Australian Government

Productivity Commission

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

Productivity Commission Issues Paper

May 2010

The Productivity Commission

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HOW TO PARTICIPATE IN THIS STUDY

Following agreement at recent meetings of the Council of Australian Governments (COAG) and the COAG Business Regulation and Competition Working Group, the Assistant Treasurer has asked the Commission to undertake a study into Australia's land planning, zoning and development assessment systems. Attachment A contains the terms of reference for the study. The Commission has released this issues paper to assist individuals and organisations to participate in the study.

In preparing our report, we will draw on discussions with, and written submissions from, people and organisations with an interest in this area and on other research and information sources. The process for making a written submission is outlined in attachment B. This paper sets out some of the issues on which we are seeking views and will form a basis for consultations. The paper is not exhaustive and participants should raise any relevant regulatory matters in their submission(s) that are of concern and highlight the data sources that may be useful or relevant to the study. The Commission is aware that some interested parties may have already invested significant time and resources in drafting submissions to other related studies and reviews. The Commission is happy to accept that material as a submission to this study with, if necessary, an indication of relevant key changes since the original submission.

Following consultations and receipt of submissions, a draft report will be prepared and released for public comment. The Commission will then prepare and present its final report to the Australian Government for consideration by the Council of Australian Governments (COAG).

The Commissioners on this study are Louise Sylvan and Paul Coghlan.

KEY DATES

Receipt of terms of reference	12 April 2010
Initial submissions due	16 July 2010
Release of draft report	End October 2010
Submissions on draft report due	Mid November 2010
Final Report	End December 2010

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1. Scope of the study

What has the Commission been asked to do?

The Commission has been asked to continue the program of performance benchmarking of Australian business regulation (box 1). At its 5 February 2010 meeting, COAG's Business Regulation and Competition Working Group (BRCWG) agreed that the Commission should conduct a benchmarking study of the states and territories' planning and zoning systems and land development assessments (DAs). Specific terms of reference for the benchmarking of planning and zoning systems were agreed in consultation between the Commonwealth and the states and territories at COAG's 7 December 2009 meeting. This benchmarking work is complementary to other COAG projects including the development of national criteria for capital city strategic planning systems, the housing supply and affordability reform agenda, and reforms of development assessment processes to reduce the costs of development.

In addition to business compliance costs, the Commission has been asked to benchmark how the states and territories' planning and zoning systems impact on competition (including unjustifiable restrictions on competition) and the overall efficiency and effectiveness of the functioning of cities. Also, as part of the study the Commission has been asked to report on best practice approaches that support competition, with particular reference to:

- preventing 'gaming' of appeal processes
- maintaining adequate supplies of land suitable for a range of activities
- removing any unnecessary protections for existing businesses from new and innovative competitors.

While the Commission was not specifically asked to address these terms of reference for DAs, as DAs are so integral to the overall process and implementation of land planning and zoning — being the means by which plans and zones are implemented — the Commission intends to benchmark DAs for these aspects as well as the compliance costs they impose.

The results of this study will highlight areas where there may be benefits from further reform.

Attachment A contains the terms of reference for the benchmarking program in general and for this particular study.

Box 1 **The Commission's performance benchmarking program**

In February 2006, the Council of Australian Governments (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

Following 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' & '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 systems for food regulation 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 benchmarking and performance benchmarking; a range of different benchmarking indicators; and approaches to collecting benchmarking data. They also provided lessons for future studies. In particular, they highlighted the potential challenges of comparing regulatory approaches across different jurisdictions, obtaining data from individual businesses and in surveying local councils.

The Commission's approach to the study

Advisory Panel, consultation and reporting processes

To give effect to the consultative practices proposed in the 11 August 2006 letter from the former Treasurer (attachment A), an Advisory Panel has been established to facilitate advice from all levels of government on the benchmarking study, and to enable a coordinated approach to data collection. An initial meeting of the panel, involving representatives from the Australian Government, State and Territory Governments and the Australian Local Government Association was held on 5 May 2010. The meeting informed the scope, approach and issues outlined in this paper.

Although the Commission will undertake its own research and data gathering activities, it will need to rely on the cooperation of governments, business and other interested parties to provide much of the data and information it needs. As part of the study process, the Commission will therefore consult with stakeholders, such as individual businesses, business groups, government agencies and regulators, and those living or working in cities. The Commission may also engage consultants to assist with certain aspects of the data collection process. That said, the Commission will, as far as practical, endeavour to minimise the burdens placed on businesses through requests for data and information.

Following consultations and receipt of submissions, a draft report will be prepared and released for public comment. Participants will be invited to make further submissions to respond to the draft report and the Commission will consider these in the preparation of its final report.

Benchmarking reference date

The reference date for the comparison of planning, zoning and DA systems across Australia's states and territories will be the most recent year for which information is widely available. It is expected that as far as possible, data will be collected for the 2008-09 financial year and where available, will be augmented by additional, more recent, information. As a consequence, it may be difficult to present information on planning, zoning and DA system impacts for a common period and caveats may be attached to some of the benchmarking indicators due to changes to regulatory systems between the sourcing of data and the reference period.

2. Planning, zoning and development assessments

Planning and zoning

'Planning' for land use is concerned with guiding and shaping the way in which cities, towns and regions develop.

Each council or regional planning area in Australia has an overarching plan that provides guidelines for new development and against which planners assess development applications. 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 retail/commercial. Each zone is defined by criteria that set out the detail of the acceptable uses for the zone. Zones are differentiated from one another as much by their unacceptable uses as their acceptable uses — for example, residential housing is generally not allowed within an area zoned 'industrial'.

The consistency within a zone is important for maintaining the unique character of areas and for facilitating the provision of suitable infrastructure. One approach to zoning used by some jurisdictions is a 'centres policy' whereby certain land uses (such as retail and industrial) are grouped in a common location (centre) with a view to providing the most efficient use of transport and other infrastructure, proximity to labour markets, and to improve the amenity and liveability of those centres (Department of Planning (NSW) 2009).

Differences between zones can include not only the types of uses, but also other development features such as setbacks, building height, allotment size, building style and when the property can be used (for example, certain zones may prescribe the hours a property can be used for a given purpose such as trade). Zones can also be based on geographical or cultural features such as hills, waterways and areas protected for environmental or heritage purposes.

Why are planning and zoning important?

Outer-suburban areas of Australia's capital cities have grown strongly in recent years, along with inner-city areas undergoing urban-renewal and consolidation, and regional centres on the coast and inland (Thompson 2007). As these communities expand and diversify, the need for coordination and due consideration of land use

changes becomes more important to ensure a community's resources are allocated and used in ways that enhance the net benefits to society as a whole.

A key part of this is consideration of the range of different uses to which land may be allocated and the quantities, location and timing for each. In making planning decisions, governments have 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. 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)

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 years into the future. Furthermore, some decisions (such as the use of agricultural land for development) may be irreversible.

In Australia, planning and zoning are the primary means by which the coordination between, and allocation of, land uses is achieved. Specifically, 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).

In this way, planning and zoning aim to enhance the development of cities in which people want to live and work and to afford protection to the property owner, neighbours, the community and environment against dangerous, illegal and undesirable developments and land uses — both in the immediate future and in years to come.

Development assessments

While what constitutes 'development' varies between jurisdictions, development can include activities such as: building work; a change in the use of land (for example, from an office to a retail store or change in hours of trade); division of an allotment; construction or alteration of a roadway or thoroughfare; creation of fortifications; modifications to a heritage place (state or local); significant tree removal or tree-damaging activity; and prescribed mining operations on land.

Depending on the type, scale and location of the proposed development, undertaking a development may first require an application for approval from a government or government agency. Development approval provides a legal document which allows a particular development to be undertaken in a defined location, within a specified time period.

The purpose of a development approval is generally to ensure that the development is consistent with the local policy envisaged for the area, as set out in the relevant area's development plan and the zoning of the land. Development assessments regulate development in an attempt to enhance the conservation, use, amenity and management of land, buildings and streetscapes; provide for the health and safety of those who use these areas and ensure the efficient and uniform application of technical requirements. In this way, the assessment process affords protection to the property owner, neighbours, the community and environment against dangerous, illegal and undesirable developments — both in the immediate future and in years to come. 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 returns.

Regulatory systems for planning, zoning and development assessments

Planning, zoning and DA systems include regulations, institutions, plans, guidelines and frameworks for implementing and enforcing planning, zoning and DA regulatory requirements. Because so many social, economic and environmental needs have a land component and trade-offs must be made between these needs, planning and zoning must necessarily also manage interactions with a wide range of interest groups and other regulatory requirements and systems.

Planning, zoning and DA regulation

Planning, zoning and DA systems include the legislation and formal regulations framing the systems, as well as quasi-regulation, such as the guidance materials that do not involve 'black letter' law. Even though most guidance materials are not 'black letter' law, the practices of regulators can give them the effect of law.

Each state and territory has its own legislation that covers planning and provides for the zoning of land (table 1). While the stated purpose of legislation differs between jurisdictions, each provides a broad framework for coordinated, orderly, effective, and/or strategic processes in the use and development of land. Consequently, there are different regulatory systems for land use developments in each state and territory. In addition, Commonwealth legislation regulates 'actions' (projects, developments, undertakings or activities) of national environmental significance and provides for 'sustainable' ecological development (box 2).

Table 1 **Key legislation and supporting regulations[a]**

	Legislation	*Regulations*
Cwlth	Environment Protection and Biodiversity Conservation Act 1999	Environment Protection and Biodiversity Conservation Regulations 2000
	Australian Capital Territory (Planning and Land Management) Act 1988	Australian Capital Territory (Planning and Land Management) Regulations 1989
NSW	Environmental Planning and Assessment Act 1979	Environmental Planning and Assessment Regulation 2000
Vic[b]	Planning and Environment Act 1987	Planning and Environment Regulations 2005
		Planning and Environment (Fees) Regulations 2000
Qld	Sustainable Planning Act 2009[c]	Sustainable Planning Regulation 2009[c]
		Planning and Environment Court Rules Regulation 2009
SA[d]	Development Act 1993	Development Regulations 2008
WA	Planning and Development Act 2005	Town Planning and Development (Subdivisions) Regulations 2000
		Planning and Development (Local Government Planning Fees) Regulations 2000
Tas[b]	Land Use Planning and Approvals Act 1993	Land Use Planning and Approvals Regulations 2004
NT	Planning Act 2009	Planning Regulations 2009
ACT	Planning and Development Act 2007	Planning and Development Regulation 2008

a There is also an extensive range of other legislation in each jurisdiction (for example, related to planning for particular cities, land acquisition, transport and the environment) which impacts on the operation of planning systems and the ways in which land can be used. **b** Victoria and Tasmania are currently reviewing their legislation. **c** Queensland's Act and associated regulation commenced on 18 December 2009. **d** South Australia's legislation includes building and construction requirements in addition to planning, zoning and development assessment requirements.

Box 2 The role of different levels of government

The Commonwealth Government does not have any powers under the Constitution for land planning or related matters, such as natural resource management. However, the Commonwealth is responsible for matters of 'national environmental significance' under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth) and, as a consequence, can become involved in specific projects and planning related matters for regions which cross state or territory borders. In some planning related matters, such as the planning exemptions and 'fast-tracking' applied to the National Building Economic Stimulus Projects and the Murray Darling Basin Authority, the Commonwealth has had to rely on the states and territories making amendments to their planning laws.

At a state and territory level, each has its own planning system, complete with statutory, policy and procedural frameworks. The administration of these systems is the responsibility of the state/territory government, although some day-to-day decision making functions are delegated to local government. For example, in New South Wales, the provision of basic infrastructure and services for local communities has been progressively transferred to local councils.

Generally, most planning and development decisions and assessments are made at a local government level. (In the Northern Territory and the ACT, the territory governments absorb most functions undertaken by the local governments in the states). An exception to this is strategic planning (the identification of desired or future land uses and the implementation of these), which usually involves greater state/territory government direction.

In recent years, state government reform of local government administration generally, has seen the centralisation of many planning functions. This has taken various forms including local government amalgamations, the creation of 'development corporations' and regional planning bodies, the appointment of planning administrators and/or the taking up of some planning and development decisions by state planning ministers on the grounds of 'state significance'. Some of these planning system changes have evolved from competition between the states and territories to be attractive to business and draw-in international and domestic capital. Greater commercialisation of state and local government administration (including planning) units has also occurred along with a move toward the use of 'planning panels' (which may be independent or include local council members) and private certification of buildings and developments.

One outcome of these moves has been a lesser role in some types of planning and development by some local councils and reduced public participation in the planning, zoning and development system.

Sources: Australian Government (2010); MDBA (2008); Thompson (2007).

The manner in which the state and territory planning regulations are to be put into operation is usually detailed in a documented state/territory planning policy. While some jurisdictions (such as Victoria) have one all-encompassing planning policy, other jurisdictions (such as New South Wales) have a number of planning related

policies — some of which may be quite specific to a particular issue or region. In each state and the ACT, these planning policy documents are statutory and enforceable instruments (in the Northern Territory, the document can be amended by the relevant minister). There are also a substantial number of land use plans at regional and local levels. For example, all mainland capital cities produced major strategic plans during the period 2003 to 2005 (Thompson 2007). In the ACT, the Territory Plan is required to be consistent with the National Capital Plan. Consequently, the regulation of land uses varies across the states and territories, and between regions, based on the physical, institutional and social characteristics of each jurisdiction.

With zoning typically undertaken at a local government level, the approach to zoning potentially varies across local government areas (although there may be some similarities in approach for councils that adhere to a regional plan). Changes to zoning may be necessitated by local government approval for a development which involves a land use that was either not envisaged in the original zoning for the site and/or has significant social or environmental impacts. The consequent change in land use zoning would generally be undertaken through a public review of the relevant area plan, including a period of public consultation and sometimes the opportunity for third-party appeals. Many rezoning matters are also required to be approved by state or territory planning departments/authorities.

Key agencies

A wide range of departments, commissions, authorities and panels have roles in planning, zoning and development assessments. Many of those listed in table 2 have direct responsibilities for the implementation and enforcement of such regulations. Others, such as the Commonwealth Department of the Environment, Water, Heritage and the Arts, are not directly responsible for the implementation of planning regulation but have an important influence on outcomes. Further, the government land organisations, which typically focus on facilitating and/or undertaking the development of urban land, are not regulators but they also can have an important impact on land availability. Aside from those listed in table 2, there are other departments and agencies within the states and territories (such as those responsible for infrastructure, transport and environmental approvals) that also play a role in the broader regulation and control of land use within a jurisdiction.

The legislation in table 1 is also not the only legislation for which the agencies in table 2 are responsible. For example, the Tasmanian Planning Commission has functions under five other Acts and minor functions under a further twelve Acts (Tasmanian Planning Commission 2010)

Table 2 **Commonwealth and state level agencies**

	Regulating department	*Other agencies/authorities*
Cwlth	Department of the Environment, Water, Heritage and the Arts[a]	National Capital Authority
NSW	Department of Planning	Planning Assessment Commission
		Landcom[b]
		Joint regional planning panels
		Independent Planning Assessment & Review Panel
Vic	Department of Planning & Community Development	Planning Panels Victoria
		VicUrban[b]
		Growth Areas Authority
Qld	Department of Infrastructure & Planning	Regional Planning Committees
		Urban Land Development Authority[b]
		Board for Urban Places
		DA Panels[c]
SA	Department of Planning & Local Government	Development Assessment Commission
		Land Management Corporation[b]
		Independent development assessment panels
WA	Department of Planning & Infrastructure	Western Australian Planning Commission
		Landcorp[b]
Tas	Tasmanian Planning Commission[d]	
NT	Department of Planning & Infrastructure[e]	NT Lands Group
		Development Consent Authority
		Land Development Corporation[b]
ACT[f]	ACT Planning & Land Authority	Department of Land & Property Services (incl. the Land Development Agency[b])

[a] The Department of the Environment, Water, Heritage and the Arts is not responsible for any dedicated planning legislation, only the *Environment Protection and Biodiversity Conservation Act 1999*. [b] A 'government land organisation'. [c] Queensland has four DA panels which operate for a limited range of issues in several local government areas. [d] From 1 September 2009, the Tasmanian Planning Commission assumed the functions previously performed by the Resource Planning and Development Commission and the Land Use Planning Branch of the Department of Justice. [e] The NT Lands Group within the Department of Planning and Infrastructure is responsible for planning within the Northern Territory. [f] In the ACT, the Commonwealth has some planning responsibility alongside the territory government.

A regulator, in the context of this study, refers to a body that administers and enforces planning or zoning laws and requirements or upon whose interpretation the application and enforcement of these requirements is based. In many jurisdictions, local councils have extensive responsibilities for planning and zoning administration and enforcement (including wide interpretative discretion in some cases); regulators at other levels of government also have some such

responsibilities. Hence, the performance of regulators in undertaking these functions, across all levels of government, is under the Commission's terms of reference for this study.

The manner in which regulatory bodies and government agencies administer and enforce planning and zoning laws and requirements can vary across states and territories and even within them. Some approaches which may influence the costs imposed on businesses, by the planning and zoning systems and the outcomes they deliver to businesses and residents include:

- the range of factors taken into account at the implementation stage of planning and zoning systems, including competition, market power, the functioning and liveability of the local area
- the allocation of regulatory responsibilities in each jurisdiction and the resourcing of the respective regulators
- administration and enforcement strategies of regulators including the extent to which a legalistic approach with strict enforcement to the 'letter of the law' is used versus a discretionary approach with greater regard for the proportionality of any given issue under consideration
- administrative procedures of regulators, such as the manner in which businesses can interact with regulators (via email, telephone or face-to-face)
- the range and clarity of information and guidelines available to businesses and the community
- requirements placed on business with respect to reporting, documentation and publication of development proposals
- fees charged for particular processes or services
- the transparency and consistency of processes, including differences in interpretation of similar requirements
- the availability of appeals processes and the ease with which these can be utilised.

In many jurisdictions, legislation also allows for the creation of planning and development bodies to facilitate the implementation of plans at a regional level. In addition, the development assessment process is also designed to ensure compliance with the zoning requirements applying to a land site.

The relevant authority to grant development approval varies both with the type of development proposed and between jurisdictions. In most states, local councils have responsibility for the assessment of most development applications. In addition, in some jurisdictions regional authorities and/or state government agencies have responsibility for the assessment of some types of development applications (for

example, Queensland's development assessment panels). In the Northern Territory and the ACT, territory government agencies and in some cases the Commonwealth Government (through bodies such as the National Capital Authority), have responsibility for issuing development approvals.

The agencies responsible for DAs play an integral part in delivering the planning and zoning system to businesses and communities. In particular, factors such as the ease with which development approvals can be sought, the length of time taken for assessments and the openness of the process to community consultation are some of the key factors which will influence the competitiveness implications and cost of DA processes (Development Assessment Forum 2009).

Government coordination and cooperation in planning, zoning and development assessments

The interpretations, decisions and actions of individual regulators, from all levels of government, can have flow on effects beyond the planning matters for which those regulators are responsible. For example, within a major city such as Sydney or Melbourne, a decision to allow an increase in housing density in a suburban local council area can reduce the need to release or rezone land for housing in a neighbouring suburban local council area. However, the increased population in that local council area can increase the demands on the roads and public transport facilities of neighbouring council areas — particularly where those neighbouring suburbs are the primary centre for commerce and/or employment. Table 3 provides some further examples of some areas where the coordination of, and cooperation in, government planning decisions may be required.

Issues

On what matters should the planning, zoning and DA related decisions and actions of governments be coordinated? How should performance on these matters be benchmarked?

Are there particular examples of where land development and development of other urban infrastructure (such as transport and schools) are or are not well coordinated?

What costs (benefits) does poor (good) coordination between levels of government create for:

- *property developers*
- *businesses, aside from property developers*
- *government agencies and local governments*
- *residents?*

Table 3 **Matters that may require coordination and cooperation between governments**

Between local councils	• Matters of regional significance • Decisions affecting neighbouring councils
Between local councils & the states	• Referral of applications for matters such as environmental issues • Consistent interpretation and application of state/ territory planning laws
Between local councils & the Commonwealth	• Interaction of Commonwealth land (such as defence sites and airports) with local planning matters
Within states & territories	• Matters of state significance • Integration of planning and zoning with state policies, such as: transport, education, and health • Planning for regions comprising a number of local councils, such as major cities • Incentives provided to attract capital and investment • Referral of applications for matters such as environmental issues
Between states & territories	• Matters of national environmental significance • Planning for regions comprising a number of local councils, such as cities near state/territory borders • Incentives provided to attract capital and investment
Between state/territories & the Commonwealth	• Matters of national environmental significance • Incentives provided to attract capital and investment • Integration of planning and zoning with: - national policies, such as immigration - national infrastructure, such as transport and mail service • Implementation of national programs, such as for strategic infrastructure and affordable housing
Within the Commonwealth	• Integration of planning and zoning related matters, such as infrastructure, with other policies, such as immigration.

3. Focus for the analysis in this study

As with all regulatory systems, the planning and zoning systems and the DA processes are intended to impact on the operation and outcomes of the market place in order to move market outcomes toward those which are socially optimal. Some adverse impacts on competition and business compliance costs are almost inevitable to ensure that public benefits, such as the amenity of urban areas, are considered in land use decisions.

Impact on competition

Given the limited (and finite) supply of land for development, competition in land provision is about the ease with which land can be moved between different uses and users in response to market conditions. Competition may be present even if there is only one business or one land site for development in an area — the key issue is whether it is straightforward for other land providers/users to access the necessary information and resources and enter the market (box 3).

The potential for planning, zoning and DA systems to have a detrimental impact on competition between businesses using urban land has been raised in previous studies (in the context of the retail sector) by the Australian Competition and Consumer Commission (2008) and the Productivity Commission (2007). These impacts on competition can arise as a result of:

- particular provisions or requirements included in regulations, plans or assessment processes
- the implementation of planning, zoning and DA requirements by regulators
- the actions and decisions of existing or potential land users in response to the planning, zoning and DA systems.

The impact on competition is generally considered in the approval processes for most rezoning and development applications (via provision for an economic impact assessment). While local businesses may be particularly interested in the impact of changes in competition on the ongoing viability of their businesses and existing urban centres, governments are generally tasked with a broader consideration of the overall benefits and costs of a development to the community. At issue, is whether competition is restricted by more than that necessary to achieve optimal community allocations and uses.

As DAs generally occur on a more frequent and fragmented basis than planning and zoning changes (and with a wide cross-section of stakeholders and likely outcomes for existing land users more obvious), there is significant potential for the emergence of anti-competitive practices in DA processes. This may be particularly the case where a large-scale development necessitates the acquisition and merging of adjoining small parcels of land held by a number of owners (that is, ownership is fractured) and/or a large number of existing residents and businesses are likely to be impacted by the development.

Box 3 Competition and regulation of land markets

A perfectly competitive market for a good or service will deliver optimal outcomes for society as a whole without government intervention if it has the following characteristics:

- many buyers and sellers, each with an insignificant share of the market
- the goods or services offered by the various sellers (and demanded by the various buyers) are largely the same
- buyers and users have complete information about quality and prices charged in the market and can move freely between suppliers
- all traders have equal access to resources and improvements in technology and can freely enter or exit the market in the long run
- there are no externalities in the sale and use of the goods or services (no divergence between private and social costs and benefits).

As a result of these characteristics, the actions of any single buyer or seller has a negligible impact on market share or prices and so these are not considered something that can be negotiated or altered.

However, a market for land would generally not meet all these requirements or necessarily be expected to — notably: land sites are not all the same and prices vary dramatically depending on location; there are high transactions costs to entering and leaving the market; and there is a range of positive and negative externalities in the provision and use of land. Consequently, governments intervene in land markets via the planning and zoning system and development assessment processes, as well as through broader regulatory frameworks:

- in order to address externalities (such as pollution), allow for public goods associated with land use (such as the amenity of green space), coordinate plans to deliver transport and other systems important to businesses and/or residents, or more generally, to achieve a socially desirable outcome. As a consequence, the ease of land exchange and use may be restricted, thus reducing competition
- to enhance the competitiveness of a market and reduce anti-competitive conduct. When competition is less than complete/perfect, some market participants may cooperate in order to increase profits (oligopoly outcome) or alternatively, compete in political and other strategic ways to gain an advantage over competitors or the people with whom they are trading. A key objective of the *Trade Practices Act 1974* is to prevent anti-competitive conduct, to encourage competition, resulting in greater choice for consumers in price, quality and service (ACCC 2008, p.8). Anti-competitive conduct which can arise includes: exclusionary provisions; misuse of market power; exclusive dealing; resale price maintenance; and mergers. In these circumstances, regulation may be used to enhance competitiveness in a market.

There is also considerable scope for regulators to introduce restrictions on developments which have the effect of reducing competition. Such restrictions may

include requirements around the timing of different aspects of a development, the types of activities permitted on a site once it is developed, and the final appearance and integration of the developed site with the surrounding area. Some of these regulatory restrictions are a means toward ensuring that the final outcome of the development is socially desirable. However, other restrictions may unnecessarily limit commercial opportunities and the scope for a competitive environment with an optimal mix of land uses.

As well as governments restricting competition, it has been claimed that some established businesses in some jurisdictions 'game' the DA process — for example, by automatically appealing an approval in order to delay or prevent the commencement of a potential competitor's operations (ACCC 2008).

Issues

What are the ways in which regulations or government processes restrict competition for land and its use? What are social, economic or environmental purposes that these restrictions serve? Could the purpose be achieved without restricting competition?

Do some governments (and their regulators) or government processes restrict competition more than others? If so, what are the ways in which they do this?

Are there particular examples where planning, zoning and DA systems are especially effective at encouraging competitive outcomes?

Which regulatory requirements on developments unnecessarily restrict the final use of a site?

How broad and transparent are the consultation processes for assessing public and business opinion on proposed planning and zoning options?

In assessing the potential impact of rezoning an area/site, do governments consider the potential benefits and costs of competition for the local economy and community? If so, how are these considered and what factors are taken into account?

To what extent do planning and zoning systems have the effect of unnecessarily limiting the entry of new industries or supporting the continued existence of particular industries in some locations?

What are some ways that governments could address anti-competitive practices in the planning, zoning and DA systems?

To what extent do the difficulties of dealing with fractured land ownership make it difficult for smaller developers to enter some markets? Should governments have a role in the merging of small separately-held parcels of land into larger plots in order to facilitate large-scale developments? If so, why?

Are appeals to zoning and DA applications by competing businesses a regular part of operations for some businesses? Why are they made? Where third party appeals are possible, what might be effective ways of identifying and preventing those that contain no substantive complaint?

Are there examples of 'gaming' occurring in zoning and DA processes?

Do developers who 'partner' with governments for particular projects and/or undertake government preferred projects receive differential treatment in the zoning and/or DA process? Does this differ depending upon whether the decision maker in the process is a local council, state/territory planning department, or a minister? If differential treatment occurs, is it justified in achieving planning objectives?

How do planning/zoning/DA decisions on council or state-owned land affect the competitive environment? Are these decisions transparent and even-handed? If not, in what ways could the process be improved?

Is information on proposed developments available to local communities and all potential land buyers or users during the planning/zoning/DA processes in a complete, effective and timely manner?

What are some examples of planning/zoning/DA processes which do not adequately consider the implications for competition?

To what extent does influence by interested parties, particularly those who may be politically active within the community, affect the decision-making processes? Does this improve or worsen outcomes? In what way? Do the views of these parties typically reflect the broader community sentiment?

Impact on compliance costs

One of the key aims of this study is to compare or 'benchmark' the impact on business compliance costs of the State and Territory planning, zoning and DA systems. Costs can be imposed on businesses at any stage along the planning, zoning and development chain (box 4). However, compared with burdens arising from other regulations, the regulatory compliance costs associated with planning, zoning and DA systems generally tend to be up-front costs incurred by businesses rather than ongoing costs associated with land use.

Box 4 Possible sources of unnecessary regulatory burdens

Requirements contained in legislation, regulations and other regulatory instruments with which business must comply:

- subject or location-specific regulations that cover much the same ground as other broader regulation
- unduly prescriptive regulation that limits the ways in which businesses may meet the underlying objectives of regulation
- regulations that provide incentives to operate in less efficient ways, including locating in an area that does not give the most efficient outcome for the business.

Institutional framework under which regulation is administered and enforced:

- the institutional requirements for the application or approval process that are unnecessarily complex or unwieldy
- the presence of multiple regulators and/or regulations which increase business search costs (over those that are likely in a jurisdiction with a single regulator and/or regulations) and/or result in an overlap or conflict in the activities of different regulators
- the presence of a single regulator with multiple regulatory responsibilities which may not be able to provide as prompt, or as relevant, advice (compared to a regulator for whom planning, zoning and/or DA matters are their sole responsibility).

Actions of regulators:

- inconsistent application or interpretation of regulatory requirements which triggers changes in the operations of a business in order to achieve compliance
- uncertainty caused by the differing approach of regulators, even where a business does not need to undertake changes to its operations
- the partial enforcement, or non-enforcement, of a regulation, which places those businesses complying with the regulation at a competitive disadvantage to non-complying businesses
- excessive time delays in obtaining responses and decisions from regulators
- enforcement approaches that inadvertently provide incentives to operate in less efficient ways
- unnecessarily invasive regulator behaviour, such as overly zealous information requests.

Inconsistency in regulatory frameworks between jurisdictions may impose additional costs on enterprises doing business across national/state/territory borders. Such businesses are likely to have their costs of compliance compounded on account of differing or duplicated regulatory requirements, even though those regulations have the same objectives.

While regulation necessarily imposes costs on those being regulated, an unnecessary burden arises when the objective of the regulation could be achieved with a lower cost to affected parties. Where regulations are poorly designed, or the approach to administering and enforcing them ill considered, they may impose greater burdens than necessary to achieve their objectives. In the case of planning, zoning and DAs, some level of regulation may be necessary to allocate land between uses and address negative outcomes on third parties, but some of the costs that the regulations impose on business and households may extend beyond those necessary to achieve such outcomes. These unnecessary costs can be broadly classified to include:

- administration and operational costs (including the costs of reporting, record keeping, publications and documentation, education and consulting costs required to interpret legislation and guidelines) beyond those needed to meet planning, zoning and DA requirements. For example, when the planning, zoning and DAs are not orderly, timely, consistent, effective or efficient
- costs associated with business inputs (including use of a particular land site), processes and technologies that are higher than the optimal possible for the business, in order to meet planning, zoning and DA requirements
- costs associated with unnecessarily changing or restricting what is produced and provided by businesses to meet planning, zoning and DA requirements.

Comparing business compliance burdens across jurisdictions

In line with previous performance benchmarking studies undertaken by the Commission, in this study the Commission will be collecting data on an agreed set of indicators, or measures, from different sources to enable comparisons between the different regulatory systems operating in each state and territory. Benchmarking can assist in setting targets for future performance, identifying areas for improvement and measuring progress against set objectives. In particular, performance benchmarking may:

- highlight potentially unnecessary burdens on businesses, where differences in regulatory burden across jurisdictions are not attributable to differences in regulatory objectives or outcomes
- highlight the regulatory approaches, for comparable objectives, that generate lower burdens on business
- increase government accountability for the efficient delivery of regulation, through the increased transparency afforded by benchmarking
- promote ‘yardstick’ competition among jurisdictions on compliance costs.

Issues

Are there particular examples where planning, zoning and DA systems are especially effective at minimising unnecessary compliance costs for business?

Where electronic DA processes have been implemented, have they had any material impact on compliance costs?

Do the requirements to be met for development approval vary unnecessarily between jurisdictions?

For the jurisdictions in which you operate or live, what planning, zoning or DA costs do you consider to be unnecessarily high?

What measurable factors would best be used to compare the compliance burden of planning, zoning and DA processes across jurisdictions?

Where rezoning of land is undertaken, does it occur in a timely manner? What slows the rezoning of land? Can delays be shortened while still allowing the rezoning process to be consultative and transparent?

Are DAs conducted in a timely manner? What aspects of the DA process (for example, pre-application assistance, tracking systems, appeals and external agency referrals) could be improved without compromising the integrity of the decision-making process? What form could such improvements take (for example, greater use of exempt or self-assessment approval tracks)?

To what extent do the risks associated with the timing and outcome of DAs deter some developers from undertaking projects?

Is the uptake of state planning/zoning policies/overlays consistent between regions or local government areas?

Do particular zoning or DA conditions (such as hours of operation) create costs — either directly or through lost opportunities? If they do, how significant are these costs and lost opportunities?

Impact on efficiency and effectiveness in the functioning of cities

Cities are generally defined in Australia to be predominantly urban areas with a permanent population of at least 25 000 people (Infrastructure Australia 2010). Although there are around 120 cities in Australia, for the purposes of this study, the Commission will focus on a subset of cities consisting of each state/territory capital city (both the central business district and surrounding metropolitan area) plus additional large urban centres across all states and territories.

While the two preceding sections focused on impacts on business via restrictions on competition and compliance costs, this section looks at how well planning, zoning and DA systems balance the competing demands for the use of land and, concurrently, preserve well functioning cities. 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 taking account of the costs and benefits involved (including social and environmental impacts).

Taken at the extreme, efficiency in the functioning of a city may be impractical and involve complex tradeoffs. It requires consideration of the complete range of land sites within the city, alternative land uses and availability of supporting infrastructure and other services, both at the current point in time and into the future. In practice, planning, zoning and DA systems should aim to *improve* the efficiency in the functioning of a city by, for example, reducing the costs of production per unit of output, increasing the supply of goods and services provided to the community, and removing barriers to innovation and flexibility.

Complementing the notion of an efficiently functioning city, an 'effectively' functioning city may be considered to be a city for which the core goals or objectives of the city are achieved and activities facilitated. In practice, a planning, zoning and DA system can be considered to be supporting the effective functioning of a city if it engenders a significant improvement beyond what would have happened anyway.

The efficiency and effectiveness with which a city functions can be assessed from the perspective of its inhabitants via measures of particular aspects such as 'liveability' and from the perspective of businesses by measures such as 'ease of doing business' type indicators.

Liveability

The liveability of a city is an indication of the general well-being of its community. and reflects the outcomes of past planning, zoning and DA practices. 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 livability of a city is generally defined by its environmental quality, neighbourhood amenity and individual well-being (Yuen and Ling Ooi 2008). However, the elements of liveability are highly subjective. Different communities and people consider different factors important and much will vary according to an

individual's age and circumstance. 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 reasonable safety within which to raise a family. As a consequence it is a challenge to select appropriate indicators for liveability.

Rapid population growth and increasing demands on infrastructure, coupled with a need to balance short term and long term needs of urban centres, means that improvements in liveability have proved a challenge for many city planners.

Ease of doing business

The ease of doing business concerns the nature and extent of transaction costs faced in establishing and conducting business. This can influence business costs, prices, innovation and economic growth. While the ease of doing business will be affected by a range of factors — such the costs of opening a business, permits and enforcement of contracts; region-specific taxation and charges; and the flexibility of hiring and firing labour — the focus for 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 DAs. Relevant items include: 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 a property for those wishing to sell it); and the time and costs involved in processing development proposals.

Issues

Which cities should be included in the benchmarking for this study?

What characteristics make a city more/less liveable and easy for businesses to operate in?

What challenges do governments and communities face in pursuit of liveability goals? How can these be addressed by planning, zoning and DA systems?

What are some examples of the ways in which planning, zoning and DA regulations, or the way in which they are implemented, adversely impact on the functioning of cities?

What measurable factors would best be used to compare the impact of planning, zoning and DA systems on the functioning of cities?

Where it has occurred, what effect has the removal of local government from decision making processes (and replacement by state agencies or regional planning panels) had on the efficiency and effectiveness of the functioning of your city?

Ensuring adequate supply of land for different uses

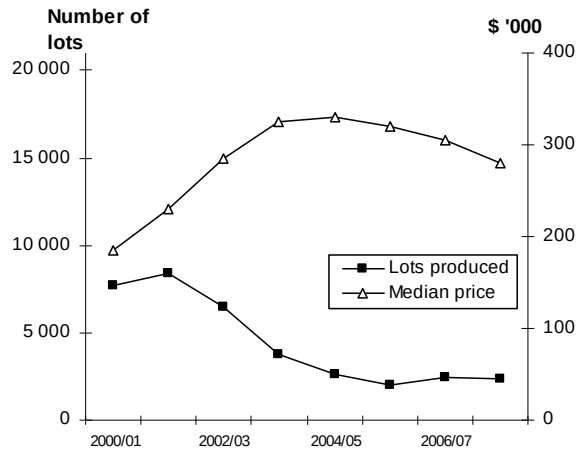
The planning, zoning and DA systems influence the supply of land for a range of uses by determining:

- the amount of land available for urban development, including the proportions allocated across the broad alternative uses of residential, business, community services and facilities, infrastructure (often serving the needs of both residents and businesses) and the environment
- the further allocation of these broad aggregates — say between single detached residences and high-rise residences, or between different types of business uses (for example, industrial, commercial and rural). Different jurisdictions, and even areas within jurisdictions, will vary in the extent to which these further allocations are determined via planning and zoning systems or by market forces.

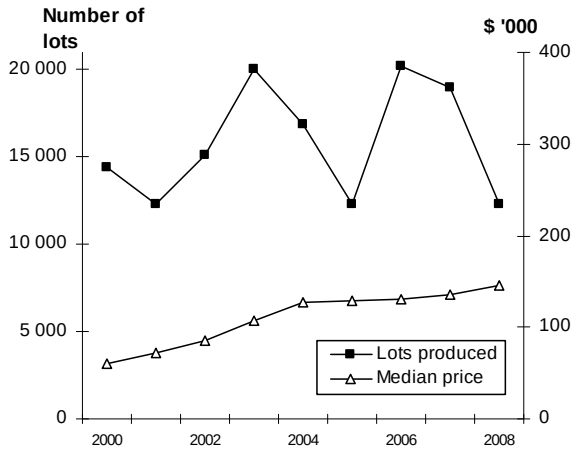
Planning, zoning and DA processes are just some of a wide range of potential factors which influence the supply of land for different uses and the price of that land. Nevertheless, these potential influences have been well documented and discussed — particularly in the context of residential land (for example: Evans 2004, Moran 2006, National Housing Supply Council (NHSC) 2009 and PC 2004). While the data presented in figure 1 is not comparable across cities (for example, Sydney and Melbourne data reflect only greenfield developments, whereas data for the Brisbane statistical area reflects vacant urban lots as the relevant greenfield data is only reported approximately biannually (UDIA 2009)), it nonetheless provides some examples of the relative movements of new residential land supply and prices in each market.

Figure 1 **Residential lot production and median lot price**[a]

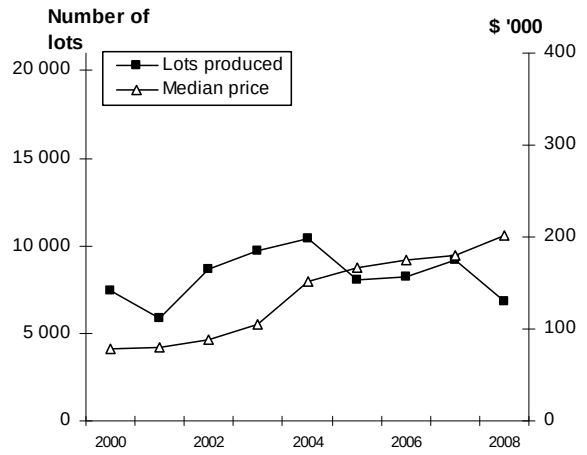
Sydney — greenfield residential lots[b]



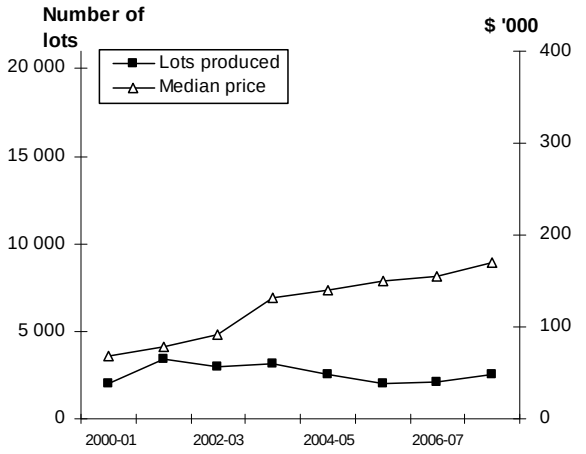
Melbourne — broad hectare residential lots[c]



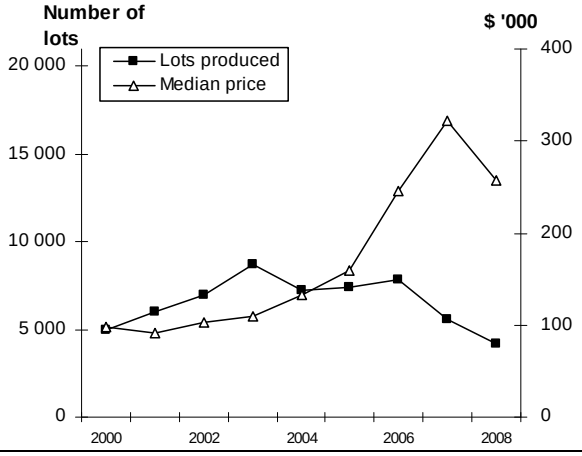
Brisbane statistical area — urban lots[d]



Adelaide statistical area — urban lots



Perth — residential lots[e]



[a] Hobart, Darwin and Canberra were not considered in the UDIA (2009) report from which these figures were derived. [b] Data excludes infill development which has been a major component of supply over the period. [c] Figure relates to 'growth area municipalities' (Casey-Cardinia, Hume, Melton-Caroline Springs, Whittlesea and Wyndham). [d] Vacant urban lots of 250–2500m^2. [e] Data relates to lots under 3,000 square metres that are zoned residential under local government town planning schemes.

Data sources: New South Wales Government, pers. comm., 7 May 2010; Department of Planning (NSW) 2010; UDIA (2009)

Planning for adequate supplies of land in different uses

Recognising the importance of ensuring an adequate supply of land for different uses, most of the strategic and statutory planning documents of the major Australian cities/regions and the territories (such as *City of Cities: A Plan for Sydney's Future*, *Melbourne 2030*, *South East Queensland Regional Plan 2009–2031*, *30-year Plan for Greater Adelaide*, *Northern Territory Planning Scheme*, *ACT Territory Plan 2008*) include such an objective as one of their broad goals.

Planning authorities typically plan for a supply of land sufficient to meet the forecast demand for land, in all its uses, for 10 to 20 years into the future. This process involves balancing the often competing social, environmental and economic considerations for what is usually a finite supply of land, and may mean that an adequate supply of land for a particular purpose is either not possible or not adequately addressed by planners.

In forecasting future demand for residential land, most of the strategic/statutory land plans of the major Australian cities/regions and the territories include some consideration of factors such as population growth rates and demographic trends (such as the falling size of households). However, the considerations for commercial and industrial land uses tend to be more complex and include: the growth/decline of industries, changing consumer patterns and preferences and global influences, such as outsourcing offshore.

Even if planners overcome the myriad of uncertainties and considerations they face in determining the adequate supply land for differing uses during the 'planning stage', there is no guarantee that sufficient land will in fact be available for those uses at different times over the planning period. For example, aspects of the zoning and/or development approval processes might delay projects, while factors external to the planning system — such as interest rates, availability of finance and market demand — may influence the viability of projects and the adequacy of planned supplies.[1]

A final challenge for planners is the length of time it can take to complete a land development project and bring 'new land' onto the market, with NHSC (2009) estimating it can take 6–15 years to complete a residential development. Such timeframes mean that the solutions available to planners to address contemporary supply shortfalls in a timely manner can be somewhat limited. As such, land planning needs to be followed by the monitoring of land supply outcomes and

1 Western Australian data shows that one third of lots given subdivision approval are not converted into titled lots within the four year limit applying to those approvals (Thompson 2007 and WAPC 1999–2008).

supported with contingency plans capable of addressing shortfalls in supply if and when they emerge.

Despite the best efforts of planners, land planned and zoned for a particular use and with the applicable DA(s), may not be made available (for sale) to the broader property market once approval has been granted. For example, land banking by developers, sometimes with a view speculative profits, can see such land withheld from the market.

Determining whether supplies are adequate

Land planning involves striking a balance in the supply of land for different uses. For example, if the supply of greenfield sites for housing is too low for a growing population there may be increases in population density along with associated social costs, such as city congestion. On the other hand, allowing an oversupply of greenfield land sites can lead to dispersed settlements that are costly to provide with the necessary infrastructure and services, and, if accompanied by a reduction in the price of land, may reduce the viability of land development by private agents.

Price can indicate whether supplies are adequate, although the price of land is also influenced by factors other than planning, zoning and development approval processes. For example, of the cost to deliver a fully-serviced 450m^2 residential lot in one of Sydney's growth centres, the NSW Urban Taskforce (2007) estimated that only 15 per cent related to the initial purchase of the undeveloped land. The remainder was attributed to local and state government charges (27 per cent), costs of financing (20 per cent), professional services fees (20 per cent) and site infrastructure costs (18 per cent).

Nevertheless, price (and to a lesser extent affordability) comparisons between cities or urban areas may still be a useful (albeit limited) indicator of the adequacy of supply. For example, the persistent decrease in the annual supply of new residential lots in Sydney between 2000-01 and 2004-05 was accompanied by a sustained increase in the price of land. By comparison, a comparatively greater and more sustained supply of new lots in Melbourne over a similar period was accompanied by a more moderate increase in the price of new lots (figure 1).

Also, within the same city or area, comparisons of the price of the same size of land allocated to different purposes provides an indication of whether planners are getting the mix of allocations right. Where land zoned for a particular use is more highly priced than land zoned for alternative uses, it can indicate that land for that particular use is relatively under-supplied or that the land zoned for the 'alternative uses' is not well suited to those alternative uses (and so is not in demand). In such

cases, there may be a case for the rezoning and deployment of more land for the more highly priced use. However, this apparent need should be balanced against the possibility that the market price may not capture the external benefits or costs associated with the different land uses.[2]

Issues

What are the social, environmental and economic reasons for which governments may wish to control the supply of appropriately zoned sites for development?

Why might developers (including government owned development bodies) wish to control the release of developed sites and/or hold on to land and not develop it? Should local and state governments require developers commence development within a certain time frame? What discourages timely completion of developments?

Are the current methods employed by planners for determining forward demand for the different uses of land appropriate? If not, why not and how could they be improved?

How successful are governments in assessing the need for future land uses and facilitating the availability of appropriately zoned sites in a timely manner? What indicators (for example, land price trends or affordability indices) would illustrate this?

Has land in your district been zoned for a certain purpose (residential, commercial, industrial, other) but the location or other features of the land render it inappropriate for the use for which it has been zoned? If so, please provide details.

Is there land in your district that is suitable for a certain purpose (residential, commercial, industrial, other) but cannot be used for that purpose due to planning restrictions, zoning or DA conditions? If so, please provide details.

Is there land in your district that is zoned for a certain purpose (housing, commercial, industrial, other) that is not being used for the purpose as it is part of a 'land bank' held by either government or a member of the private sector? If so, how has this affected the supply of that type of land in the district, the prices paid for it and commercial activity more generally?

What impact would limiting opportunities for third party objections/appeals and so fast-tracking projects through planning and DA processes have on the supply of land for different uses?

2 For example, an industrial land use that creates air and noise pollution may not be desirable on land adjacent to residential property and areas of environmental sensitivity to such pollution.

Attachment A: Background documents

A1 Text of the overarching terms of reference

The Productivity Commission is requested to undertake a study on performance indicators and reporting frameworks across all levels of government to assist the Council of Australian Governments (COAG) to implement its in-principle decision to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden on business.

Stage 1: Develop a range of feasible quantitative and qualitative performance indicators and reporting framework options
In undertaking this study, the Commission is to:

1. develop a range of feasible quantitative and qualitative performance indicators and reporting framework options for an ongoing assessment and comparison of regulatory regimes across all levels of government.

   In developing options, the Commission is to:

   - consider international approaches taken to measuring and comparing regulatory regimes across jurisdictions; and
   - report on any caveats that should apply to the use and interpretation of performance indicators and reporting frameworks, including the indicative benefits of the jurisdictions' regulatory regimes;

2. provide information on the availability of data and approximate costs of data collection, collation, indicator estimation and assessment;

3. present these options for the consideration of COAG. Stage 2 would commence, if considered feasible, following COAG considering a preferred set of indicators.

The Stage 1 report is to be completed within six months of commencing the study. The Commission is to provide a discussion paper for public scrutiny prior to the completion of its report and within four months of commencing the study. The Commission's report will be published.

Stage 2: Application of the preferred indicators, review of their operation and assessment of the results

It is expected that if Stage 2 proceeds, the Commission will:

4. use the preferred set of indicators to compare jurisdictions' performance;

5. comment on areas where indicators need to be refined and recommend methods for doing this.

The Commission would:

- provide a draft report on Stage 2 for public scrutiny; and

- provide a final report within 12 months of commencing the study and which incorporates the comments of the jurisdictions on their own performance. Prior to finalisation of the final report, the Commission is to provide a copy to all jurisdictions for comment on performance comparability and relevant issues. Responses to this request are to be included in the final report.

In undertaking both stages of the study, the Commission should:

- have appropriate regard to the objectives of Commonwealth, state and territory and local government regulatory systems to identify similarities and differences in outcomes sought;

- consult with business, the community and relevant government departments and regulatory agencies to determine the appropriate indicators.

A review of the merits of the comparative assessments and of the performance indicators and reporting framework, including, where appropriate, suggestions for refinement and improvement, may be proposed for consideration by COAG following three years of assessments.

The Commission's reports would be published.

PETER COSTELLO

11 August 2006

A2 Request for this study and study 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

RECEIVED
12 APR 2010
CHAIRMAN'S OFFICE

PO Box 6022
Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7360
Facsimile: 02 6273 4125
http://assistant.treasurer.gov.au

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.

Attachment B: How to make a submission

This is a public study and the Commission invites all interested individuals and organisations to take part. Anyone can make a public submission. In your submission, you do not need to address all the issues raised in this paper and you may comment on any other issues that you consider relevant to the terms of reference.

There is no specified format

A submission can be anything from a short note or email outlining your views on a few matters to a more substantial document covering a wide range of issues. Where possible, you should give evidence to support your views, such as data and documentation. Although we welcome every submission, multiple, identical submissions do not carry any more weight than the merits of an argument in a single submission.

Participants can make subsequent submissions throughout the course of the study. In particular, participants will be invited to make further submissions to respond to the draft report, which is expected to be released in October.

Submissions should be public documents

The Commission seeks to have as much information as possible on the public record. This is a public study, and the Commission will make submissions available for others to read. Submissions will become publicly available documents once placed on the study website. This will normally occur shortly after receipt of a submission, unless it is marked confidential or accompanied by a request to delay release. Any confidential material sent to the Commission should be provided under separate cover and clearly marked.

Email lodgement is preferred

If possible, submissions should be lodged by email or as a text or Microsoft Word document (.txt, .rtf, .doc), rather than Adobe Portable Document Format (.pdf), to ensure screen readers can read them. (Submissions may also be sent by mail, fax or audio cassette, and arrangements can be made to record oral submissions over the telephone.)

Please ensure that the version sent to the study is the final version, and that you have removed any drafting notes, track changes, annotations, hidden text, marked revisions, as well as any internal links. Please also remove large logos and decorative graphics (to keep file sizes down). This will enable the submission to be more easily viewed and downloaded from the website. Copyright in submissions sent to the Commission resides with the author(s), not with the Commission.

Each submission should be accompanied by a submission cover sheet containing the submitter's personal and organisational contact details. The submission cover sheet is available at the end of this attachment or from the study's website:

www.pc.gov.au/projects/study/regulationbenchmarking/planning

Please lodge your submission with us by 16 July 2010 so that we can make full use of it in our draft report. Other key dates, submission addresses and contact details are provided at the front of this paper.

Productivity Commission

SUBMISSION COVER SHEET

(not for publication)

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

Please complete and submit this form with your submission:

By email: planning@pc.gov.au OR by fax: (02) 6240 3377

Or by post: Performance Benchmarking Australian Business Regulation
Productivity Commission
PO Box 1428
Canberra City ACT 2601

Organisation……

Street address ……

Suburb/city …… **State & Postcode**

Postal address ……

Suburb/city …… **State & Postcode**

Principal contact …… **Phone** ……

Position …… **Fax** ……

Email address …… **Mobile** ……

Please indicate if your submission:

☐ contains NO confidential material

☐ contains SOME confidential material (provided under separate cover and clearly marked)

☐ contains confidential material and the WHOLE submission is provided 'IN CONFIDENCE

Please note:

- For submissions made by individuals, all personal details other than your name and the state or territory in which you reside will be removed from your submission before it is published on the Commission's website.
- Submissions will be placed on the Commission's website, shortly after receipt, unless marked confidential or accompanied by a request to delay release for a short period of time, where they will remain indefinitely.
- Confidential material should be provided under a separate cover and clearly marked 'IN CONFIDENCE'.
- Copyright in submissions resides with the author(s), not with the Productivity Commission.

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