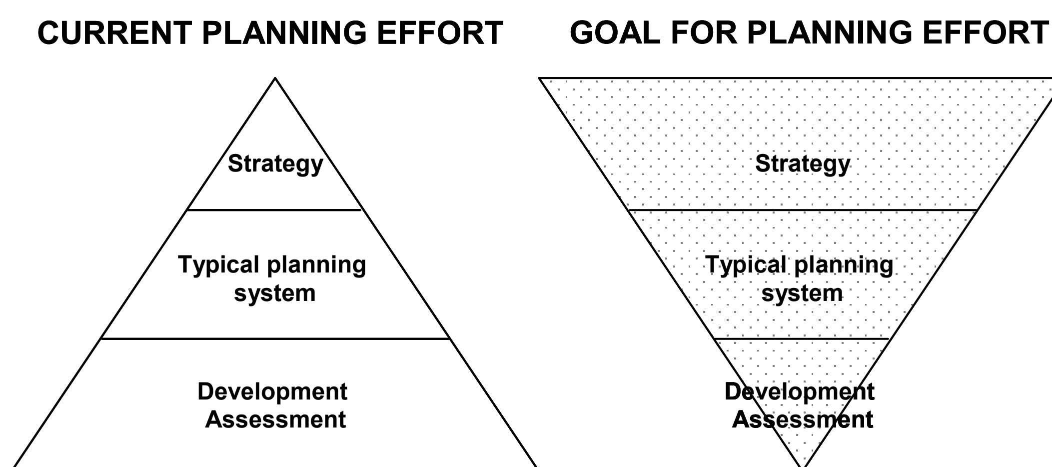
Leading practices

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

Broadly, the planning departments of the states and territories indicate that their reform efforts have been directed at focusing more on the earlier stages of planning when strategic land use policy and its associated plans are put in place. This is likely to improve the timeliness of development assessments because more of the important and difficult decisions have already been resolved prior to a development proposal or request for rezoning (figure 4). However, it is an inevitable aspect of the planning system that some decisions can only be made at the time of assessing a particular proposal.

Figure 4 **Changing the focus of planning efforts**



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

The leading practices identified by the Commission fall into seven broad groups. Each is important — and many are interdependent — in achieving more effective planning and zoning outcomes.

1 Early resolution of land use and coordination issues

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

- strategic land use plans that are not just aspirational but also make broad decisions about where future urban growth will occur, alternative land uses, timing, infrastructure and the provision of services (to contribute to social, economic and environmental objectives)
- strategic land use plans that are integrated across different levels of government and across different government departments and agencies to make consistent decisions about relevant matters, ranging over infrastructure, environment, housing and human services
- a consistent hierarchy of future oriented and publicly available plans — strategic, city, regional, local — ensuring that when strategic plans are updated, the other plans are also quickly updated (local plans have been recorded as lagging by as much as 23 years in Western Australia)
- provisions for resolving planning conflicts between government agencies when they arise
- provisions to facilitate adjustment to changing circumstances and innovation including effective engagement, transparency and probity processes for planning scheme amendments
- effective implementation and support arrangements for all plans, including:
  - clear accountabilities, timelines and performance measures
  - better coordination between all levels of government and linked, streamlined and efficient approval processes
  - one clear authority which monitors progress against the strategic plan
  - completion of a structure or master plan in major new developments before proceeding to subdivision
  - government land organisations being the first developer in new settlement areas to reduce regulatory risk, provide precedent planning decisions to assist other developers and to ensure major ‘lead in’ infrastructure is in place
  - a designated body responsible for the coordination of infrastructure in new development areas with:
    - sufficient power to direct or otherwise bind infrastructure providers to their commitments to deliver the immediate and near-term infrastructure needs of settlements (as agreed through a structure planning process)

  - the ability to elevate significant strategic issues and/or decision making to the level of Cabinet where it is relevant to do so (as South Australia's Government Planning and Coordination Committee is required to do)
- committed budget support (primarily for new infrastructure) to promote certainty and investment.

2 Engaging the community early and in proportion to likely impacts

Engaging the community more fully in developing strategic land use plans and subsequent changes can achieve better community buy-in for plans and their amendments. Responses to surveys indicated that a number of councils and state and territory agencies regard consultation primarily as a way to inform communities about their plans rather than engaging residents with a view to building plans around informed community opinions and preferences. Effective community engagement in the planning process would be more likely to happen if required by the relevant legislation. This is identified by the Local Government and Planning Ministerial Council (2009) as a best practice principle for community involvement.

With greater clarity around community preferences, decision makers can outline explicitly the trade-offs among competing viewpoints and the extent to which different preferences have been addressed as strategy and structure/master plans are being developed. While this would not eliminate opposition to a specific development or spot rezoning, an explanation of plans in terms of optimising the overall community and city welfare is likely both to gain greater acceptance and provide more certainty to residents and businesses. In some cases, it would be important to provide scientific and other evidence relevant to decisions made, such as how areas at risk of being damaged by one in a 100 year floods were identified.

Given the apparently large opposition to infill, it is particularly important to engage the community in determining an appropriate balance between greenfield and infill development and about the pattern or nature of infill. In general, at any stage from planning to development approval, the extent of community engagement should be proportionate to the potential impacts involved — the greater the potential impact on businesses or neighbourhoods, the more attention should be paid to the extent and form of the public consultation and/or notification processes.

3 Broad and simplified development control instruments

Originally, the primary objective of planning was to segregate land uses which were considered incompatible; but today, planning is being asked to serve much more complex objectives. In the extreme, planning systems suffer, on the one hand, from

planners who try to prescriptively determine how every square metre of land will be used and, on the other hand, from developers who play a strategic game of buying relatively low-value land and attempting to rezone it to make a windfall gain. The scope for both would be reduced if zoning definitions were broadened and zones and other development control instruments were defined in terms of broad uses rather than prescriptive definitions.

If the prescriptiveness of zones and allowable uses were significantly reduced — particularly those relating to business definitions and/or processes — it would facilitate new retail and business formats to locate in existing business zones without necessitating changes to council plans to accommodate each variation in business model. It would also provide more flexibility to adjust residential developments to changing demographics and preferences. Land areas set aside for industrial uses could be used for those industrial activities which, because of their adverse impacts on other land users, need to be located in separate areas. This may include not only chemical polluting industries but also activities such as ports and other infrastructure which operate 24 hours a day. For example, residential and commercial encroachment can restrict road access and result in restrictions on hours of operation or limitations on what can be traded through a port. For most businesses (commercial, service providers and some light industrial), there are limited and identifiable impacts associated with their location decisions and therefore few planning reasons why they should not be co-located in a business zone. This is also the case for retail except where it may result in significantly increased congestion and the infrastructure is insufficient to allow adequate access.

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

4 Rational and transparent allocation rules for infrastructure costs

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

- use upfront charging to finance major shared infrastructure, such as trunk infrastructure, for new developments where the incremental costs associated with each development can be well established and where such increments are likely to vary across developments. This would also accommodate 'out of sequence' development
- for infill development where system-wide components need upgrading or augmentation that provide comparable benefits to incumbents, this should be funded out of borrowings and recovered through rates or taxes (or the fixed element in periodic utility charges)
- for local roads, paving and drainage it is efficient for developers to construct them, dedicate them to local government and pass the full costs on to residents (through higher land purchase prices) on the principle of beneficiary pays
- for social infrastructure which satisfies an identifiable demand related to a particular development (such as a neighbourhood park) the costs should be allocated to that development with upfront developer charges an appropriate financing mechanism
- for social infrastructure where the services are dispersed more broadly, accurate cost allocation is difficult if not impossible and should be funded with general revenue unless direct user charges (such as for an excludable service like a community swimming pool) are possible.[1]

5 *Improving development assessment and rezoning criteria and processes*

The Commission particularly supports the following practices, a number of which reflect recommendations made by the Development Assessment Forum:[2]

link development assessment requirements to their objectives

- clearly link development assessment requirements to stated policy intentions that can be assessed against rules and tests or decision criteria. While useful in itself, clarifying the objectives served by requirements is also likely to reduce the number of matters requiring approval
- eliminate impacts on the viability of existing businesses as a consideration for development and rezoning approval

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[1] Productivity Commission (PC 2004).

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

use a risk-based approach

- stream development and rezoning applications into assessment ‘tracks’ (exempt, prohibited, self assess, code assess, merit assess and impact assess) that correspond with the level of assessment required to make an appropriately informed decision. This both speeds up most development assessments and rezonings, and releases assessment resources to focus on those proposals which are particularly technically complex or have significant impacts on others
- facilitate more ‘as-of-right’ development processes

facilitate the timely completion of referrals

- develop memoranda of understanding between referral bodies and planning authorities regarding what advice will be provided by referral bodies and how that advice will be dealt with by planning authorities. Clear and concise pro-forma development approval conditions (‘model conditions’) would also assist
- have all referral requirements collectively detailed and located in one place
- as far as technically possible, resolve all referrals simultaneously rather than sequentially

adopt practices to facilitate the timely assessment of applications

- adopt electronic development assessment systems to reduce costs for businesses and residents but also to improve consistency, accountability, public reporting and information collection/benchmarking
- limit the range of reports that must accompany an application to those essential for planning assessment, including referrals, leaving the need for other reports (such as for most engineering) until after planning approval is obtained — where necessary agreeing to these during a pre-application meeting
- ensure the skill base of local council development assessment staff includes a good understanding of the commercial implications of requests and decisions and the capacity to assess whether proposals comply with functional descriptions of zones, etc rather than judging them against detailed prescriptive requirements

adopt practices to facilitate access to relevant information

- ensure prohibited, allowable and restricted land uses for different zones are clear and publicly available, in a readily understandable form
- notify the community of proposed planning scheme amendments
- hold open meetings for significant rezoning such as conducted by the Tasmanian Planning Commission

provide transparent and independent alternative assessment mechanisms

- have clear criteria on what triggers approval by (regional, city and state based) alternatives to councils — the most important being that a proposal is likely to have significant positive or negative impacts beyond a council's boundaries
- expert and independent panels or commissions appear to be less contentious and more transparent than ministerial discretion unaided by an open and independent assessment
- have panels or commissions take input from all interested parties, including local interests, and publish the basis for the decision.

6 Disciplines on timeframes

More extensive use of timeframes for planning processes would provide better discipline on agencies and give developers more certainty. Statutory timeframes, with limited 'stop the clock' provisions, and deemed-to-comply provisions (as used by the ACT) would be beneficial for development assessment and referrals. Such disciplines are not designed to place undue pressure on the system but rather to encourage planners to meet reasonable deadlines. Given that some processes necessarily vary greatly, Queensland's practice of adjusting the statutory timeframes for structure planning according to the particular characteristics of each major project provides both certainty and flexibility.

Local councils also indicate that poor or incomplete development applications are a significant factor in their efficiency results – causing significant delays and costing significant amounts of staff resources. Various remedies have been trialled from requiring applicants to seek professional advice to providing a significant assistance service (sometimes free and sometimes for a cost) through pre-application meetings. The ACT's process of penalising applicants for incomplete applications through re-submission charges — as long as application requirements are clear and easily accessible — may also help timeliness.

7 Transparency and accountability

Transparency and accountability in planning decisions can be enhanced through:

- ensuring that planning scheme amendments have at least as much public scrutiny as is given to development assessments
- the appropriate availability of appeals for development assessment and planning scheme amendments, including limited third party appeals

- publishing comparable data on council outcomes and from other development assessors, such as panels, ministers and planning departments
- access to rules and regulations such as the location and restrictiveness of certain zones and other controls on land use in a consistent and clear format
- measures to promote probity in planning decisions including whistle blowing protection, conflict of interest provisions, bans on political donations from developer interests and anti-corruption commissions
- thorough and effective notification of development and planning scheme amendment applications being assessed under the merit and impact assessment tracks or by alternative assessment mechanisms.

While appeal rights may extend approval times, they have an important role to play in a complex area subject to considerable discretion, competing policy objectives and vulnerable to special dealing. Rather than prohibit appeals, efforts would be better focused on ensuring good notification and engagement, clearly explaining trade-offs made and providing less formal conflict resolution and review mechanisms so that the resort to appeals is less likely.

Practices which appear to reduce vexatious third-party appeals include clear identification of appellants and their grounds for appeal, the capacity for courts to award costs against parties seen to be appealing for anti-competitive purposes, and prohibition of appeals if the party did not put in an objection to the development application. These would reduce incentives to game the appeals systems to intentionally slow down developments.

Fortunately, all jurisdictions are moving towards collecting a range of data from local councils each year. This is a useful exercise. Consideration should be given to publishing a core set of consistently defined indicators for all states and territories so that benchmarking of those factors most relevant to the performance of planning, zoning and development assessments continues. These would include indicators on: land supply; development assessments and spot rezoning (including the numbers and use of different local council assessment tracks and alternative assessment mechanisms); and the extent and nature of appeals.

States and territories would also benefit from collecting data on a city level to compare progress on their strategic plans such as whether they are achieving infill and housing targets and reporting on all these indicators annually.