costs without getting the best environmental outcome as it appears to have a narrow focus on reservation of equivalent-sized offset areas (or larger areas where habitat rehabilitation is involved) in a piecemeal way' (2008, p. 4). Similar sentiments were expressed by other stakeholders over the course of this study.

Where projects require approval under both the EPBC Act and state/territory environmental laws, proponents may need to satisfy the requirements for environmental offsets from both Commonwealth and state/territory governments. While the offsets required by a state or territory may satisfy EPBC Act approval requirements, it is not always the case. This is because approvals under the EPBC Act are focused on NES matters which are typically more narrowly defined than the matters covered under state and territory approvals (which aim to protect broader biodiversity values and the whole of the environment) (Department of the Environment and Water Resources 2007a). As such, the offsets sought under the EPBC Act can be more precisely defined and targeted toward mitigating the impacts on the NES matter, rather than the protection of biodiversity and the environment more generally.

Box 11.3 **Environmental offsets**

DSEWPC has defined environmental offsets as 'actions taken outside a development site that compensate for the impacts of that development — including direct, indirect or consequential impacts'. Offsets are typically required for those projects where the adverse impacts on the environment cannot adequately be avoided or mitigated and, as such, they are a tool for allowing development while still seeking to secure long-term conservation outcomes.

Environmental offsets can be classified as:

- direct offsets, including: the acquisition and inclusion of land in a conservation estate; covenanting arrangements on private land; restoration or rehabilitation of existing degraded habitat; and re-establishing habitat
- indirect offsets, including: implementation of recovery plan actions; contributions to relevant research or education programs; removal of threatening processes; contributions to appropriate trust funds or banking schemes; and on-going management activities such as the monitoring, maintenance, preparation and implementation of management plans.

Where land is required to be set aside as an offset under an EPBC Act approval, the ongoing management of that land generally falls to the relevant state/territory government or, in some instances, the relevant local government.

Source: Department of the Environment and Water Resources (2007b).

All states and the Northern Territory either have a policy on environmental offsets or have such a policy under active consideration, while the Commonwealth has released a six page draft policy statement on environmental offsets under the EPBC Act (Department of the Environment and Water Resources 2007b).[16] The Western Australia Government (2008, p. 4) contends that the draft status of this policy and its lack of detail have 'exacerbated uncertainty and delays for projects subject to the EPBC Act'.

Even though the Commonwealth does not have a formal policy on environmental offsets, they are regularly included as EPBC Act approval conditions.[17] For the year 2009-10, 10 of the 20 approvals granted under the EPBC Act for residential,

[16] These policies for environmental offsets (as defined in box 11.3) are distinct from government policies enacted as part of their strategic land planning to preserve land for environmental reasons (some of these policies are discussed in chapter 4, section 4.2). For example, while the ACT does not have an offsets policy, substantial amounts of land in the ACT are reserved for 'environmental uses'.

[17] The EPBC Act provides for the Minister attaching an approval condition if he or she is satisfied that the condition is necessary or convenient to protect the NES matter (or to mitigate or repair damage). The presence (or absence) of a formal Government policy on environmental offsets does not impact on the Minister's ability to attach such approval conditions.

commercial and industrial property developments in urban areas required direct offsets of land (table 11.5).[18] Where a set amount of land was prescribed within the conditions of the approval, the amount of offsetting land required for each hectare of development ranged from 0.1 to 8.4 hectares. While this is a considerable range, it should not be interpreted as inconsistent decision making. This is because each project differs in the scale and intensity of its impact on the environment and the extent to which that impact can be otherwise mitigated or avoided. Hence, the comparative size of offsets sought should vary from project to project in line with the nature of each project.

Table 11.5 **Land offsets as conditions of EPBC Act approvals: 2009-10**
Residential, commercial and industrial property developments in urban areas

	Referrals decided	*Approvals conditional upon land offsets*	*Ratio of offset area to development area*[a]		*Other 'offset' conditions*[b]
	Number	Number	Minimum (ratio x:1)	Maximum (ratio x:1)	
NSW	5	2	0.2	8.4	n.a
Vic	6	4	1.2	4	• Proponent to devise offset plan and deposit **$1 million** (in trust) to cover the purchase of offsetting land.[c]
Qld	5	1	0.1		n.a
WA	4	3			• Proponent to set aside **$650 000** for the purchase up to 1 250 hectares of conservation land.[d] • Proponent to provide **$370 000** toward the purchase of conservation land and maintain **2 hectares** of cockatoo foraging area within the development.[e] • Proponent to provide **$300 000** for the purchase of **459 hectares** of offsetting land, provide **$314 111** toward the purchase of conservation land and maintain **5.54 hectares** of cockatoo foraging area within the development.[f]
Tas	1	0	n.a	n.a	n.a

n.a not applicable. [a] Where the conditions prescribe a set area to be offset. [b] Where the conditions **did not** prescribe a set area to be offset. [c] The conditions also obligate the proponent to cover the cost of the purchase of offsetting land should the cost exceed $1 million. [d] Development area was 54.4 hectares. [e] Development area was 16 hectares. [f] Development area was 226 hectares.

Source: EPBC Act Public Notices (database), DEWHA, Canberra, daily updating.

18 In 2009-10, the Minister made 21 decisions on controlled actions for residential, commercial and industrial property developments in urban areas (table 11.5), of which 20 were approvals and 1 was a refusal.

Requirements for offsetting land were not the only conditions applied to the 20 approvals granted under the EPBC Act in 2009-10 for residential, commercial and industrial property developments in urban areas. Other conditions included:

- the retention of topsoil and the provision of that topsoil to the state environmental regulator for land rehabilitation works
- the gathering of harvestable seed and provision of that seed to the state government's department for the environment
- the planting of a set number of seedlings of particular plants and a commitment that if a given percentage of those seedlings did not survive a set period, the lost seedlings would be replaced
- monetary contributions for rehabilitation works
- monetary contributions for measures such as the construction of a Cassowary crossing
- water quality tests
- fencing of certain areas (EPBC Act referrals database (EPBC Act Public Notices (database), DEWHA, Canberra, daily updating).

These conditions were applied relatively consistently to comparable developments within each jurisdiction, even if the extent of the condition (such as the amount of topsoil to be retained) varied from project to project. It is also notable that, for many of the projects, the conditions required by the Commonwealth largely reflected the controls put forward by the project's proponents for approval.

11.3 Commonwealth land

The land owned by the Commonwealth is spread across Australia and includes: defence establishments; Commonwealth national parks; certain airports, certain office and research facilities (such as numerous Commonwealth Scientific and Research Organisation sites); and certain special purpose properties (such as the Royal Australian Mint and Commonwealth Law Courts). Further, all land in the ACT is owned by the Commonwealth — this section does not consider the unique arrangements relating to Commonwealth land in the ACT which, while presenting planning challenges, are not amenable to benchmarking across jurisdictions given their uniqueness.[19]

[19] For administrative purposes, the ACT divides 'Commonwealth land' into 'National Land' and 'Territory Land'; the National Capital Authority undertakes planning assessment of developments on 'National Land', while ACTPLA has primary responsibility for 'Territory Land'.

The development of Commonwealth land is not typically subject to the same planning controls as development on non-Commonwealth land. As a result, such development can be at odds with the local land use plans developed for the area and it can place unplanned demands on local infrastructure that take that infrastructure beyond its capacity. For example:

> The City of Whyalla has been sidelined in shaping the boundaries of the Cultana Defence training area expansion 15 kilometres to the north of the city. The expansion area excludes a large area of industrially-zoned land ideally suited to major industrial developments requiring extensive site areas. Better coordination between the federal, state and local government levels would result in all parties needs being satisfied; this has not happened to date and threatens diversification of Whyalla's economy and its negotiations with potential end users. (City of Sydney, sub. 55, p. 2)

On the other hand, development approved by local or state authorities in proximity to Commonwealth land does not always take account of the uses of that Commonwealth land and may encroach on Commonwealth land or buffer regions around that land, thereby limiting the extent to which that Commonwealth can be used for its intended purpose. For example, residential development into the noise corridors around airports may result in curfews being implemented that limit aviation activities at that airport. A number of submissions raised this as a relevant issue:

> Previous Brisbane Airport Master Plans show that the location for the proposed runway has been moved twice in the past decade in response to concerns about noise impacts on existing communities. The result was a substantial buffer zone around the airport ensured a balance between sustainable and curfew-free airport operations and a high level of residential amenity. A consequence of the relocation of the runway was to "shrink" the noise contours closer to the airport (and reduce the areas exposed to more significant noise levels), and recent planning applications have indicated that developers are now taking advantage of this reduced noise footprint to re-zone and then develop previously industrial-zoned sites as residential developments. BAC believes that the approval of these applications significantly erodes the benefits that the relocation of the New Parallel Runway delivered. (Brisbane Airport Corporation Limited 2009)

> … in Victoria there is no link between land use planning controls and prescribed airspace…The current systems for the protection of Melbourne Airport's Prescribed Airspace are inadequate and must be improved… In particular there is a need to consider additional mechanisms to prevent the expansion of residential development into areas which are likely to be the subject of noise nuisance, and to establish clear buffers which provide for long term certainty as to future development. (Melbourne Airport 2009)

Some Commonwealth legislation, such as the *Airports Act 1996*, includes measures for the integration of land use planning on Commonwealth land with the plans and policies of surrounding state/territory and local governments. However, outside of

such legislation, there are few mechanisms in place to formally coordinate the actions of the Commonwealth and states/territories. Those mechanisms that are in place typically focus on airports (table 11.6).

Table 11.6 **Mechanisms for coordinated planning on and around Commonwealth land**

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
Memorandum of understanding	-	-	-	-	-	-	Airports[a]	Defence Housing[b]
Formal agreement	-	-	-	-	-	-	-	-
Advisory group / steering committee	Airports	-	-	-	-	Airports	-	-

- No measures in place. [a] Draft agreement. Agreement is made directly with the operators of Canberra Airport and does not involve the Commonwealth. The Commonwealth Minister for Infrastructure, Transport, Regional Development and Local Government remains responsible for planning decisions on the airport's land. [b] Sets a share of land in new residential suburbs to be set aside for Defence Housing Australia.

Source: Productivity Commission survey of state planning departments and agencies (2010, unpublished).

While development on Commonwealth and surrounding land presents a potential coordination issue, stakeholders have raised it as an issue for this study primarily in the context of Commonwealth owned airports of which there are 21 including: Sydney; Melbourne; Brisbane; Perth; Adelaide; Hobart; Canberra and Darwin airports. As a consequence, the remainder of this section focuses on development on and around Commonwealth airports.

Development on Commonwealth airport land

Commonwealth airports[20] are regulated under the *Commonwealth Airports Act 1996* (Cwlth), which specifies requirements such as master plans for the airport and major development plans for significant developments. The Commonwealth Minister for Infrastructure and Transport is responsible for this Act and, in turn, the planning and development decisions in relation to Commonwealth airports.[21] As such, these airports are not subject to the planning and development laws of the states and territories, or the land use plans of local councils — although a degree of alignment is required between an airport's land use planning and the relevant state/territory and local government planning schemes.

Melbourne, Brisbane, Perth and Canberra airports in particular have been the sites of a comparatively high number of non-aviation developments since 2005

[20] The operation of all 21 Commonwealth airports have been privatised through the sale of long-term leases over the airport sites.

[21] Prior to December 2010, it was the Minister for Infrastructure, Transport, Regional Development and Local Government who was responsible for the Act.

(table 11.7). However, in the case of Perth, these developments have related to manufacturing and distribution/logistics (activities either unaffected by airport noise or that benefit from proximity to transport infrastructure), rather than retail and offices. Such developments have, on occasion, been followed by concerns over the extent to which they have often not been integrated with state and territory policies and local council land use plans and the extent of state, territory and local government provided infrastructure needed to support development on airport land. (box 11.4).

Table 11.7 **Major non-aviation developments approved for capital city airports**

	Development	*Year*
Sydney	Two nine level mixed use buildings[a]	2005
Melbourne	DHL Danzas freight facility	2006 & 2007
	Mixed use development[b]	2007
	Reject Shop distribution centre	2006
	Office development	2004
	International mail sorting facility	2004
Brisbane	Federal Office building	2007
	Hotel Precinct	2007
	Convenience centre	2007
	Direct Factory Outlet[c]	2004
Perth	Linfox warehouse and distribution centre	2007
	Clay manufacturing plant	2006
	Coles Myer distribution centre	2006
	Woolworths warehousing and distribution park	2003
Adelaide	Hotel complex	2008
	IKEA store	2005
Hobart	Outlet centre and bulky goods/homemaker centre	2007
Canberra	Office Development	2008
	Office complex	2007
	Direct Factory Outlet[c]	2006
Darwin	Home and Lifestyle Super Centre	2009

a The buildings provide 18 000m^2 floor space which can be used for office, retail and hotel use. **b** Approximately 48 000m^2 of restricted retailing, convenience retailing and other uses. **c** Large floor space warehouse shopping.

Source: Department of Infrastructure, Transport, Regional Development and Local Government (2009b); Department of Transport and Regional Services (2005).

Box 11.4 **Impact on local planning frameworks of development on Commonwealth land**

The *National Aviation White Paper* (Department of Infrastructure, Transport, Regional Development and Local Government 2009a) cites examples of retail and commercial developments on airport land that have generated increased traffic congestion, noise and other community impacts. The *National Aviation White Paper* also noted that a number of retail developments on airport land were identified by local councils as having progressed without reference to the local land use plans and so did not observe the retail hierarchy planned for the area.

Perth and Brisbane's planning frameworks have been challenged by developments on airport land. For example developments at Brisbane's airports are said to have caused significant inefficiencies in Brisbane's infrastructure and economic planning. While developments at Perth Airport and on surrounding land are said to have occurred with little provision being made for the necessary transport infrastructure. (Council of Capital City Lord Mayors, sub. 31)

The Senate Standing Committee on Rural and Regional Affairs and Transport (2007) inquiry into the Airports Amendment Bill heard an array of concerns focusing on the approval mechanisms for Commonwealth airports. Local authorities and business groups in particular highlighted perceived issues including:

- large-scale commercial developments taking place on airport land outside the planning controls that apply to similar developments on non-airport land
- poor consultation with communities and state and local planning authorities
- lack of developer contributions for off-airport infrastructure requirements
- documentation requirements less than for conventional development applications
- the role of airport lessees as both proponents and approval authorities for some developments.

Since December 2008, the Commonwealth Government has been working with representatives of state and territory and local governments, and the airports on many of these issues (box 11.5). Further, as part of the *National Aviation White Paper*, a number of reforms were proposed, including:

- requirements for the airport master plans to show how they align with state and local government planning laws and to justify any variances
- new community impact trigger for major development plans relating to proposals with significant community, economic or social impacts
- prohibition of developments likely to conflict with the long-term operation of an airport as an airport (subject to Ministerial approval in exceptional circumstances) — these developments are now known as 'sensitive developments' and include long-term residential development, residential aged care or community care facilities, nursing homes, hospitals and schools.

- all federal airports (except Mt Isa and Tennant Creek) are to establish Community Consultation Groups, with the main capital city airports also required to establish a Planning Coordination Forum for regular strategic dialogue with planning authorities
- provisions for consultation with state/territory and local governments on development of a safeguarding framework to protect airports and the communities around them (Department of Infrastructure, Transport, Regional Development and Local Government 2009a).

Box 11.5 **Planning Coordination Forums**

Some airports and governments already engage on planning issues in relation to airports and their surrounding communities. For example, the Brisbane Airport holds regular summit meetings with community representatives and state and local government planners. Similarly, the Adelaide Airport and state government officials also have regular, formal contact on economic development, planning and environmental issues.

The *National Aviation White Paper* (Department of Infrastructure, Transport, Regional Development and Local Government 2009a) foreshadows a requirement for 'Planning Coordination Forums' to be established for each main capital city passenger airport. The Planning Coordination Forums are intended to facilitate discussion and engagement on matters such as Master Plans, the airport's program for proposed on-airport developments, off-airport development approvals and significant ground transport developments that could affect the airport.

Source: Department of Infrastructure, Transport, Regional Development and Local Government (2009a).

Of these reforms, the master planning process along with the consultation provisions, are essential elements in addressing the concerns raised in relation to development on airport land. These mechanisms, if successfully implemented, will provide the opportunity for airports and state, territory and local governments to jointly work through the likely impacts of future airport developments.[22]

As at January 2011, many of the reforms from the *National Aviation White Paper* have been implemented or are being implemented. The Planning Coordination Forums and Community Aviation Consultation Groups have either been established or are being established, where they are required. Amendments to the *Airports Act* to strengthen planning requirements at regulated airports have also been passed by Parliament (and are now operational).

[22] While the reforms were not in place for observation in the benchmarking period of 2009-10, they were in the process of being implemented as at January 2011 with the process of implementation providing stakeholders with the opportunity to have input into planning issues.

Development in proximity to airport land (and under flight paths)

Development near an airport can potentially impact upon the operation of that airport. For example, the construction of a multi-storey building near an airport may affect aviation safety by creating a physical obstruction to aircraft or interfering with air navigation surveillance and navigation equipment. Similarly, a residential development under a flight path may result in earlier curfews for the airport should the residents be sufficiently vocal and persuasive in complaints over noise from the airport. The state, territory and local governments responsible for the planning and development controls on the land around airports need to be alive to the possible issues their planning and development decisions may cause.

It has been said that, amongst the major Australian airports the issue of coordination has been most problematic for the Canberra airport (Stevens, Baker and Freestone 2010). This is because the Canberra airport is located close to the New South Wales-ACT border and so has two distinct planning regimes making decisions with the potential to affect its operations. The scale of the Canberra Airport (and the commercial development thereon) and its proximity to the Canberra Central Business District makes its impact on Canberra's commercial land supplies and uses quite pronounced.

The proposed Tralee development (box 11.6) provides an example of the planning issues that can arise for developers, airports and communities — after over eight years, the fate of the proposed development remains undecided and a source of ongoing cost and uncertainty for the developer, the airport and the community. While the impasse on the Tralee development requires the resolution of planning issues, it also requires a resolution of the issues raised by the competing commercial interests of the developer and the airport and the policy objectives of four governments (the Commonwealth, New South Wales, ACT and Queanbeyan City Council).

Queensland, Western Australia and South Australia are the only jurisdictions to have aviation-specific state planning policies (Stevens, Baker and Freestone 2010 and Productivity Commission survey of state planning departments and agencies 2010, unpublished) and New South Wales, Queensland and South Australia are the only jurisdictions to have referral provisions triggered by developments in proximity to airport land (see table 10.4 in chapter 10). However, the strategic land use plans for Sydney, Melbourne, South East Queensland, Perth, Adelaide and the ACT all have provisions to the effect that:

- residential development will take place away from airport noise corridors
- land in airport noise corridors will be directed toward industrial activities, transport related businesses and other uses that are not affected by noise.

Box 11.6 **Tralee development — case study for development near an airport**

The area known as 'Tralee' comprises around 230 hectares and is located approximately six kilometres south west of the Queanbeyan city centre and immediately adjoining the ACT border. It is also located in an area proposed by the Canberra Airport owners (Canberra Airport Limited (CAL)) to be a high noise corridor.

Tralee was purchased by Canberra Estates Consortium No. 4 Pty Limited (CEC4) in June 2002 — CEC4 being a joint venture company majority owned by Village Building Co. Limited and related parties. In July 2002, CEC4 sought the rezoning of Tralee to 'residential land' from Queanbeyan City Council — a yield of 1500–2000 dwellings from the site being anticipated at that time. As at January 2011, the land was yet to be rezoned and no development has taken place.

It is not possible to detail the complete course of events since 2004 in this box, but some of the key events include:

- a 2006 *Independent Panel Review* reporting to the New South Wales Minister for Planning found that the Tralee area should not be considered for residential development, but rather should be used for employment land and as a transport hub
- in December 2008, and on the recommendation of an independent New South Wales Planning Review Panel, the New South Wales Minister for Planning approved a revised Queanbeyan Council Strategy Map which allowed for aircraft noise sensitive developments, including residences and a school, in the Tralee area
- a number of iterations of the *Queanbeyan Local Environment Plan (South Tralee)* — CAL successfully argued to the Land and Environment Court (NSW) that there was a technical flaw in the public consultation process for the 2009 draft version of this LEP which rendered it invalid.

While the rezoning of, and subsequent development on, the Tralee sites requires the resolution of a number planning issues, it also requires a resolution of the issues raised by the competing commercial interests of the developer and the airport and the policy objectives of four governments (the Commonwealth, New South Wales, ACT and Queanbeyan City Council). Some of the many issues in play include:

- the provision of affordable housing
- the future aircraft noise related issues for the community
- the potential restriction of the current activities and future growth of Canberra Airport
- the requirements for new road and water infrastructure and the impact of the development on existing infrastructure in both New South Wales and the ACT.

Source: Village Building Co. Limited (2002-09); Gilligan (Chair of the Independent Review Panel) (2006); Houston (2010b); Kelly (2010); Knaus (2010); Stevens, Baker and Freestone (2010); Pers. Comm., Commonwealth Government, 24 January 2011.

While planning around capital city airports presents a number of complex dilemmas, the application of the principles set out in the strategic land use plans would contribute toward preventing situations, such as that confronting the Tralee development, from occurring in the capital cities.

11.4 Leading practice approaches to address Commonwealth coordination issues

Some best practices approaches to addressing the land use planning coordination issues inherent in areas of Commonwealth responsibility are apparent and include:

- in relation to the EPBC Act:
  - the approach anticipated in the November 1997 *Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment* that the states and territories would accredit and accept the Commonwealth's EPBC Act assessment process for EPBC Act assessments made under bilateral agreements
  - providing greater clarity for business in respect to environment protection laws and the associated referral requirements of both the Commonwealth and states/territories so as to reduce the number of referrals that do not need to be made and to make the most use of the assessment approaches available under bilateral agreements
  - having a policy directing the application of conditions commonly applied to development approvals (such as environmental offsets)
  - strategic assessments under the EPBC Act are undertaken in conjunction with the broader strategic land use planning for an area and before any proponent seeks to commence development in that area.
- in relation to development on and around Commonwealth land where that land is not subject to state/territory and local government planning controls:
  - master plans for the Commonwealth land that are aligned with the relevant state/territory and local government planning laws (and any variance from those plans and laws justified)
  - the use of community consultation groups to engage with communities around the Commonwealth land that are affected by planning decisions made in relation to that land
  - the use inter-government planning coordination forums for the engagement of state/territory and local government planners on strategic planning issues.

12 Comments from jurisdictions

In conducting this study, the Commission was assisted by an Advisory Panel comprised of representatives from each of the Australian state and territory governments, and from the Australian Local Government Association. In addition to providing advice to the Commission and coordinating the provision of data, government representatives examined the draft report prior to publication and provided detailed comments and suggestions to address factual matters and improve the analysis and presentation of the data.

The Commission also invited each jurisdiction, through its panel members, to provide a general commentary for inclusion in the report. These commentaries are included in this chapter, and presented in the same order as the data in the report.

New South Wales

“ The NSW Government welcomes the Productivity Commission’s draft report on benchmarking planning, zoning and development assessment systems across Australian jurisdictions. The benchmarking study is a valuable exercise to inform all spheres of government and the community about key issues in planning and assessment systems. It also provides practical insights into the mechanisms that deliver good practices and outcomes in planning and development.

NSW strongly endorses transparency as a key feature of efficient and accountable development assessment systems. NSW collects and publishes comprehensive information and analysis of local, State and industry performance including regular performance monitoring reports on major development, local development and concurrence and referrals; monthly planning updates; metropolitan and regional strategy updates; Metropolitan Development Program, Employment Lands Development Program; and outcomes monitoring of the BASIX building sustainability program. This performance monitoring assists to identify areas for improvement and tracks improvements over time. These important resources are being progressively refined to improve both transparency and the evidence base for future planning and regulatory decision-making.

The NSW Government is continuously working to improve planning and assessment systems. Its comprehensive planning reforms over recent years aim to streamline planning and building decisions; reduce red tape; improve transparency, independence and certainty in the decision-making process; and ensure decisions are made at the most appropriate level. Key reforms since 2008 include:

- The new Planning Assessment Commission provides independent advice and decisions on significant proposals; and six Joint Regional Planning Panels provide independent and significantly faster decisions on regionally significant proposals.
- The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) commenced in February 2009, enabling 10 day approvals for residential homes and extensions meeting set standards. The Codes SEPP has since been improved and expanded with the introduction of codes for Commercial and Industrial, Housing Internal Alterations, Strata Subdivisions. Further reforms are being progressed.
- The new standard instrument for preparing new Local Environmental Plans (LEPs) means local plans across NSW can use the same planning language, making it easier for communities to understand what is proposed for their local area. The new Gateway plan-making process means new LEPs are being produced in around half the time they used to take.

- The *State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2008* reduced red tape by removing unnecessary concurrence or referral clauses — further reductions are being achieved through the Standard Instrument LEP program.
- Initiatives to increase transparency include new laws requiring the disclosure of political donations and the Department of Planning's Meeting and Telecommunications Code of Practice (endorsed by the Independent Commission Against Corruption).
- Recent reforms to the way NSW collects local infrastructure contributions are aimed at improving housing supply. These reforms include a cap for council-imposed charges on new development of $20,000 per lot in established areas and $30,000 per lot for greenfield sites.

NSW endorses the view that the planning system should not impede competition that can deliver greater choice and lower prices of goods and services for consumers across the State. As the Report notes, a draft Competition State Environmental Planning Policy has been developed in NSW to clarify that competition between individual businesses is not in itself a relevant planning consideration and to prohibit other unnecessary restrictions on competition contained in planning legislation and policies. At the same time, a draft Activity Centres Policy has been developed that will facilitate competition by encouraging existing centres to grow and new centres to form.

Significant initiatives since the review period include the release in December 2010 of the *Metropolitan Plan for Sydney 2036*, which will shape the future growth of Australia's only global city. The Plan follows a five-year review of the 2005 Metropolitan Strategy and supports:

- Planning and infrastructure capacity for 770,000 new homes;
- Locating at least 70 per cent of new housing within existing urban areas;
- Planning and infrastructure capacity for 760,000 more jobs in the greater Sydney metropolitan area by 2036;
- Protecting Sydney's biodiversity and agricultural land by focusing most greenfield development in Sydney's established growth centres; and
- Outlining Sydney's transport future, placing jobs and homes near existing and planned transport capacity and identifying long-term urban renewal and freight corridors that will be further investigated.

Measures built within the plan to ensure it is implemented include a public annual update report and a new Metropolitan Plan Delivery Group. ”

ACT

“ The ACT Government welcomes and supports the Productivity Commission’s efforts in preparing this substantive benchmarking report. When finalised, it will be a valuable resource outlining the impact of planning and zoning systems across the country and drawing together issues relevant to planning and public policy.

For the ACT, as the national capital, there are a number of unique factors that influence planning and land administration arrangements that should be borne in mind with any analysis of planning system performance. These factors include the Territory’s leasehold land tenure, the relationship between Commonwealth and Territory land, and the role of different jurisdictional bodies.

The ACT Government recognises the significant economic and community benefits available in promoting best practice planning and development. In this regard, a number of ACT planning system features receive favourable comment in the Commission’s draft report. The Territory has been supportive of reforms to improve performance, for example the ACT’s new planning legislation, restructuring of the Territory Plan, and adopting of model provisions from the Development Assessment Forum.

Through its 2010 Supermarket Competition Policy, the ACT Government has also sought to promote competition and diversity in the full line supermarket sector (as well as assisting viability by enabling some local supermarkets to expand). The reforms have taken place in the context of a ‘legacy’ of restrictions on the number of full line supermarkets within group centres. Without action, significant impediments to supermarket competition in the Territory would remain, to the detriment of consumers. As a consequence and following the recommendations of the 2009 Review of ACT Supermarket Competition Policy, the Government has put in place a detailed framework for delivering competitive market outcomes. Any immediate concerns regarding the exclusion of certain parties from particular locations should be weighed appropriately against the overall benefits to the community from greater diversity and choice, and potentially greater competition over time.

The ACT supermarket competition framework includes planning and zoning aspects that diversify entry of suitable full line chains, remove artificial constraints on supermarkets expanding (consistent with public amenity and competition objectives), and provide more flexibility in retail zoning provisions. These elements are complemented by policy measure promoting wholesale market competition, and factoring competition into Government decision-making.

The 2010 Supermarket Competition Policy is subject to ongoing review of competition in the sector. It is expected that the ACT Chief Minister will receive the initial findings from this review in the first half of 2011.