

Productivity Commission - Business Regulation Benchmarking – Role of Local Government
A study to benchmark the extent to which particular approaches to the exercise of regulatory responsibilities by local governments affect costs incurred by business, both within and between jurisdictions

The Department of Resources, Energy and Tourism (DRET) welcomes the opportunity to provide a submission to the Productivity Commission (the Commission) benchmarking study on the regulatory responsibilities of local government and their impact on business costs.

The resources, energy and tourism sectors are key drivers of the Australian economy underpinning the competitiveness of regions, industries and businesses across the economy. These sectors are at the forefront of the economic and environmental challenges facing Australia:

- mining and tourism account for nearly 12 per cent of Australia's gross domestic product;
- mining alone brings \$80 billion a year of gross value added into Australia's economy;
- the electricity and gas supply industries add a further \$17 billion;
- tourism accounts for nearly \$1 in every \$10 of Australia's export earnings;
- energy exports account for \$3 in every \$10 of Australia's export earnings; and
- one-in-15 Australian workers earn their livelihood from the resources, energy and tourism industries.

This submission seeks to highlight some of the key areas of local government regulation that impose unnecessary costs to businesses operating in these three sectors and proposes recommendations to provide for more streamlined regulatory processes. Reduction in unnecessary regulatory burden will enhance productivity and support Australia's economic growth.

Tourism

The Australian Tourism Industry

The tourism industry is complex and diverse. It is defined by consumption rather than production and includes accommodation and food services; transport, postal and warehousing; retail trade; ownership of dwellings; education and training; administrative and support services; arts and recreation services; rental, hiring and real estate services; health care and social assistance; information media and telecommunications; other services; and financial and insurance services.¹

In 2009-10 the tourism industry generated \$92 billion in spending, contributed \$34 billion (or 2.6%) to GDP, and employed 500,500 people or 4.5% of total employment. It is Australia's largest services export industry, providing 9% or \$23 billion of Australia's total exports in 2009-10.

Tourism plays a vital role in the strength, diversity and resilience of the Australian economy. Investment in the tourism industry also provides opportunities to:

- encourage innovation and continuous business improvement in tourism operations;
- encourage tourists to return to Australia for the purpose of study, work or permanent migration;
- enhance multiculturalism and foreign relations and create stronger alliances with those countries who are investing in Australia; and
- enhance conservation in areas of high natural amenity and cultural significance.

¹ Tourism Research Australia, State of the Industry 2010

With 46% of tourism expenditure in Australia spent in regional areas, tourism is of considerable importance to Australia's regional communities². The tourism industry also has a significant output multiplier. Tourism's total output multiplier is valued at 1.91. This means for every dollar spent on tourism adds an additional 91 cents to other parts of the economy. At 1.91, tourism's total multiplier is larger than other important industries such as mining (1.67), retail trade (1.80) and education and training (1.38).³ This also means that an uncompetitive tourism industry has a significantly higher opportunity cost in terms of the lost potential broader economic benefits that can be realised.

The National Long-Term Tourism Strategy

In recognition of the importance of the tourism industry to Australia's economy and of increasing the productivity of the industry, the Australian and state and territory governments have committed to the National Long-Term Tourism Strategy (the Strategy).

The Strategy is an inter-jurisdictional, micro-economic reform agenda to increase productivity in the tourism sector. It aims to achieve this through fixing labour and skills shortages, increasing investment, removing unnecessary and burdensome regulation, increasing product quality, building business capability and encouraging firms to use digital technology more effectively.

The Strategy seeks to provide firms with the tools to compete more effectively in the global marketplace whilst reforming aspects of the broader operating environment that act as impediments to growth.

The complexity of business regulation across all levels of government has been identified, under the Strategy, as an impediment to growth and investment.

Tourism and Local Government

DRET notes the specific roles and responsibilities of local government vary across jurisdictions, however this submission does not seek to analyse each jurisdiction, rather it seeks to signal those areas of responsibility which commonly have a significant impact on the tourism industry.

Local government is pivotal to all phases of tourism development. As the August 2010 report of the NSW Tourism and Local Government Taskforce notes:

*'Virtually every aspect of tourism involves councils; either as a development authority or as a regulator. This strategic position occupied by local councils needs to be recognised by State and Federal Government as well as the industry itself. Local government can be an influential industry partner if it is included. Equally, without local support, the probability of success is markedly diminished.'*⁴

The complexity of the business of the tourism industry means that it has potential to interact with local government across a broad spectrum of roles, including in the areas of:

- infrastructure provision and maintenance;
- land-use planning;
- environmental management;
- open space planning and management;
- public health and safety management;
- local economic development;

² Tourism Research Australia, The Economic Importance of Tourism in Australia's Regions

³ Tourism Research Australia, Tourism's Contribution to the Australian Economy, 1997-98 to 2009-10

⁴ Final Report, Tourism and Local Government Taskforce, August 2010

- education, training and employment;
- tourism promotion and marketing;
- arts and cultural development;
- community development; and
- human services.⁵

The industry is also dominated by small business: 93% of all tourism businesses are sole operator, micro-businesses or small businesses. Only 6.5% are medium sized, employing 20 to 199 people, and less than 0.5% are large, employing 200 or more people.⁶ This industry composition means that tourism businesses cannot quarantine resources to focus solely on understanding and negotiating regulatory process and the consequences of costly processes and time delays are keenly felt. The impacts on tourism businesses are also felt across the economy as, according to June 2007 estimates of Tourism Research Australia, around 29% of the two million actively trading businesses in Australia were tourism-related.⁷

Tourism and Local Government's regulatory role

While, as identified above, local government responsibilities impact on the tourism industry in many and various ways DRET is mindful the focus of the Commission's study is regulatory responsibilities. Local government's regulatory responsibilities impact the tourism industry in a wide range of areas including:

- building compliance;
- land-use planning;
- public health;
- environment protection;
- food safety;
- control of tobacco; and
- road safety.

Areas of most significant impact

DRET notes and agrees with the Commission's observation that because of the significant breadth of local government's regulatory roles it is appropriate to focus on areas which have the greatest potential to impact on business. DRET considers the two most significant areas of impact are:

- the complexity of regulatory interaction across levels of government; and
- land-use planning.

Complexity/ layers of regulation

Australia's regulatory environment is complex. Businesses are often required to satisfy the regulatory requirements of Commonwealth, state and local government, and to interact with more than one regulatory authority at the Commonwealth and state level. In many instances, to establish a new business or expand/ change the nature of an existing business, regulatory approvals are needed concurrently and a delay in one area can impact business costs and start-up times.

The cumulative impact of regulation is a significant challenge for the tourism industry. It is important for regulators to be mindful that businesses must meet a range of regulatory requirements which can be confusing and costly to navigate. As an example, a tour company operating in Victoria may need:

⁵ Achieving sustainable local tourism management, Phase 1 – Practitioners Guide, Sustainable Tourism CRC

⁶ The Jackson Report on Behalf of the Steering Committee Informing the National Long-Term Tourism Strategy

⁷ Tourism Research Australia, State of the Industry 2010

- a food safety registration, permit and plan from the local council;
- a liquor license from the Department of Justice;
- bus operator accreditation from Public Transport Safety Victoria;
- accreditation to drive passenger vehicles from the Victorian Taxi Directorate;
- a licence to operate permit from Parks Victoria; and
- eco-tourism accreditation from Ecotourism Australia.⁸

While only one of the above regulatory requirements is administered by local government, it is important for local regulators to be aware their requirements may be just one part of a complex system. Local efforts to reduce regulatory requirements; streamline procedures; and better inform businesses of what is required and, where possible, guide them through the processes will positively impact business which will have flow-on benefits for local economies.

The Commission should examine the extent to which business costs are impacted by the complexity of the multi-layered regulatory framework and consider what mechanisms could be implemented to streamline the regulatory framework and reduce complexity for businesses.

Land-use planning

Land-use planning regulations, while a discreet area of regulation, also involve complex processes and interactions between levels of government.

‘Each state government effectively establishes the legislative framework that manages the plan-making process. These frameworks are the primary tool used to ensure the continuing coordination and integration of planning across all levels of government within a particular state. Although this framework establishes the process by which development assessment takes place within a state, **almost every local government authority plays a central role in assessing and deciding planning proposals** [emphasis added].’⁹

The Investment and Regulatory Reform Working Group (IRRWG), which operates under the Strategy to progress regulatory reforms to promote investment, commissioned a review of regulations which impact tourism investment. The review found the area of local government regulation which most significantly and negatively impacts tourism business is land-use planning. In particular, the review found:

- planning schemes are complex and challenging to navigate and can act to prohibit, discourage or limit the scope of developments. This is particularly the case where land is zoned in a manner that does not provide for tourism uses;
- councils lack resources and experience of tourism developments;
- local council decisions can be subject to a high level of community influence or intervention which adds to uncertainty;
- the regulatory culture can be as important as the letter of the regulation; and
- the impact of short-term visitors (tourists) is not consistently reflected in local area plans and should be in order to ensure adequate and sustainable planning for local tourist facilities and infrastructure.

The IRRWG’s findings are supported by other, broadly based studies which demonstrate concerns in regard to land-use planning regulation are not unique to the tourism industry.

⁸ Victorian Tourism Industry Council, and Victorian Events Industry Council submission to the VCEC Inquiry into Victoria’s Tourism Industry

⁹ Urbis, Tourism Planning Code, Key Issues + future directions, June 2010

The April 2010 Victorian Competition and Efficiency Commission (VCEC) Inquiry into Local Government for a Better Victoria contracted Roy Morgan Research to survey Victorian businesses about their regulatory interactions with councils. The survey contacted around 1900 businesses of which 605 reported having a regulatory dealing with local government in the previous three years. Over half of the businesses dealing with land-use planning regulations reported that their most recent dealing with local government had a negative impact on their business¹⁰.

While the above experience is taken from Victoria, because of VCEC's recent relevant work in this area, the Victorian experience is unlikely to be isolated. This is borne out by the Commission's own report 'Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment' which, based on an Australia-wide analysis, found the complexity of land-use planning systems represents a significant compliance burden for business.

For a new or expanding tourism development, in addition to the regulatory requirements it must meet as part of its operations (eg food safety for a bed and breakfast or restaurant, parking for a range of uses), it must first navigate the land-use planning system. The lack of consideration for tourism in planning regulation, particularly provision for tourism uses in zoning, translates into unnecessarily high costs for tourism operators. These regulations typically add to planning timelines (increasing holding costs), create additional processes and compliance requirements (raising administrative costs and consultant fees), exclude tourism from attractive development opportunities (decreasing revenues and profits), and add to uncertainty by investors (raising capital costs).¹¹

Practical examples of the challenges tourism businesses face in land-use planning regulation follow. These examples have been provided by state tourism organisations, and development proponents (either directly to DRET or to another government inquiry).

Bicheno/ Tasmania

A private developer sought to invest \$15 million in an ecotourism development near Bicheno on the east coast of Tasmania. The land they purchased (34ha) was zoned by the local council as Coastal Rural. The developer submitted an application to develop eco-accommodation with a very low footprint of approximately 3 ha, on land that had previously been used for sand mining and hunting, and was in a state of disrepair. The Development Application was originally approved, then challenged and taken to the High Court by the Attorney-General of Tasmania. The basis of the challenge was that the coastal area was covered under the state coastal planning policy which prevented Urban Development. The problem for the developer, was that the local planning scheme did not have a zone in which their ecotourism could be classified as a permitted use. In fact the local planning scheme could not fit the ecotourism into any one zone. This prevented a planning amendment under section 43a of the Tasmanian *Land Use Planning and Approvals Act 1993*, and therefore was ultimately deemed as Urban Development, which was not permitted under the state coastal planning policy. The role of the Attorney-General was not to openly oppose the Development Application, but to defend the process regarding state coastal policy. The real issue lay with the failure of the local planning scheme to correctly assess the ecotourism development based on its permitted use.¹²

¹⁰ VCEC, Local Government for a Better Victoria: An Inquiry into Streamlining Local Government Regulation, Draft Overview and Recommendations for further consultation and input, April 2010

¹¹ L.E.K. Consulting, Tourism Investment and Regulation Review, August 2011

¹² Tourism Tasmania

Yarra Valley Grange Conference Centre/ Guest House/ Restaurant, Warburton, Victoria

A property developer purchased the Yarra Valley Grange Conference Centre in 1998. The Centre was vacant at the time and was sold by receiver managers appointed. The new owners then leased the property to a highly experienced conference operator “Grange Group of Conference Centres” who operated it successfully for twelve years.

Toward the end of the last tenancy agreement, the tenant advised, as part of the evolution of their business to meet market expectations, they would like to relocate the restaurant component of the business into a separate building to the existing conference centre facilities. This would support the ongoing viability of the business as it would allow for the restaurant to cater to passing tourist traffic rather than being closed to the public during times when a conference was in house.

The property owner supported this business strategy and applied to the Council for a permit to build a separate restaurant. The Council took many months to consider the application and provided no reasons for the lengthy consideration period. The tenant became concerned by the lengthy delays and the negative impacts on their business viability and ultimately advised the property owner of their decision not to renew the tenancy.

The property owner then referred the application to the Victorian Civil and Administrative Tribunal (VCAT) for review on the basis the Council had not determined the application within the statutory period. The Council advised VCAT the reason for the delay was because the property owner had not provided sufficient evidence to prove the existing-use rights which Council stated needed to be demonstrated for a continuous period of fifteen years. The applicant/owners had provided the Council with 12 years of proof based on the tenants business operations and had also obtained statutory declarations from a previous owner operator who provided substantial supporting evidence for a period 8 years earlier. Notwithstanding the above, the Council queried a period of approximately 18 months prior to the purchase by the current owners when the previous owner operated the business and went into liquidation. Despite repeated enquiries as to the relevance of this requirement, Council did not provide any justification for the requirement or lengthy delay in their consideration.

VCAT found in favour of the property owner and instructed that the permit for the restaurant be issued. While the VCAT decision represented a positive outcome for the property owner it did not come without significant costs.

The property owner lost a high quality tenant and expended \$150,000 in taking the matter to VCAT. The premises has been marketed professionally by specialist agents seeking a new operator either by leasing or selling the property over the past 12 months without success.

The community lost a successful business operation which may take some time to rebuild. This loss included employment of staff to operate the Centre; support of local industry (eg through local purchase of provisions for the Centre); and loss of employment of local tradespeople in the construction of the new restaurant.

While the property owner was able to withstand these business costs and may be able to re-tenant the Centre, if this type of regulatory hurdle were faced by an owner operator it is likely to put an end to the business.¹³

¹³ Advice provided by Hallmarc October 2011 including VCAT decision and order of 3 July 2011

Lorne, Victoria

An existing tourism operator in Lorne, Victoria made an application to the local Shire to erect a large fly free bird aviary as a tourism attraction for international and domestic visitors. It was refused as it did not fit into the schedule of the Rural Conservation Zone in which the business is located. The refusal was despite the support of councillors, the local tourism board and local economic development committee.¹⁴

All these examples provide practical demonstration of the great extent to which land-use planning can impact tourism development: in some cases actually preventing development and in others causing significant and costly delay. The impact of inflexible zoning regulation is also highlighted by two of the above examples.

The IRRWG has sought to address some of these issues through the development and promulgation of a National Tourism Planning Guide¹⁵. The key features of the Guide include:

- guidance for jurisdictions on how to use the planning framework hierarchy to pro-actively plan for the supply side of tourism. This includes an approach to the plan-making process; and the formulation of state, regional and local planning responses;
- mechanisms for planners to better engage with the tourism industry;
- guidance on land use zoning approaches and tourism land use definitions to assist planners to determine the appropriateness of tourism development;
- guidance for jurisdictions to consider the use of call-in powers (ie allow the state government to assess proposals under a streamlined assessment process); and
- measures local authorities can use to incentivise tourism development (eg increasing maximum allowable floor space for tourism developments to increase their financial viability, exempting tourism developments from developer levies and implementing tourism only land zones).

While the Guide is a valuable resource, in order to ensure a more user-friendly land-use planning system there is need for systemic reform.

The Commission should undertake detailed analysis of the regulatory role of local government in land-use planning with particular consideration of how regulation of zoning could be reformed to reduce costs for business and create a more conducive environment for business, including tourism development.

Other areas of impact

While DRET considers the complexity/ layering of regulation, and local government's regulatory responsibility in regard to land-use planning have the most significant impact on tourism business costs, there are a range of other areas where the impacts of regulation are significant. This is particularly the case for small businesses with tight operating margins and therefore limited capacity to absorb the cost impacts of regulation.

¹⁴ Lorne Bush House Cottages submission to Inquiry into Rural and Regional Tourism 22 April 2007

¹⁵ The National Tourism Planning Guide can be accessed at:
<http://www.ret.gov.au/tourism/nlts/publications/Pages/default.aspx>

Some examples include:

- environmental regulation

An urban Victorian Council announced a plan to charge cafes and restaurants a fee for using outdoor heaters in winter. The fee was to be \$105 per business for the use of heaters which encourage outdoor dining. It was intended to reduce energy consumption and subsequent carbon emissions. However, after feedback from local businesses and residents the fee, was axed. While this regulation was withdrawn, it is an instructive example of the potential impact local government regulation can have on small tourism businesses. If the Council had proceeded with the charge, it would have added to the cost base of businesses and potentially driven trade elsewhere due to the likelihood that costs would have been passed on to customers.¹⁶

- road safety/ traffic management

A rural NSW Council requires that in some circumstances businesses pay a Section 94 fee for car parking. The fee is set at \$11,375 per car park required and is reported to be discouraging businesses from locating in the area as they may be required to pay for a number of car parks. The policy is under review, but such fees can act as a significant deterrent to small tourism businesses. The description of the fee is also confusing to new businesses who are encountering council regulation for the first time. Section 94 refers to section 94 of the NSW *Environmental Planning and Assessment Act 1979* which provides for contributions towards the provision for improvement of amenities or services. While its meaning and purpose may be clear to local regulators, it is not easily understood by the wider community. In this regard, the example also highlights the need for regulators to be mindful of the needs of clients in their communications.¹⁷

- building regulation/ working hours

The Master Builders Association of Victoria notes that a range of different regulations determine appropriate working hours on building sites. In municipalities across Victoria, regulated start times on weekends commence after the official remuneration clock begins for commercial construction workers (eg workers are paid from 7.30am-3.30pm, but in most local government areas, workers cannot undertake construction activity until 9am). By restricting start times to 9am on a Saturday, builders are forced to pay employees at double time penalty rates for 1.5 hours of unproductive time. This is causing employers in commercial construction to shift away from Saturday work, leading to projects taking 15% longer to complete.¹⁸ This type of impact flows on to service industries like tourism which are dependent on the timely completion of building works to open new, or extend existing, premises. Again, the domination of the industry by small business means tourism is ill equipped to absorb the costs associated with delays.

The Commission should pay particular consideration to those areas of local government regulation that impose significant costs on small business, including the flow-on effects of some regulations (eg the cost impact of regulation of the building industry on service industries). If this is not possible, the Commission should consider how the principles of best practice regulation can be applied at the local government level.

¹⁶ Media Reports of September 2011

¹⁷ Media report of 6 July 2011 and minutes of the Special Planning Committee Meeting of Council of September 2011

¹⁸ Master Builders Association of Victoria, Submission to the Victorian Competition and Efficiency Commission Inquiry into Streamlining Local Government Laws, December 2009

Major Resources Projects

In April 2009, the Productivity Commission released a research report titled “*Review of the regulatory burden on the upstream petroleum (oil and gas) sector*”. The objective of the review was to identify ways to improve the regulatory arrangements and reduce unnecessary burdens on the upstream petroleum sector. The study was concerned with the regulation of conventional upstream petroleum projects that involve more than one jurisdiction and focused on burdens that may arise from deviation from best practice regulation or from poor administration of regulatory arrangements.

In Chapter 10 of the Report, the Commission noted that “*local government has a legitimate role in some planning and developing assessments. However the Commission shares concerns about involvement from local government that adds to unnecessary regulatory burdens.*”

The Commission recommended in its draft report that State and NT Governments should make clear the scope of local government’s role in the approval of upstream petroleum developments (and other major developments). This was strongly supported by the Western Australian Department of Mines and Petroleum (DMP), which stated local government ‘can stray beyond its level of expertise in the approval of upstream petroleum developments’ (sub. DR22, p. 22).

DMP suggested the following should be considered to clarify the role of local government:

- draft standard Memorandums of Understanding (MOU) template could be developed by a government’s lead approval agency to be utilised by petroleum developers and local government bodies responsible for the area of development. The MOUs would clarify roles and timelines for both parties and provide mechanisms for dispute resolution.
- Guidelines — resource and environment agencies, industry and local government [could] develop guidelines outlining the scope and role of all parties in the approval of upstream petroleum development. (sub. DR22, p. 23)

The Commission considered that the above suggestions could prove useful in defining respective regulatory roles for upstream petroleum projects. Such guidance should make explicit that areas that require specialist industry knowledge, or areas that are already regulated by other agencies, are out of scope for local government.

The Commission recommended:

“Recommendation 10.1: State and the Northern Territory Governments should make clear the scope of local government’s role in the approval of upstream petroleum developments (and other major developments). Where aspects of these developments are already regulated by environmental agencies or major hazard facilities regulators, or when the regulation requires specialist industry knowledge, involvement by local government is not warranted.”

The National Partnership Agreement (NPA) to deliver a seamless national economy included as milestone #9 that the:

“States and Territories: Develop a draft Memorandum of Understanding (MoU) template that clarifies the roles and timelines of petroleum developers and local government bodies by December 2010.”

Regrettably this milestone has not been achieved despite urging from the Commonwealth for a jurisdiction to drive this milestone forward.

In the absence of a nominated jurisdiction to progress the milestones, it was agreed at the November meeting of the then Upstream Petroleum and Geothermal Subcommittee (UPGS), that the Commonwealth, as UPGS Secretariat, would make contact with the Australian Petroleum Production and Exploration Association (APPEA) and the Australian Local Government Association (ALGA) on behalf of UPGS to ascertain their views on this Milestone and Milestone 12 of the NPA.

The Commonwealth wrote to APPEA and ALGA on 18 February 2011 seeking their views on the possible contents or scope of an MoU for petroleum developers and local government bodies. In subsequent discussions between the Commonwealth and APPEA, APPEA indicated that while interaction between the upstream oil and gas industry and local governments is of key interest to the industry, particularly in relation to onshore operations, they found it difficult to visualise how an MoU would operate in practice. As an alternative, APPEA suggested development of a guideline on the issues that should be considered by developers and local governments more generally in formulating agreements. APPEA also stated that the issue is becoming more relevant in the context of the onshore liquefied natural gas (LNG) developments in Queensland and New South Wales. After informal consultation with some of its members, APPEA also suggested that processes already in train in WA, involving the mining sector and the WA Local Government Association, appear to be the most appropriate way to address the local issues affecting the oil and gas industry, and reiterated that a template MOU in a national context may be a complex task.

In discussions with ALGA, the Commonwealth outlined APPEA's response and asked ALGA for their views. ALGA also suggested that a guideline may be more effective.

To address concerns previously highlighted about the potential for increased regulatory burden as a result of lack of clarity of the scope of local government's role in the approval of major oil and gas projects the Commission could propose alternative, pragmatic options to address this issue.

Energy

Land-use planning

Land-use planning regulation has also been identified as significant for the energy sector.

The responsibilities of local governments in relation to land-use issues impact on Carbon Capture and Storage (CCS) (and energy activities). In many cases this responsibility is no different from that relating to any other activity that requires land and should be treated in the same way.

CCS also has potential requirements for land-use for long distance transport infrastructure (pipelines carrying carbon dioxide). Other parts of the energy sector have similar needs, for example natural gas pipelines and electricity transmission lines. Such infrastructure will commonly cross a number of local government areas. In this situation any inconsistencies in regulation between different local government areas will likely increase compliance costs for industry. Moreover, the overall approvals process will always benefit from a high level of coordination in the development of relevant infrastructure corridors.

The Commission should consider the impacts on business costs of inconsistent regulation across local government areas where business activity crosses local government boundaries.