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**Submission to the Productivity Commission Performance Benchmarking of  
Australian Business Regulation: Planning, Zoning and Development  
Assessments, Draft Report**

We commend the Productivity Commission for releasing its draft report on Planning, Zoning and Development Assessment prior to finalisation, and welcome the opportunity to comment on the substantial work undertaken to date.

In seeking to document how the Australian planning systems work, why they operate as they do, and, how planning system performance might then be measured, particularly in relation to urban efficiency and function, the study contains much useful descriptive information about Australian planning systems, and insightful opinions about the strengths and weaknesses of these systems from different stakeholders.

In making this submission we are informed by the presentations and feedback made by speakers and participants at a public forum, organised by the Faculty of Architecture, Design and Planning, at the University of Sydney, on 31 March 2011, and attended by Associate Commissioner, Paul Coghlan. However, the views expressed in this submission are our own.

Our comments focus firstly on the concept of performance measurement in planning, secondly the need to shift focus to spatial strategy as opposed to system reform, thirdly on the increasing tendency to emphasise land use zoning as the main technique of statutory planning in Australia, in contrast to other parts of the world, and fourthly, to the issues associated with development contributions.

*Performance measures*

In refraining from a “league table” of planning systems the report sensibly acknowledges the difficulty of defining appropriate performance measures for

both planning system performance and city efficiency. The indicators that are used in the study provide an interesting means of comparing planning systems in relation to issues regarded as particularly significant for matters such as housing supply and new business development. However, the current range of indicators contained in the report should not be regarded as comprehensive measures of planning system performance – even in relation to the narrow foci of business compliance costs, competition, and urban efficiency. Further, it is difficult to interpret the indicators provided – for instance, faster assessment times may mean faster refusals (as assessment officers take a cautious approach or do not take the time to explore alternative options with applicants) or mean poorer decisions (Barker 2008).

Extending the spectrum of benchmark indicators appropriate to measuring planning system performance, in a wholistic sense, would be an important contribution to Australia's urban and regional development. Annual strategic analysis of an expanded, more comprehensive suite of national planning system attribute and outcome indicators, complimenting the path-breaking work of the National Housing Supply Council, could be an important task to support the emerging national urban policy work being undertaken by the Commonwealth's Major Cities Unit.

Such a framework should remain closely tied to the spirit and purpose of planning, as defined by the British economist Kate Barker, in her landmark review of the UK planning system:

- To protect and supply important social and environmental goods that the private market might over-consume or undersupply
- To prevent negative externalities from private development, and promote positive ones
- To promote social fairness in managing processes of urban development and change
- To provide a basis for sharing information to all actors in the development process through spatial plans (promoting efficient urban development and investment certainty)

- To overcome monopolies that might otherwise prevent necessary development (for instance, through land release, charging or acquisition levers) (Barker 2006).

Focusing on the report's evaluation of planning system performance, it is interesting to note that despite the very poor reputation, and indeed, perception, of the NSW planning system, NSW largely scored middle ranking results amongst the other jurisdictions in relation to the indicators reported, such as speed, complexity, costs of development, and barriers to business competition.

This probably reflects serious attempts by the previous NSW government to reform the system for greater standardization, simplicity and speed – but sometimes at the expense of substance. NSW is not alone – as reported by the Productivity Commission, most of the States and Territories have undertaken serious planning system review and reform processes, largely oriented towards red tape reduction, codification of minor developments, standardization of local planning instruments and development charges, and faster land release and approvals.

Many of these reforms remain to be bedded down as changes are implemented and planners and developers adjust to the new systems. Changes themselves cause delays and uncertainties, meaning there may be significant lag times between the introduction of reform and perceived impact.

*The need for strong spatial strategy at national, state, and regional levels*

However, better statutory planning systems are no substitute for strong spatial strategy, establishing the framework for urban growth and change; the relationships between cities and regions, and wider connections to the global economy.

Proactive spatial planning in Australia has been disempowered by a steady decline of major public investment in infrastructure and the withdrawal of the Commonwealth and States from serious land and housing development via the state land authorities since the 1970s. To some extent the potential role of

government land organizations is acknowledged in the Productivity Commission's draft report, as there have been some attempts to revive the model over the past few years. The establishment of Queensland's Urban Land Development Authority (ULDA) is a case in point. However, for the most part these authorities are required to act like private developers, particularly in achieving commercial returns for their activities. This limits the real potential of a government player in the urban development space.

The loss of proactive, public sector planning has meant that spatial planning schemes have been wholly reactive to private development, leading to disappointing outcomes over time. In Queensland and Victoria, there have been sincere attempts to use infrastructure investment to deliver spatial planning objectives, through long term, funded infrastructure strategies, and there are signs that the other jurisdictions may follow.

But in focusing on infrastructure it is important to situate infrastructure planning within a wider spatial planning strategy. Infrastructure must support urban and regional planning outcomes, rather than driving the agenda, as can happen when powerful, well funded agencies sit parallel to, rather than subsumed within, a framework responsible for delivering spatial policy.

While the report acknowledges the benefits of strategic metropolitan spatial plans, the focus on the business compliance costs and competition impacts of planning systems should be balanced against an assessment of the economic dividend delivered by a well planned city. Concentrating development in centres, providing for a diversity of housing types and limiting urban sprawl has measurable benefits arising from business agglomeration, reduced congestion, and enhanced labour productivity. Quantifying these in a formal benefit-cost model alongside competition and compliance impacts would enable the Productivity Commission to evaluate the overall benefit (or cost) to the community of planning interventions.

*Statutory planning is not synonymous with zoning*

Perhaps reflecting the terms of reference for the study, there seems to be a conflation of statutory planning and related regulatory requirements as

synonymous with land use zoning. The focus of the study seems to legitimate and endorse land use zoning as the principle mechanism for development control when in fact it is an outdated and often ineffective tool. Further, it seems that zoning is now regarded as synonymous with development entitlement, an idea that appears to be gaining legitimacy when as a general matter of principle, under Australian planning law, development entitlement is only granted with planning permission.

In the appropriate push to have smaller, low impact activities kept out of the discretionary planning process, it is important not to conflate this codification upwards to imply that zoning is the most effective means of managing urban change. Nor is it necessarily optimal to precisely assign land uses ahead of the merit assessment of particular proposals. Neither matter is settled in international practice or research.

For instance, the United Kingdom abandoned zoning with the introduction of the *Town and Country Planning Act 1947*, and has found that retaining development rights nationally, as an entitlement to be allocated through planning permission, has supported government in securing greater public benefit from the planning process.

Zoning was designed to separate potentially competing land uses, as a way of preventing land use conflict. As such it is a reasonable tool for achieving certainty in mono use development contexts – such as low density suburbia, industrial parks, or pastoral farmland.

However, zoning is a poor tool for encouraging a more complex spectrum of uses because of the function of the land market – which defines value by the highest and best permissible use. Thus a small corner shop is often unable to compete on the market for a site where large lot supermarket chains choose to operate, similarly, a commercial developer find difficulty sustaining rents in a context where residential uses – apartments – are significantly more valuable, just as farmers find extending their operations unviable when farm land is priced at residential subdivision values.

While in terms of pure competition, these outcomes might not be problematic – in spatial and environmental terms they are very serious indeed. In the sections of the report addressing competition, it would be helpful to make a clearer distinction between seeking to restrict particular firms (which might be regarded as anti competition) versus regulatory controls that seek to maintain locational access to neighbourhood services or jobs, and to policies that seek to preserve important industries such as agriculture (through constraints on surrounding land uses, as is proposed to protect major ports).

The above discussion also illustrates why flexible zoning can be a misnomer – in many cases, flexibility is only available to those able to bid the highest for a particular parcel of land. If flexibility is the goal, a different system for managing land use change, situated within a strategic framework setting desired goals and assigning preferred approaches to addressing these goals – provides a more workable outcome. This type of place based planning is happening in practice through the process of master planning for large urban release and renewal sites.

While significant time and energy should be expended on establishing and resourcing strategic spatial strategy, including detailed environmental studies and socio-economic research, the actual statutory planning phase should not need to be exhaustive at the time of plan preparation. Aside from the economic impact on land values associated with signalling a change in land use through pre-emptive rezoning, placing too high a burden on the process of developing planning rules means that by the time the rules are in place, they are likely to require some modification to meet the specific requirements of significant development proposals – again triggering unanticipated request for rezoning or rule modification. This takes us to the perverse outcome where jurisdictions are commended for having strong strategic plans in place but chastised for being too slow to process a spot rezoning.

#### *Development contributions*

The draft report makes a number of sensible observations in relation to development contributions. Ultimately, development contributions are appropriate for local infrastructure and facilities required by a development, but the

contribution framework should be designed to encourage their efficient provision and in support of wider strategic objectives, such as housing diversity.

Therefore, simple requirements calculated on a per hectare basis, or as a proportion of development value, are good models. Both form part of the suite of tools used in NSW and Victoria. Neither approach encourages a perverse incentive (for instance, a single dwelling on a large lot is a rational response to contribution formulas determined on a per dwelling basis), nor promotes higher profit seeking activity at the expense of wider strategic goals (again, a premium housing development of fewer, high value homes, would receive a development contribution discount on many local government charging regimes, which are based on per lot or per dwelling formulae), leading to sub optimum outcomes.

In relation to State or regional infrastructure contributions, the concept of betterment (associated with a significantly favourable planning decision such as a rezoning or variation in planning requirements), recouped at the point of land transfer, provides a way of contributing towards significant new infrastructure. However, the provision of major State and regional infrastructure to new development areas should not depend on this approach.

In conclusion, the Productivity Commission's draft report represents a significant attempt to understand the operation and purpose of statutory planning systems, and communicate a range of views as to the performance of these systems across the States and Territories.

In defining leading practice, a fuller explanation of the purpose of planning – which is far wider than the promotion of business competition and urban efficiency – is an important starting point. Further, a clearer distinction between strategic urban and regional spatial policy, and the statutory planning systems which are a support but no substitute for this policy, is needed. In this context, the Productivity Commission could note the Commonwealth's work in developing a national urban policy and point to the need for a wider urban and regional spatial policy to guide all levels of government in Australia.

Yours sincerely,

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### **References**

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