

## **PORTS AUSTRALIA – SUBMISSION ON DISCUSSION PAPER**

### **PERFORMANCE BENCHMARKING OF AUSTRALIAN BUSINESS REGULATION: PLANNING, ZONING AND DEVELOPMENT ASSESSMENTS**

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Ports Australia welcomes the opportunity to respond to the Productivity Commission's invitation to comment on its Issues Paper addressing Planning, Zoning and Development Assessments as part of its brief to review Australian Business Regulation.

We have responded to those aspects raised in the paper that we believe are strategically relevant to the future operational efficiency and viability of Australia's ports.

A number of our member ports have also made submissions that address in greater detail some of the issues identified by the Productivity Commission as relevant to their study

#### **Ports Australia - Representation**

Ports Australia is the peak industry body representing all port corporations, both publicly and privately owned, at the national level. Our website is at [www.portsaustralia.com.au](http://www.portsaustralia.com.au). Ports Australia is a constituted company limited by guarantee, with a Board of Directors comprising the CEOs of ten member port corporations.

#### **Summary of Position**

The strategic policy imperative of prime importance to the ports community is to ensure that definitive statutory measures are established to ensure that port land, and land dedicated to road and rail access and freight precincts such as intermodal terminals, are appropriately protected.

The promotion of such measures and assertive action to drive better planning outcomes in our cities and communities (of which ports are an integral part) and to minimise land use conflicts, is consistent with the thrust of the National Ports Strategy and work currently underway within COAG on city planning.

While it is recognised that the Issues Paper released by the Commission does, in the main, address planning issues in Australia's capital cities, those key areas of importance to the ports community mentioned above are not unique to these cities. Ports in regional areas likewise have significant issues centering on constraints on available land and land use conflicts and encroachment on their land and their access corridors by land uses incompatible with port activity. This occurs notwithstanding planning "guidelines" and the establishment of other planning instruments that were originally designed to prevent such conflicts.

A number of ports are endeavouring to establish models that provide certainty in port planning and land use and with appropriate statutory support/backing. These models offer the prospect of reducing regulatory burden and overlap, and increasing planning certainty, and form part of a menu of measures designed to protect our trade interests.

The need for action in this area is very much driven by the substantial growth forecasts in Australia's container and bulk trades over the next 20 years and beyond.

The Issues Paper expounds, or makes observations about, principles of good planning some of which are fundamental to ensuring that ports and freight precincts, amongst other land uses, are appropriately planned and zoned and by implication protected. In practice many of these principles are simply not adhered to or given effect by enforceable instruments that oblige parties such as local government and state agencies to conform to sound planning disciplines.

## General Issues for consideration

### 1. Growth and Port Development – Important Implications for Land Use Planning

There is strong growth in prospect in Australia's container and bulk trades which lends some urgency to ensuring the protection of land for port development and to ensure meaningful planning and implementation of road and rail access commensurate with this growth. A number of landmark reports have indicated that if resolute action is not taken to address these issues then Australia's trade performance stands to be compromised.

These projections are well documented, and most recently in the context of development work carried out to support the development of the National Ports Strategy.

Importantly the implications for planning and other key elements of public policy of this growth in prospect is now beginning to gain the traction it deserves at the political and policy development level. Arguably the safe and efficient movement and positioning of freight through our cities and other urban areas now represents a challenge second only in importance to big ticket items such as climate change and water management.

The graphs below respectively show the growth in Australia's container trades between 1993 and the end of 2009, iron ore exports between 1988/89 and 2008/09, and coal exports between 1988/89 and 2008/09.

In the background work carried out for the development of the National Ports Strategy it was further established that:

- for the container trades a "business as usual" compound annual growth rate of 5.0% - 7.5% will increase port throughput by between 3 to 6 times in 25 years. At 7.5% compound annual growth Australia's international container task will double by 2020.
- a medium growth scenario for iron ore exports, i.e. a compound annual growth rate of 5%, will mean an increase from about 350 million tonnes in 2008/09 to 800 million tonnes by 2030. Assuming a high growth rate of 10%, iron ore exports would reach about 2,100 million tonnes in 2030.
- coal exports will grow from about 260 million tonnes in 2008/09 to over 700 million tonnes in 2030, based on a medium compound annual growth rate of 5%. At a higher growth rate of 7.5% the figure in 2030 will be 1,200 million tonnes<sup>1</sup>

In this context our major container ports of Brisbane, Sydney, Melbourne, and Fremantle, and the bulk Ports of Dampier, Port Hedland, Gladstone and Newcastle are, or have in prospect, billion dollar infrastructure investments to increase terminal, channel and berth capacity to meet forecast trade growth.

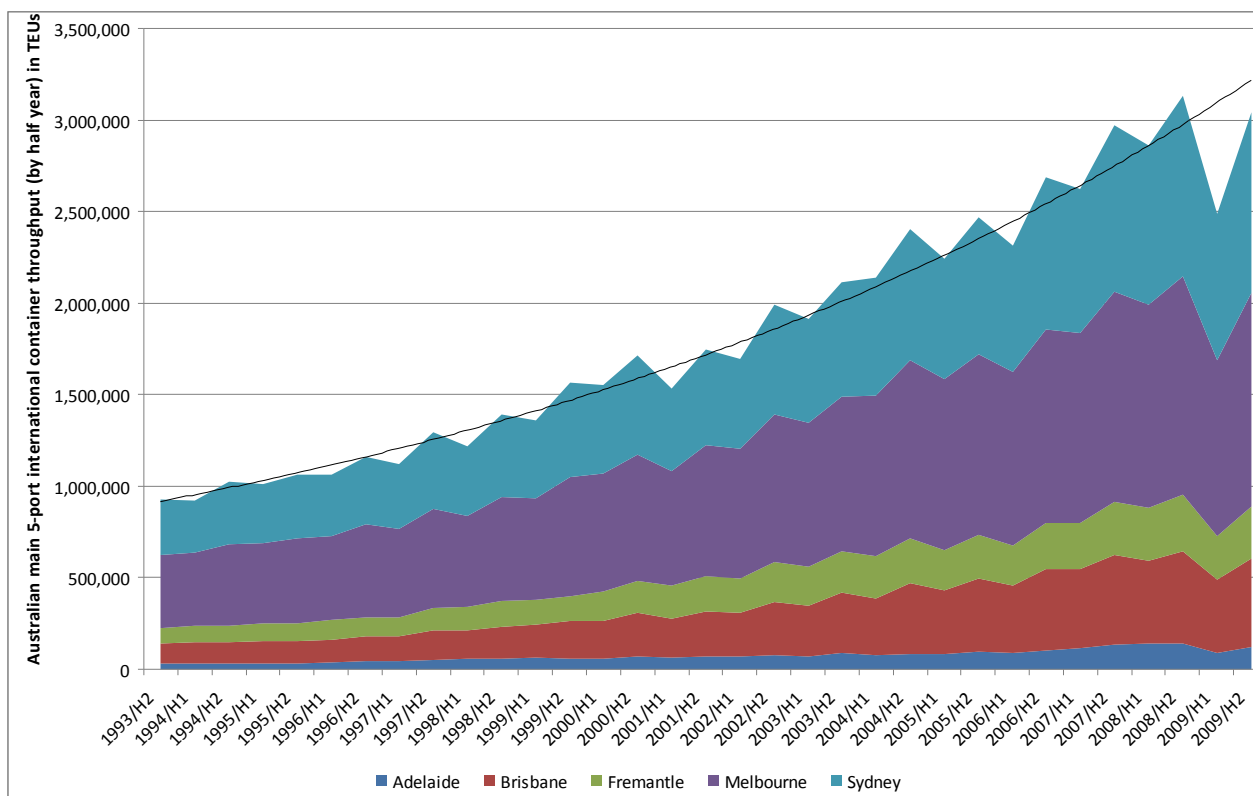
In order that the benefits of these investments are to be fully realized, and the national trade needs appropriately addressed, assertive action is required to preserve land for port and freight precinct development, and to minimize land use conflicts that, among other things cause tensions between imperative trade facilitation needs and urban amenity.

The need to minimise these conflicts and to plan more effectively the land use around port precincts and their road and rail access corridors forms an important element of the National Ports Strategy which has been developed by Infrastructure Australia in consultation with industry stakeholders, for consideration by COAG.

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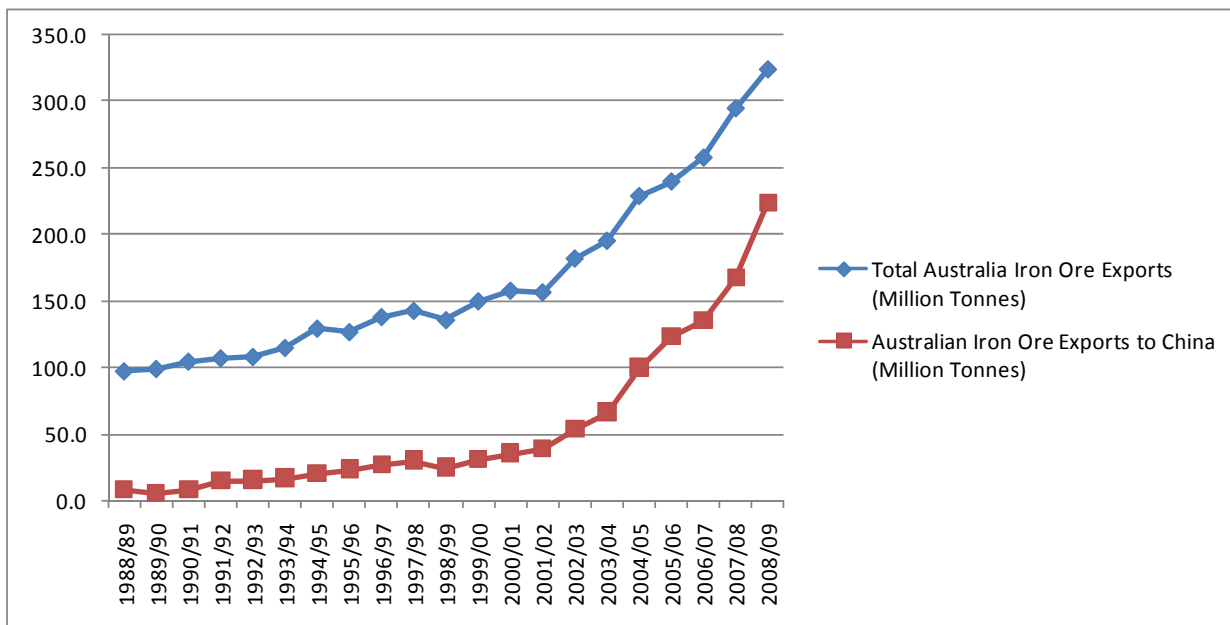
<sup>1</sup> This content is drawn extensively from *Background Paper 5* for the NPS; "The possible future market challenges for relevant ports" prepared for Infrastructure Australia and the National Transport Commission, by GHD Meyrick.

**Figure 1 Development of the main 5-port container throughput (six-monthly), 1993-2009**

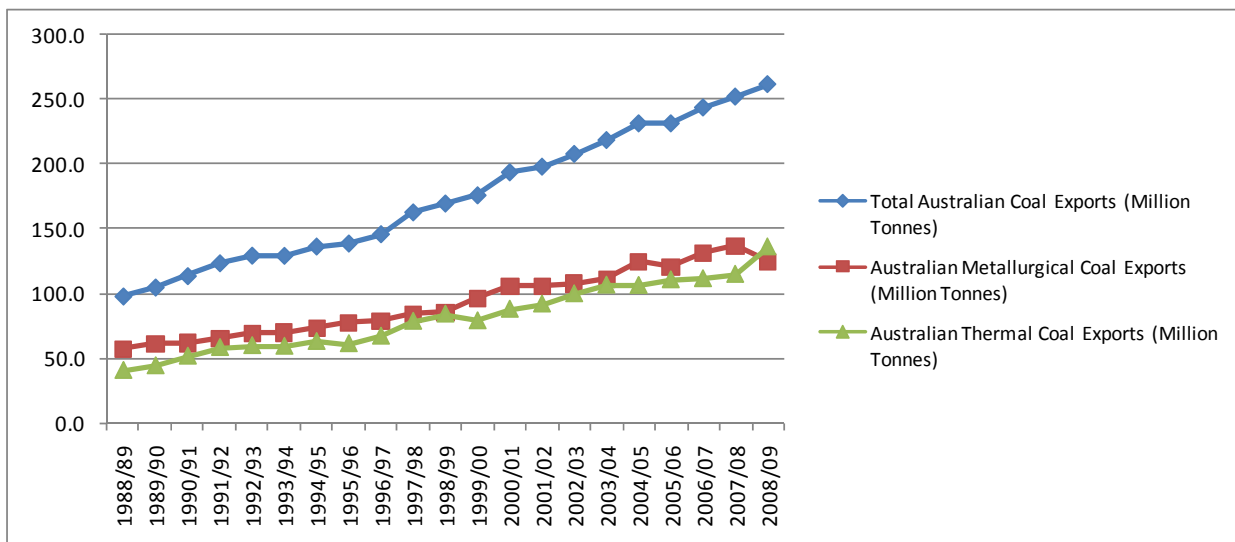


Source: Industry data / analysed & graphed by GHD Meyrick

**Figure 2 Development of Australian iron ore exports, 20 years (1988-2008)**



**Figure 3 Development of Australian coal exports, 20 years (1988-2008)**



Source: GHD Meyrick  
Infrastructure Australia and the National Transport Commission  
*Background Paper 5 for the NPS "The possible future market challenges for relevant ports", April 2010*

## 2. Landside Costs of Container Trades

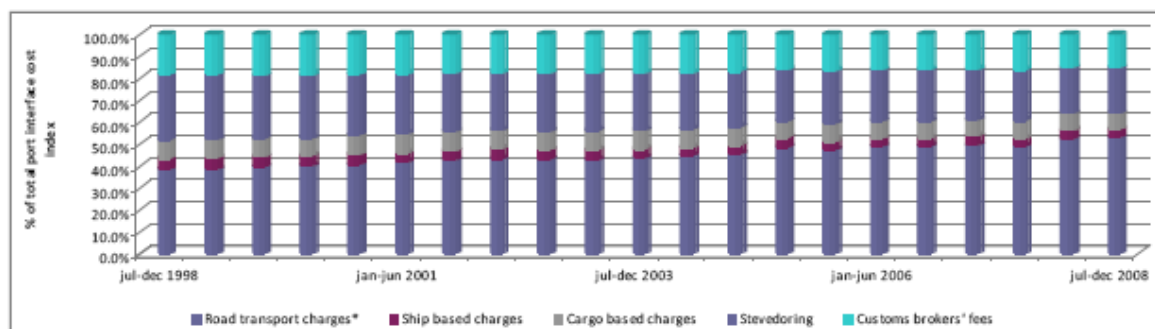
It is instructive to note that of all port related container costs, land side costs have significantly increased relative to other costs included in the relevant index. While it can be reasonably argued, and it is acknowledged, that this trend cannot be related in any sense entirely to planning and zoning failures it is indicative in part of the infrastructure and other constraints imposed in part by such failures that in turn contribute to these costs. It is an important adjunct to the points made above under the heading of "Growth"

The port interface index developed by the Bureau of Infrastructure, Transport and Regional Economics (BITRE) shows for example that road transport charges over the ten year period 1998 to 2008 have increased more than any other component of the index which also encompasses ship related charges, cargo based charges, stevedoring and customs brokers' fees.

Again turning to container road transport charges this component now represents 50% of the total port interface cost, up from around 35% in 1998. This data does not take into account the considerable cost and logistical task associated with empty container movements which of itself an important element in the container supply chain.

This data is demonstrated in the Figure below.

**Figure 5 Trend in share of road transport charges within the port interface index, 1998-2008**



(\*) Source BITRE Waterline publications (15-20,000 GT ship range) with road transport charges calculated by GHD as the average of BITRE import and export road transport charges for Brisbane, Sydney and Melbourne and then re-graphed by GHD.

### 3. Port Planning Issues

The functionality of ports is in a sense indistinguishable from the functionality of cities with which they co-exist.

This principle is captured on page 23 of the paper: *“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 economic success of cities, McNulty et al. concluded that cities that are not liveable places are not likely to perform important economic functions in the future”.*

Ports are an integral and key part of the “economic life” of our cities. Typically 80 percent of containers offloaded in the capital city ports are destined to be unpacked only 40 kilometres from the port so demonstrably these ports perform an important function in serving the consumer needs of those cities and providing their citizens with access to choice. Re-positioning container ports in Australia, if such a thing was considered remotely feasible, is to remove them from the markets that they serve.

Elsewhere the paper cites that: *“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 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)”(p6).* It further states that; *“Planning, zoning and DA systems include the legislation and formal regulations framing the system, as well as quasi-regulation, such as 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”. (p9)*

While we agree with these statements we would contend that it is precisely because much of planning requirements are a matter of “guidance material” rather than law that generates serious issues for our member ports and still leads to outcomes that, by way of example, place new high priced apartments within metres of a rail corridor providing access to one of our growing ports, where, as an aside, it is also a specific goal of that port and its shareholder to increase the market share of rail in the container market. There are guidelines that should have prevented this outcome but the responsible authorities often do not commit to them.

Accordingly we contend that such matters should be the subject of law that provide unambiguous provisions for ports to preserve land for port related development, buffer zones and access corridors. A number of our member ports are actively working on models that provide certainty in planning which Ports Australia proposes be discussed with the Commission in the near future.

### 4. COAG

As this benchmarking study is initiated by COAG, the results of the Study should highlight areas where there may be benefits from further reform. Particularly, the results of the Study should complement COAG projects such as the:

- Development of national criteria for capital city strategic planning
- Reforms of development assessment processes to reduce the costs of development
- Land use planning reforms that provide certainty and security over the significant infrastructure and commercial investments in port facilities and supporting access routes

Attached is some supplementary material which is constituted of notes contributed by members and provides some additional insight into the issues raised above.

Ports Australia  
October 2010

**Ports Australia – Submission to the Productivity Commission – Land Use and Planning  
Supporting Notes**

1. Land use planning at ports is a more difficult proposition than say planning for a more homogenous activity given the complexity of port precincts, operations and infrastructure. Planning regulation throughout Australia needs to recognise the unique characteristics of ports and the need to consider:
  - that separation and buffers are critical to existing port operations, but more importantly future growth potential (which has a direct relationship with the economy);
  - following on from the point above, protection of surface transport corridors leading to and from port precincts (via buffers, setbacks and determination of appropriate land uses in close proximity etc);
  - that port land uses are not 'standard' as found within a typical 'general industry' estate;
  - that port land uses rely upon:
    - flexible boundaries
    - oversized infrastructure (roadways/driveways/utilities/services)
    - a strong interaction of infrastructure (ie: gantries and conduits/pipelines running over, under and alongside of roads etc)
    - multi-modes of transport operating collectively throughout the port precinct
  - that in some cases (ie: terminals areas) cannot be expected to achieve the same levels of 'amenity' due to dominance of 'hard surfaces' for logistical, efficiency and safety/operational reasons.

It is therefore quite clear, that port land use plans need to specifically address the very specific nature of port operations. Following on, 'regulations' therefore need to recognise and be responsive to this unique setting and character.

2. A critical component of a harmonious relationship between a seaport and local/state governments is the clear recognition of port boundaries and consequently, the treatment of land uses on 'each side of the fence'. Any regulatory changes to provide greater clarity of 'boundary issues', would seem to be a positive contribution to overall city planning.

For the Port of Brisbane for example it is now mandatory to include in their Land Use Plan, detailed plans showing land uses in the neighbouring local government area (and commentary describing the consistency or otherwise). Furthermore, it is now mandatory for Brisbane City Council, for example, to include port zones and commentary on port land uses within the City Plan.

This move promotes greater awareness of port planning and a very clear line of communication going forward.

Determining appropriate developments on 'city v port' boundaries represents one of the most important land use planning challenges. Competition for land in close proximity to water (ie: near seaports) is evident through most Australian cities - therefore clear regulation of these areas, particularly those in and around port precincts, needs greater clarification which may come through stronger planning regulation (such as State Planning Policies / Environmental Planning Regulations) which control development in such areas.

3. A further matter worthy of some more thought is the ability of state based legislation to clearly 'prohibit' certain land uses/activities within port precincts (and sometimes in areas adjacent to port precincts) such as residential developments, major shopping centres and the like (other than those required for local convenience).

This achieves three things:

- protects port lands for port purposes;



- provides a higher level of protection for ports from 'reverse amenity' issues both now and into the future; and
  - for local government, provides greater certainty that the 'hierarchy' and 'primacy' of residential and commercial precincts will not be affected by port land developments.
4. On the issue of competition:
- Conflicting land-use planning and assessments by local governments lead to urban encroachment and land use conflicts (which constrains and/ or disrupts the operations of the port). This has the potential to decrease the competitiveness of a port.
  - As a strategic manager of land, a number of ports allocates available land with due regard to competition principles.
5. Compliance costs are substantial.

The Victorian Department of Planning & Community Development and the Minister for Planning are the responsible authorities for the Port of Melbourne Planning Scheme although planning controls generally allow port development as of right.

The Port of Melbourne Corporation (PoMC) monitors planning activity in adjoining municipalities to ensure planning proposals are compatible with, and unlikely to compromise, the future development and operation of the Port. In terms of compliance costs:

- On a regular basis, PoMC deals with approximately 13 key state and local authorities on land-use planning/ compliance issues.
  - In the quarter Jan - March 2010, PoMC identified 14 new planning issues of interest/ concern to PoMC. These issues ranged from Planning Scheme amendments and Strategies through to planning permit applications for sensitive / incompatible land uses within close proximity to the Port of Melbourne.
  - The total number of planning issues requiring PoMC intervention since 2003 is in excess of 35. The costs (both human resource and direct expenses) associated with monitoring planning activity and intervening where necessary (especially where the Victorian Civil and Administrative Tribunal is involved) is significant.
6. Negative effects on the efficiency and effectiveness in the functioning of a city

The importance of the Port of Melbourne to the Victorian and Australia economy is estimated to be (based on 2004-05 financials and modelling in 2006):

- Generation of total economic output of \$2.7 billion, including value adding to the Victorian economy of \$1.2 billion
- Supporting in the order of 14,000 full time jobs.

Urban encroachment and land use conflicts that constrain or disrupt the operations of the port can decrease the efficiency and effectiveness in the functioning of a city by:

- Curtailing visits by vessels which would cause a commensurate downward impact on the economy. The implications for Gross State Product would run into the billions, and the employment effects would be significant.
- If the competitiveness and efficiency of Port of Melbourne operations is compromised, this would likely lead to higher costs per unit of cargo carried. In turn, this would result in higher costs to consumers and impact the ability of some businesses to operate, with flow on employment consequences.

The negative effects of land use constraints should also consider the geographic distribution of private sector investments in the outer metro locations which are based on the port's location. Any land constraints that affect the port must also take into account the secondary effects throughout the supply chain.

## 7. Port Land Allocation

- Typically ports have a restricted area for growth and development

- Unrestricted expansion of port areas is often constrained by urban renewal and sensitive land use development
- These same constraints are affecting port access routes
- Due to the limited land within the port precinct, allocations must be made to maximise the productivity of the land and its contribution to the efficiency of port operations
- Land use conflicts can also promote port productivity arrangements which have the potential to exclude some operators from participation
- Uncertainties regarding land use planning outcomes has the potential to restrict / constrain long term investments

#### 8. Port Environs Planning Framework

- PoMC has been working with various agencies since 2005 in an effort to resolve the inconsistencies and uncertainties regarding land use planning in areas adjacent to the port
- PoMC has adopted a tiered approach in addressing these issues seeking statutory reform, policy recognition, local government engagement, developer mediation and arbitration
- The Port Environs Advisory Committee is currently reviewing these issues and are expected to hear from submitters in August
- A copy of PoMC's submission is attached.

On a similar note, PoMC provided comments to the Victorian Competition and Efficiency Commission's *Inquiry into streamlining Local Government Regulation*. Thereafter, VCEC released a draft report recommending the following:

- Recommendations to strengthen incentives for Local Governments for ongoing improvements in the administration of planning regulation, including financial incentives for achieving (clearer) State targets / outcomes.
- Recommendations to strengthen monitoring, reporting and evaluation frameworks around the implementation of regulation for both Local and State Government. In particular, increased reporting of 'outcomes' (not just 'inputs and processes') and independent checks against performance indicators and benchmarks. The reported information should be widely available to the general public to increase local and state government accountability.

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