



Dedicated to a better Brisbane

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12 June 2012

Dr Warren Mundy
Productivity Commissioner
Performance Benchmarking Australian Business Regulation
Productivity Commission
PO Box 1428
CANBERRA CITY ACT 2601

Dear Dr Mundy

Thank you for the invitation to contribute to the Productivity Commission's interim report: *Performance Benchmarking of Australian Business Regulation: The Role of Local Government as Regulator*.

A review of the report has identified a number of repeating key themes across the different areas of regulation. These include:

- A delegation or devolution to local government of regulatory role without commensurate resource or skills by state government agencies;
- The complexity and duplication of regulatory activities as a result of layered legislation from both state and local governments; and
- Enforcement of state legislation generally predominates local government regulatory responsibilities.

These themes relate to a national view of the challenges faced by local government when regulating businesses. The Brisbane City Council has in the past, been faced with similar challenges. Although equally, Queensland legislation related to the roles of local government in determining land use and development of the built environment has provided necessary flexibility to support leading practices that reduce regulatory burden, cost and timeframes for businesses across the city. A submission discussing these points is attached for your consideration.

A number of leading practices are outlined in the report, and as an approach, Council supports the concept of national consistency in regulation. However, this must always allow flexibility to accommodate local drivers, including environmental and other outcomes demanded by the community. Council would be pleased to nominate a representative for an advisory group tasked with developing outcome driven regulation, given our uniqueness among our local government peers.

I look forward to reading your final report in July.

Yours sincerely

Colin Jensen
CHIEF EXECUTIVE OFFICER

Att

Productivity Commission Interim Report - March 2012

Performance Benchmarking of Australian Business Regulation: The role of Local Government as Regulator

General Comments:

Outcome driven regulation:

One of the main themes of the report is the opportunity for outcome based regulation that is nationally applicable. Community outcome and community demand are key drivers in the Brisbane City Council's (BCC or Council) ongoing improvement initiatives. Participation on an advisory group tasked with developing outcome driven regulation would be of particular interest given our unique status among local government in Australia.

In addition, BCC since our original submission has adopted a compliance and enforcement approach based on the Braithwaite pyramid in our Compliance and Regulatory Services branch. It provides a guideline to staff that describes a risk based approach to regulatory compliance and enforcement activity that supports consistent outcomes for businesses and other customers.

Consistency

This report is a draft interim report on a benchmarking study of the regulatory role of local government across all Australian states and the Northern Territory. Some of the statistics included in the document itself highlight the challenges of this national approach, particularly impacting BCC. For example BCC is the largest Council by population size and it has the largest work force. It is predominantly urban, although because it encompasses both very high density residential and the lower density suburban residential there are inherent challenges creating regulatory frameworks that are consistent and transparent over the range of circumstance across the city.

BCC supports the concept of consistency of approach across both State and Commonwealth, however given the significantly different challenges required by our local government such as population density of 800 people per square kilometer compared to 1 person per 1000 square kilometers at the other end of the local government spectrum, flexibility within the approaches must be available. To regulate 107,000 business across the city mitigating the impact of the businesses on the amenity and accessibility of the city for residents requires careful consideration in the preparation of regulatory frameworks and a national one size fits all approach will not be an effective tool.

Revenue and Cost Consistency

Another theme evident in the interim report is consistency of costs to business. One example provided is the cost of commercial photography in Brisbane and in Cairns; \$563 for the former and \$177 the latter. While this example was illustrative of the need for consistency, it must be acknowledged that the cost of closing roads and facilitating an alternative for consumers is likely to be significantly higher in Brisbane than in Cairns for obvious demographic reasons. Again, flexibility within a consistent approach must be an over-arching principle of any work that is undertaken with regard to costs related to regulatory function.

Council considers it important that the Commission acknowledge that local governments in Queensland are not able to use fees and charges as revenue streams. In the case of BCC, Section 99 of the *City of Brisbane Act 2010 (Qld)* (the Act) requires Council to set its fees at 'cost recovery' only. In particular, subsection 99(4) states a 'cost-recovery fee must not be more than the cost to the Council of taking the action for which the fee is charged'. Section 100 of the Act requires Council to maintain and make available a register of fees. Previous Supreme Court rulings have confirmed the constraints of these provisions. Legislation related to the setting of fees is less prescriptive in other states; the New South

Wales *Local Government Act 1993* says, for example, that the cost to Council *need not be the only basis for determining the approved fee for that service*, providing more options for NSW councils compared with Queensland councils.

Shifting of red tape burden

A concept discussed in the paper is one of creating regulation with statutory force, with governance by an independent authority, with regular reporting by local government. While the suggestion has been made that such an approach has been proven successful in other jurisdictions, development of any such structure must guard against reducing red tape to business by shifting the burden to local government; creating processes that monitor compliance and performance of local government by unwieldy reporting regimes. Any reduction in process must benefit both business and local government.

State Government Influence

It is pleasing to note the Commission has recognized the often negative implications that occur when state legislation is delegated or enforcement is devolved to local government, without appropriate resources or skills provided. This often leads to duplication of effort, additional red-tape as a result of prescriptive methodology determined by state government agencies, and lack of flexibility to allow local government to develop risk or outcome based enforcement options.

BCC wishes to emphasise support for this key point highlighted in the report. Local government is caught in a tug-of-war between strongly expressed local opinions, and growing list of responsibilities and requirements delegated to them by their state government.

Best practice information sharing and strategic leadership

Council is an agency member of the *AELERT* organisation. *AELERT* is *Australasian Environmental Law Enforcement and Regulators neTwork*; an organisation where knowledge, guideline/template, marketing and strategy collateral is shared across agencies to ensure best practice innovation and learning are available to members. Headquartered in Canberra, the organisation has key "clusters" which are areas that focus on best practice for training, operations and legal practice. States have "local" groups or committees for their jurisdictions that meet regularly to share information and resources, and collegiate projects may be sponsored by the national secretariat. Local and state government agencies are members of the organisation. BCC is an active member in Queensland and is a key contributor to the training cluster at national level.

Another successful innovation by BCC has been strategic advisory groups. These groups chaired by Council (an example is advertising signs advisory group) have membership by invitation to the largest providers, as well as industry representative groups, and meet at least twice each year. The forum does not discuss individual issues, however it does tend to identify trends that cause concern for industry generally, and opportunities for improvement or change. Collegiate and transparent design of audit protocols and forms and documents used in the enforcement process means that voluntary compliance has improved. Innovation has been proposed or implemented as a result of discussion by the group. At inception, there was some distrust about the level of engagement by Council however as the group matures and has been able to influence draft legislation, or process change, the stakeholder buy in has improved.

In place for a number of years, Queensland has a local government "toolbox" (www.lgtoolbox.qld.gov.au). This is a resource available to the public and industry that describes the requirements environmental health related activities, including Disaster Management resources. In addition, via restricted login, Queensland councils have access to forms, standard operating procedures and legislative resources that are also stored on the website (although not available to the public). Given that environmental health is primarily

legislated by state governments, the sharing of resources provides both consistency across regulatory experience across the state, and allows for leveraging of work done by a council with applicable resource by a council that does not have necessary capacity or capability.

Classifications used in the report

The draft report outlines the classification of local governments according to differences in their geography and demography as 'important'¹. The Commission uses a classification system based on the Australian Classification of Local Governments (ACLG). It defines six local government classifications. In its initial submission to the Commission, Council made comments against the use of either the ACLG or local government boundaries as the geography for its analysis. The Brisbane City Council is the municipal government for over half of the Australian Bureau of Statistics Brisbane Statistical Division, which can be thought of as metropolitan Brisbane. This disparity in size and scope has resulted in misleading comparisons in Figure 2.3 (p47) of the draft report.

Therefore, the geographies adopted by the Commission result in some anomalies which are best illustrated by reference to Council's own geographic aggregations. The Economic Development unit of Council uses 11 ABS Statistical Local Area (SLA) based geographic aggregations to subset Brisbane with no overlaps. These aggregations are not administrative regions. The 11 aggregations are set out in Table 1 below.

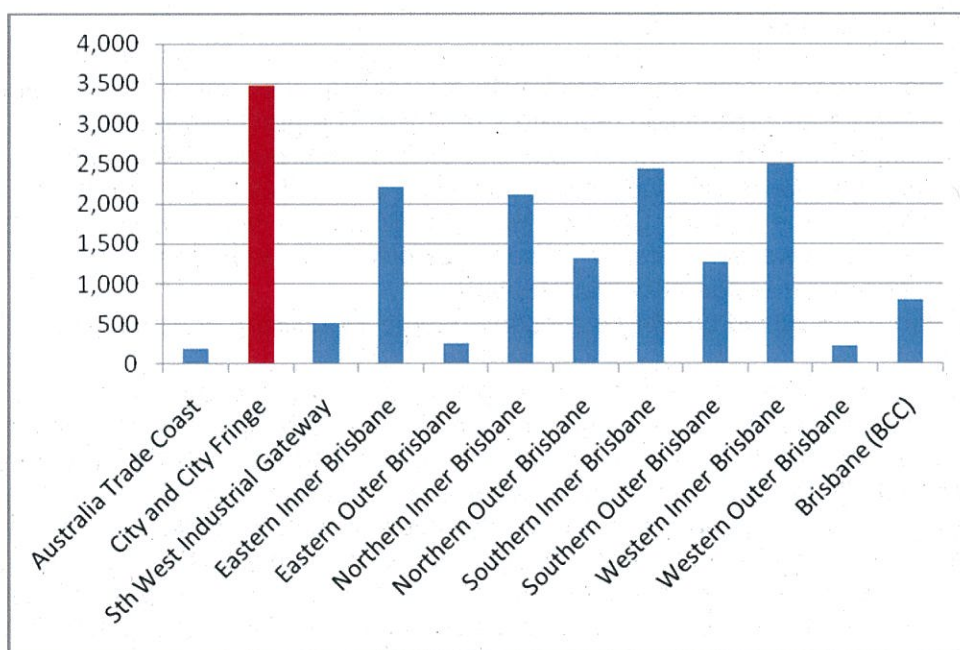
Table 1. Brisbane City Council Economic Development Unit aggregations²

Aggregation	ERP 2011	Area (sq km)	Pop Den 2011
Australia Trade Coast	20,844	107.4	194
City and City Fringe	97,798	28.2	3,468
Sth West Industrial Gateway	30,833	60.2	512
Eastern Inner Brisbane	92,830	41.9	2,216
Eastern Outer Brisbane	71,668	273.9	262
Northern Inner Brisbane	123,603	58.5	2,113
Northern Outer Brisbane	201,130	153.8	1,308
Southern Inner Brisbane	66,091	27.1	2,439
Southern Outer Brisbane	220,994	174.4	1,267
Western Inner Brisbane	66,530	26.7	2,492
Western Outer Brisbane	87,071	386.3	225
Brisbane (BCC)	1,079,392	1,338.4	806

¹ P43

² ERP and Area data from ABS Cat 3218.0 Regional Population Growth, Australia

Figure 1. Population densities for Brisbane aggregations



Council considers that either the SLAs of City Inner and City Remainder or the City and City Fringe aggregation are better geographies to use as a comparison with other state capital cities. Both geographies result in similar population densities, with the SLAs having slightly higher density than the larger City and City Fringe aggregation.

Council considers the remaining ten aggregations are better included in the urban metropolitan (UM) classification, as they are directly analogous to the urban based local governments found in other parts of South East Queensland and Australia.

Table 2. UM classification of SEQ local councils plus urban Brisbane (excluding the City and City Fringe aggregation)

Aggregation*	ERP 2011	Area (sq km)	Pop 2011	den
10 BCC Aggregations	981,594	1,310.2	749.2	
Rest of SEQ	1,866,583	9,068.9	205.8	
Total SEQ plus BCC	2,848,177	10,379	274.4	

For a breakdown by Statistical Local Area refer to Appendix 1 – Table 1.

The presentation of the urban areas of South East Queensland as UM increases the population density of the region by 33% and is more comparable with the other cities included in the draft report.

If this alternative geography is adopted by the Commission then the comparisons made in Chapter 6 need to be reviewed. Figure 6.1, for example, shows the density of business for all of the Brisbane City Council, however, ratios similar to Sydney and Melbourne would be shown if the proposed alternative geography is used.

Chapter Specific Comments:

Chapter 7 Building and Construction

The paper identifies a number of leading practices by building regulators aimed at reducing both direct and indirect costs associated with complying with various state and local government building and construction regulatory regimes. The practices include:

- *Introducing a charging regime for obtaining building approvals based on time;*
- *Subjecting standards beyond those specified in the National Construction Code (which includes the Building Code of Australia (BCA)) to a cost benefit analysis;*
- *Implementing consistent stated based guidelines or enforceable standards for construction site management matters; and*
- *Moving to a risk based building inspection regime for building certification.*

While Council does not disagree with these practices, current compliance costs to the building and development industry under current building regulatory framework in Queensland are not significant, or unnecessary, in part as a result of the legislative restrictions and conditions imposed on local government related to their role, jurisdiction and powers. The performance based model adopted in Queensland for building work, including the BCA and Queensland Development Code, provides both certainty (in the form of prescriptive standards) and flexibility (in the form of alternative solutions). Removing flexibility from the framework would improve consistency across jurisdictions, however could adversely affect the desired built environment outcomes sought by local government in accordance with the needs and expectation of the local community.

The main costs imposed by local government identified in the report include:

- *Local governments mandating building standards (particularly for energy efficiency and sustainability) beyond those in the BCA and referenced in state and territory building laws;*
- *Delays in assessing and processing building applications;*
- *Conditions placed on construction site activity;*
- *Inspection regimes used to assess compliance for building and plumbing work; and*
- *Often inconsistent fees and charges for assessing building applications.*

BCC does not undertake these initiatives and therefore have limited comments.

7.1 *Regulatory Role of Local Governments*

Council's Compliance and Regulatory Services Branch is responsible for a range of administrative and enforcement functions within a state wide building regulatory framework comprising a number of inter related laws, regulations and codes. Council's powers and jurisdiction for carrying out these administrative functions are prescribed in the *Sustainable Planning Regulation 2009 (Qld)*, which includes building assessment work as a referral agency under the Queensland Development Code for particular building matters such as design and siting of class 1a buildings, fire safety for budget accommodation buildings and residential services.

7.2 *Scope of excessive burdens of business*

Direct costs of building and construction approvals:

BCC meets its statutory obligations under the *Building Act 1975 (Qld)* to provide building certification functions by appointing private building certifiers under a contractual arrangement. Council's building approval and certification fees are fixed by resolution and adopted in the annual budget based on the cost to Council to provide the service in accordance with the cost recovery fee provisions under the *City of Brisbane Act 2010*. These provisions prevent local government from imposing a fee above that of the cost to Council in taking the action, or providing the service, for which the fee is charged.

Council acknowledges that these fees are based on the average cost of all applications of specific type, and not the actual cost of a specific application. A fee model that allows a fee to be imposed based on the actual time taken to perform the required building certification and ancillary administrative functions may reflect a true 'user pays' approach providing for an equitable apportioning of the cost of the service provision.

Variations in building standards

Council is restricted from making or amending local planning instruments or local laws about an aspect of building work, other than about specific matters prescribed in Part 3 of the *Building Regulation 2006 (Qld)*. These include:

- (a) *Additional water saving targets;*
- (b) *Design and siting requirements for class 1a and class 10 building;*
- (c) *Swimming pool construction;*
- (d) *Designation of bush fire prone areas; and*
- (e) *Land liable to flooding.*

These provisions allow councils to adopt alternative building and construction solutions to address the specific and individual needs and expectations of the local community. Council is further restricted under the *City of Brisbane Act 2010* from making local laws that establish alternative processes for building work matters that are already provided for under current planning and building laws.

Extent and substance of conditions placed on construction site management

In Queensland, the *Environmental Protection Act 1994* is the primary legislation for regulating the environmental impacts from building and construction work, covering matters such as erosion and sediment control, hours of operation and noise. This statutory instrument provides a standard that can be applied and enforced consistently across jurisdictions. However the law also allows for local government to regulate construction site management matters based on the needs and expectations of the local community through the development approval framework under the *Sustainable Planning Act 2009 (Qld)*.

Leading Practices

Charging regimes for building applications:

Council supports the concept of a charging regime that is based on the actual time taken for the assessment of an application, however notes the differing levels of flexibility within current legislation across states.

Building Standards

The report has identified that the current Queensland gateway approach is a leading practice. The development of separate standards under the Queensland Development Code addresses the particular climatic and geographic needs of Queensland, across the state generally (through performance requirements), and of the local governments, specifically (through alternative solutions), facilitating pragmatic solutions for specific circumstances under a consistent umbrella.

Managing construction site activity

The leading practice discussion refers to using enforceable conditions in regulation of construction site activity, with conditions being flexible enough to deal with genuine differences in local environmental circumstances. BCC acknowledges that this flexibility may result in expense to the construction industry; however the sustainability and heritage of the environment must be a consideration for the local government and development/construction businesses. This consistency, with flexibility is an outcome generally supported by Queensland's *Environmental Protection Act 1994*.

Building Inspections

Council considers that for the BCC area, the current inspection requirements legislated in the *Building Regulation 2006 (Qld)* protect the integrity of the building process by subjecting the work to the necessary scrutiny and using a practical, pragmatic approach give users and occupiers of building the 'peace of mind' about the standard of construction. A prescriptive approach that mandates the aspects or stages of construction that must be inspected also mitigates conflicts of interests, or potential conflicts of interests, of those building professionals involved in the proposal.

Chapter 9 Public Health and Safety

BCC does not play a role in cooling towers, swimming pools, brothels, liquor licensing; all are state government functions.

9.1 Food Safety

Council is supportive of reducing the regulatory burden on food business through the fostering of a compliance partnership with industry to achieve innovative and best practice outcomes. BCC has, through the "Eat Safe Brisbane" scheme demonstrated an ability to utilise a risk based management framework and incentive licensing scheme to underpin fundamental public health outcomes for the community.

Council acknowledges that nationally there is significant variation and difference in fee structure, revenue policy and reduced transparency around licensing and service delivery. Inherently all local and state authorities enforce the *Food Safety Standards*, however there continues to be significant inconsistencies in the application of those standards which often lead to differing levels of service delivery. While licensing is an administrative tool to allow regulation, there needs to be a stronger focus on developing nationally consistent outcomes through performance based legislation and standards.

Transparency of food industry performance through implementation of a national food safety grading system is a concept supported, although Council encourages the national application of a food grading system that considers good management practices and an ongoing and active compliance partnership with opportunity for increased self regulation.

The report does not identify inhibitors that adversely affect or make it difficult for local government to achieve leading practices. Poorly written legislation, or antiquated legislative precedence (i.e. release of information, secrecy provisions) often compete against contemporary policy for public or right of access to information. Local governments that choose to be innovative are restricted by such inhibitors, and may face penalties by state governments when seeking to act in the best interests of the community and industry.

Leading Practices

There is little reference to food safety rating systems, of which "Eat Safe Brisbane" is a leading example. The process has been developed in partnership with business, is risk based and incentivises a form of self-regulation by way of reduced fees and reduced audit frequency for higher rated businesses. A significant reduction in red tape, and the ability to influence the regulatory requirements or burden on the business is key to the success of the initiative.

It is relevant and important that systems that support and encourage partnerships with industry, while providing transparency, governance and risk management should be identified as leading practices where such systems support the reduction of regulatory burden on the food industry.

9.5 Skin Penetration Activities

Council encourages the need for national review of the regulations surrounding of skin penetration activities. However, in Queensland the trend towards outcomes based performance criteria has reduced burden on the industry where risk and activity are measured. In considering the context for review, other leading practices, particularly international standards, should be considered as alternatives other than to replicate the food industry audit framework as a possible solution in advocating improved transparency and reduced regulatory burden.

Chapter 10 Environmental Regulation

A large amount of environmental regulation has been devolved by the Queensland Government to local government over the last decade without providing adequate compensation or the ability to recover the cost of undertaking the devolved regulatory roles. While Council's regulatory responsibility has increased, its regulatory revenue has decreased. The options available to local government to raise revenue to cover the cost of administering environmental regulation are limited. Adequate funding needs to be provided to local government if it is identified as the most appropriate level of government to administer environmental regulation. There are instances where the Queensland Government has devolved regulatory responsibility to local government for matters that are best administered at a state government level, for example the regulation of asbestos or matters that affect the environment over whole regions and not just within local government boundaries.

Council supports more efficient regulation and less duplication between levels of government, however a uniform national approach that takes a lowest common denominator or one size fits all approach would not be acceptable as it would lead to a lowering of environmental standards without the flexibility to manage local requirements.

Specific concerns Council has raised in the past with government agencies regarding environmental laws that Council has to comply with as well as administer, include:

- Lack of State Government coordination and planning;
- Burdensome administration of approvals, in terms of cost, time and complexity;
- Assessment and approval of Council works not commensurate with risk levels;
- High cost of administration;
- Overlap of State Government legislation leading to unnecessary administrative effort and inconsistent outcomes; and
- Lack of training or inadequate training provided by the state government in implementation and compliance with State Government legislation.

10.1 Environmental Regulation Overview

Role of Local Government authorities in environmental regulation

In Queensland, the primary responsibility for environmental regulation is with the State Government. However the on-ground implementation of this regulation is with local government; for example water contamination offences under the *Environment Protection Act 1994 (Qld)* and Pest Management under the *Land Protection (Pest and Stock Route Management) Act 2002 (Qld)*. Implementation is undertaken on both local government controlled land and private property.

The obligations of local governments in undertaking Commonwealth environmental regulation commitments are often not well understood. This includes how these obligations integrate with local government processes such as assessing development applications or the issuing of permits to carry out works on protected vegetation. There is often a perception that all responsibility to meet these obligations is with the applicant and local governments

are under no obligation to check compliance with requirements under legislation such as the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.

The number of local laws across Queensland is a reflection of the differing priority and community expectation that each local authority must address. The management expectation for vegetation in an urban dominated area like Brisbane is very different to that of a city such as Rockhampton or other regional local authorities with a rural focus.

There are also significant differences in the ability local authorities have to financially resource the development and subsequent implementation of local laws in both determining areas to be protected, assessment of permits and compliance action for offences. For example, Brisbane has undertaken detailed mapping of areas of vegetation that are protected whereas other local authorities use a "blanket" type protection system to protect all trees over a certain size.

Scope for excessive regulatory burdens on business

BCC agrees that environmental regulation generally does not have the most impact on businesses. Key costs to businesses in Brisbane are most often when work in progress is stopped for offences such as water contamination or the removal of protected vegetation without a permit. The cost to business is then the secondary cost in project delays and associated corrective actions to become compliant.

10.3 Coastal management and sea level rises

Council agrees that changes to planning controls are the key to the managing sea level rise issues. Current coastal management plans provide additional complexity to planning procedures when dealing with coastal applications. The inclusion of provisions in the planning schemes of relevant local authorities to address sea level rise considerations is a key way to simplify administration of the planning controls.

10.4 Vegetation and Weed Control

Scope for excessive regulatory burdens on business

BCC agrees that a key burden to business may be the processing time for applications. There is also confusion with business where additional layers of regulatory control exist. For example, some vegetation communities may be subject to protection by the Commonwealth *Environment Protection & Biodiversity Conservation Act 1999*, the Queensland *Government Vegetation Management Act 1999*, and Council's *Natural Assets Local Law 2003*.

Clear and consistent assessment decisions need to be made on protected vegetation applications with consistent rehabilitation/offset requirements for the vegetation permitted for removal. As previously noted, Council has detailed and comprehensive mapping of vegetation that informs conditioning related to vegetation management in approval processes.

10.5 Waste management

Council agrees that the use of punitive measures where businesses do not comply with waste regulation requirements is an appropriate enforcement tool to educate offenders and act as a deterrent to future non-compliance. The value of penalties available under the *Waste Reduction and Recycling Act 2011 (Qld)* are appropriate and consistent with other similar types of legislation.

However an anomaly exists in Brisbane relating to the enforcement of littering (discussed below). This is an example where enforcement by the State Government may provide support to some areas of the State, however provides confusion in a local authority area when an enforcement regime is already in place. In this case the State Agency expressed an expectation that enforcement by BCC would continue in parallel with State Agency enforcement. In practice, this has not been successful.

Leading practices

Remove duplication of information requirements between local and state governments. For the purposes of clarity and efficiency it is important that duplication of regulation between local and state governments is reduced. One such example is the regulation of littering from vehicles. Prior to the introduction of the *Waste Reduction and Recycling Act 2011* Council was solely responsible for the enforcement of littering from vehicle provisions under the *Environmental Protection Act 1994*. Under the *Waste Reduction and Recycling Act 2011* the Queensland Government now also enforces littering from vehicle offences. This duplication of regulation creates confusion over roles and responsibilities for local government, the Queensland Government and the community. It also creates a risk that a duplication of enforcement action for the same offence could occur.

Address skills shortages in environmental management and regulatory functions

Currently, local governments through established networks and regional collaborative groups, share information and knowledge on environmental management and regulatory functions. In Queensland, the predominantly urban local governments have good information sharing, often leveraging off projects and lessons learnt by neighbouring councils.

In disaster management situations, councils regularly share resources to ensure the necessary recovery and response can be provided to the community, often across the whole state. State-wide training of Environmental Health officers for disaster response is an example of a collegiate approach to resourcing which could be expanded to other areas of regulation to improve capability and capacity to share resource in response to technically complex or significant matters.

Chapter 11 Planning, zoning and development assessment

Development assessment (DA) approaches

This chapter seems to provide a balanced view on “excessive and avoidable” costs identified by business compared to the local government role to balance community interests and business opportunities.

The leading practices identified in the report provide broad support for the initiatives recently introduced by Council. In addition the key points 3 and 4 outlined on page 433 align with Council’s current development assessment approach. It should be noted that in Queensland key points 2 and 5 on p433 support from the State Government would be required to implement these measures.

Council supports the position to identify opportunities for improvement of “*application quality to include better pre-lodgement guidance or the use of electronic DA processes that do not allow applications to be submitted until they are complete*”.

Council provides public access via the internet to development proposals, process, progress and decisions made.

With respect to the leading practice identified, to streamline planning and DA processes for tourism developments, Council provides a broad based DA streamlining process for a wide variety of appropriate applications not just a specific industry type. This approach is leading practice and should be considered for inclusion in a final report.

Development assessment fees

As previously noted, in the case of BCC, Section 99 of the *City of Brisbane Act 2010* requires Council to set its fees at ‘cost recovery’ only. In particular subsection 99(4) states a ‘cost-recovery fee must not be more than the cost to the council of taking the action for

which the fee is charged'. Accordingly, Council DA fees are conservatively set to accord with the Act requirements in respect to recovery of assessment costs.

Chapter 11 provides no real conclusion on the issue of DA fees, in particular whether fees should be set by cost recovery principles (Qld and WA) or, as with most other states, government set maximums. The Commission did find that fees in Queensland were much higher than the other states and came to no conclusion as to why.

The draft report (p30) outlines that cost recovery for local government environmental regulation of business is patchy, such as that for water and waste discharge. A leading practice would be to have greater transparency in what business is being charged for and what proportion of local government regulatory implementation costs these charges are covering. In general, to be consistent with good regulatory practice, fees should typically recover the administrative cost of regulation (PC 2001).

Developer contributions

The report outlines a view that leading practice is *in setting the level of developer contributions "the appropriate allocation of costs hinges on the extent to which infrastructure provides services to those in a particular location relative to the community more widely"*. This view is consistent with the Productivity Commission's previous work.

The commission appears to suggest that upfront infrastructure charges should be levied for trunk infrastructure, and the allocation of the cost to a development should be according to its share of use, relative to the broader community's use. The Commission leading practice comment could be considered to be inconsistent with the Maximum Standard Charges Regime set by Queensland Government (as adopted by Council) because that regime does not allocate a charge in accordance with the cost of the infrastructure on a 'per catchment' basis. Specifically, the charge does not hinge "*on the extent to which infrastructure provides services to those in a particular location relative to the community more widely*" because the charge has no relationship to the actual cost of infrastructure. Note the previous charging regime under *Sustainable Planning Act 2009* did comply with this.

Demand Charge: The Maximum Standard Charges is otherwise consistent with the Commission's leading practice identified because it is a de-facto user-based charge. The charge is levied per demand unit by charging per sqm gfa, per unit, per lot, etc.

The Commission may wish to note that the Queensland Government intends to evaluate and review the standard adopted charges regime in early 2013. The point of that review will be to use the findings to inform infrastructure charging methodology to be applied from 1 July 2014, which is the mooted end of the standard adopted charges regime.

11.1 Regulatory roles of Local Government authorities in determining land use and development of the built environment

The report acknowledges that:

- *the distribution of regulatory responsibilities relating to planning, zoning and development assessment between different levels of government in Australia is complex and varies substantially across jurisdictions, and*
- *Most states have a hierarchy of planning instruments whereby local government plans and policies must be consistent with state government planning policies. In addition, most state government planning departments issue planning policies and guidelines to assist local governments. Alternative mechanisms for development approval may also exist which give either a regional planning body, state government department, and/or the planning minister decision making powers.*

This is a fair representation of the Queensland system. The importance of citywide strategic planning activity in comparison to other capital city jurisdictions must also be recognised for BCC, given the uniqueness of the jurisdiction.

Track based assessment

The Commission has noted the national Development Assessment Forum leading practice recommendation of using track based assessment. The report says:

- *Each state has implemented some form of 'track'-based assessment system to streamline the development assessment process and align the level of assessment undertaken by local governments with the perceived risk of the development application*
- *Less than half of local governments responding to the Commission's survey report using the track-based assessment frameworks, introduced by state governments, to assess development applications... This may be an example of how difficult it is to get Local Governments to actually put into practice state and national reforms.*

The report lists adoption rate for track based assessment for Queensland as 36%. BCC considers that this rate is significantly under-reported. Any development approval issued by a local government in Queensland is administered through the Integrated Development Assessment System contained in the *Sustainable Planning Act 2009*. The construction of local planning instruments, including planning schemes in accordance with chapter 3, and the assessment of development applications in accordance with chapter 6 of the *Sustainable Planning Act 2009*, both require the 100% adoption of a track based assessment approach (which Council achieves).

11.2 Identifying and benchmarking regulatory burdens imposed by local government

This section of Council's submission provides information on BCC's approach for electronic lodgement of development applications and on direct costs. The Commission identifies electronic lodgement of applications is a leading practice. Queensland is the leading Australian state in the adoption of this practice with almost 60% of applications being lodged electronically. The figure 2 below shows that current BCC levels of electronic lodgement reached 76% for high level applications in February 2012.

Prior consultation on the lodgement of development applications is seen by the Commission as a key innovation in reducing assessment times. Council processes include a range of staff, dependent on knowledge set required, assisting with the provision of pre-lodgement advice to the development industry. The figure 3 below describes the level of pre-lodgement activity in comparison to the level of development applications lodged. Pre-lodgement advice from the BCC is given in writing.

Figure 2: Rates of electronic lodgement of development applications to Brisbane City Council during the 2011/12 financial year.

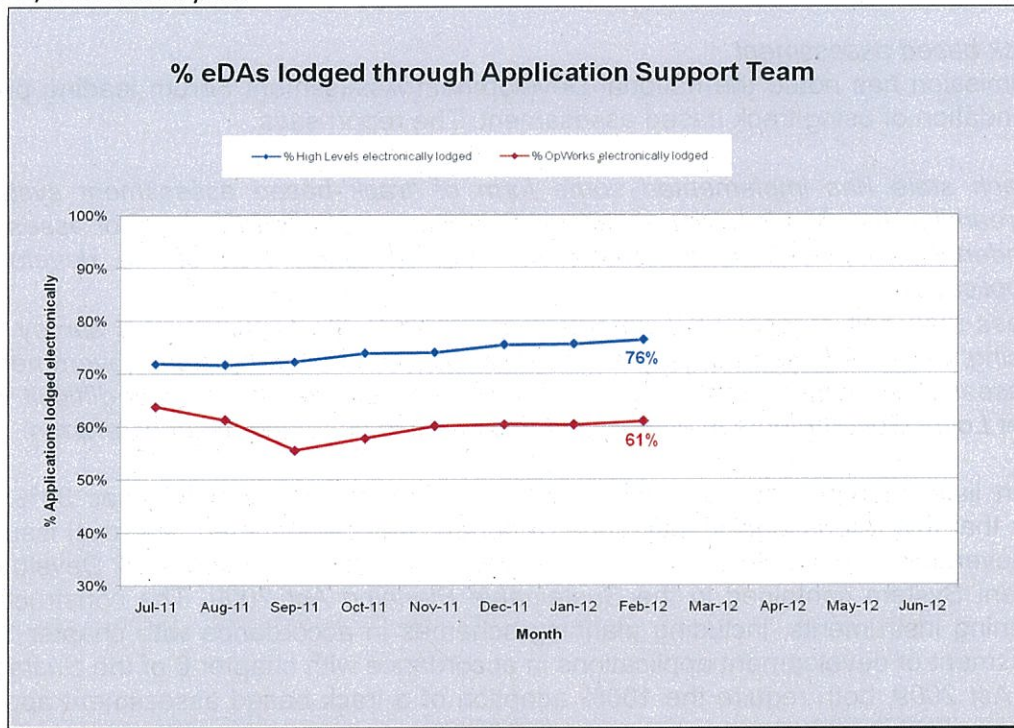
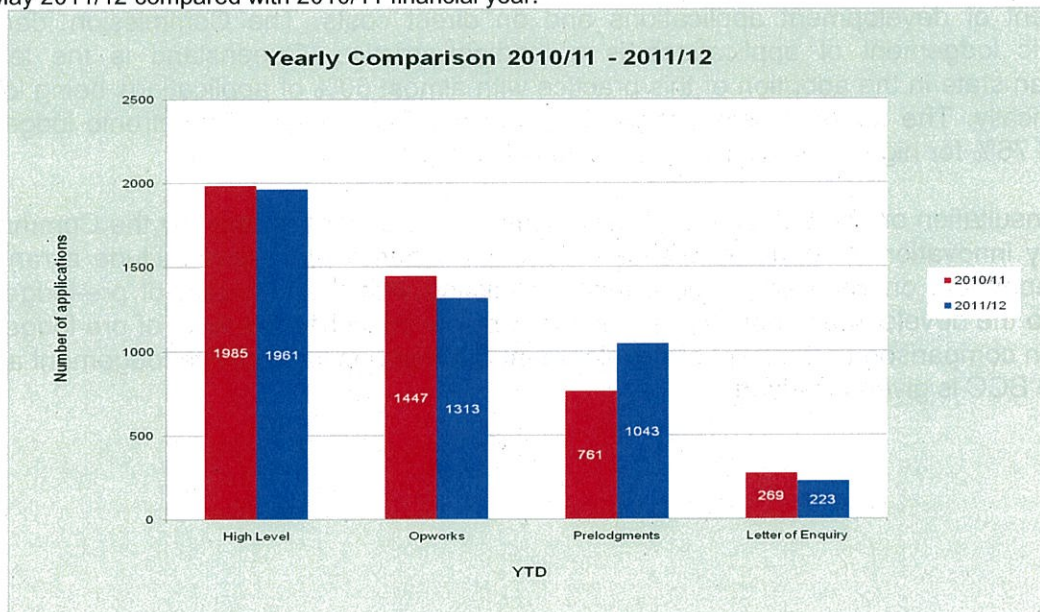


Figure 3: The number of pre-lodgement applications, high level or development / planning applications year to date May 2011/12 compared with 2010/11 financial year.



Note: "Opworks" or "operational works" refers to detailed design applications required subsequent to a high level application such as a subdivision applications and commonly dealing with matters such as bulk earthworks designs etc.

Direct costs

The interim report includes the following statement: *One of the most significant costs associated with obtaining planning and development approval is the cost of holding the land to be developed (p452).*

There are a number of ways in which Council optimises the design and implementation of the planning scheme for Brisbane that fosters certainty relating to development applications and reduces holding times.

A track based assessment approach has been utilised by the planning scheme for 100% of development application processes. The use of code assessment also provides greater predictability for applicants. The figure below shows the current BCC snapshot.

Table 3: Impact or merit assessment versus code assessment not involving public advertising – a snapshot of the volumes currently in the Brisbane City Council system as at 23 April 2012.

Code	Code (notifiable code)	Impact appropriate	Impact Inappropriate	Total
331	107	292	317	1047
32%	10%	28%	30%	

Equally important as the volume of code assessment in comparison to impact assessment, is the manner in which the planning scheme utilises code assessment as an assessment track. For example, Brisbane's current planning scheme prescribes code assessment (subject to certain qualifications) for:

- The majority of CBD uses;
- Centre activities (a broad suite of retail, commercial, tourism and entertainment uses) across the city's network of multi purpose centres; and
- Industrial uses in existing industrial areas.

Many of these applications are fast tracked through the RiskSMART process. This is a simple and fast way of assessing development proposals. Applications are prepared, lodged, and certified by a Council accredited RiskSMART consultant. Council guarantees that these applications are decided quickly. RiskSMART applications are also incentivised by a 30% fee discount, which reflects the reduced input required by Council. The table below shows the increased utilisation of this service over the last five years.

Table 4: Comparison of proportion of high level applications finalised using the *RiskSmart* methodology during the financial years from 2006/07 to 2010/11 and year to date in February 2012.

Year	2006-07	2007-08	2008-09	2009-10	2010-11	YTD 2011-12
						Budget target 25%
RiskSmart Applications (Total)	119	286	570	782	756	509
High Level Applications including RiskSmart (Totals)	3,776	3,954	3,377	3,428	3,186	1,961
RiskSmart Applications as a % of high level applications	3%	7%	17%	23%	24%	26%

Another direct cost incurred by businesses that the Commission identifies is the forgone opportunity due to the inability to set up a business as a result of a land use restriction. While restrictive zoning practices due to amenity, heritage or other planning reasons might be outside of the scope of this report, it is important that the report does consider the positive role of land use planning when undertaken with an economic imperative. For example, land use restrictions might be imposed on undesirable uses for the purpose of husbanding finite resources for the benefit of the broader economy. Commonly, good quality agricultural land, mineral reserves or deepwater access for port related development are protected in this way. To not do so, might lead to goods being unavailable or needing to be sourced from outside the city or region and involving excessive cost and delay that could otherwise have been avoided.

Local government must retain the flexibility for local, specific, economic values and drivers to be part of any planning processes.

11.4 *Leading practices in planning, zoning and development assessment*

The report states *the adoption of the following measures will assist in strengthening the overall planning system and assist local government by facilitating early resolution of land use and coordination issues:*

1. *ensuring local planning schemes are regularly updated or amended to improve consistency with state-wide and regional planning schemes and reduce confusion for potential developers;*
2. *adopting broad land-use zones to increase the potential for competition and provide opportunities for new or supplementary business activities;*
3. *increasing transparency and community consultation where planning scheme amendments, or 'spot rezoning', is requested as part of a proposed development; and*
4. *providing support to local governments that struggle to undertake strategic planning.*

The report concludes that *no one jurisdiction has implemented these measures*. BCC has in place, leading practice processes in respect of planning, zoning and development assessment that are outcome driven to support business.

The attention of the Commission is drawn to the following features of the planning, zoning and development assessment system in Queensland and the Brisbane City Council.

1. Regular update of planning schemes:

- City Plan 2000 is subject to a program of twice yearly update.
- City Plan updates progress through two state interest review stages to ensure conformity with state interests including consistency with the statutory South East Queensland Regional Plan and the relevant state planning policies.

2. Broad land use zones:

- The principal instrument governing planning, zoning and development assessment in Queensland is the *Sustainable Planning Act 2009* which generally eschews the prohibition of land uses and requires the merit based assessment of development applications based on their potential impacts.
- Brisbane's City Plan 2000 adopts a strong pro-competition stance through requiring code based assessment of a broad range of industrial and commercial uses in nominated industrial and multi purpose centres respectively.

3. Transparency regarding "spot re-zonings".

The Queensland Government explains in the guide to the *Sustainable Planning Act 2009* that:

- Integrated Development Assessment System (IDAS) balances the need for effective and timely approvals with the rights of the community to be informed

and to comment on key proposals IDAS includes checks and balances to ensure any obligations imposed on participants are balanced with rights of redress: and secondly that

- IDAS includes accountabilities on all participants to ensure the process is timely, transparent and fair. All processes under the Act have clear end points specified with a right of appeal or review attached.
- Certain planning and development information specified in the Act must be kept available for the public. Some documents are to be kept for inspection and purchase, and some are to be kept for inspection only. Entities which are required to keep information available include local government.
- The *Sustainable Planning Act 2009* clauses 335 and 391 include specific provisions requiring explanation and recording of spot re-zonings.
- City Plan 2000 is available online.
- *The PD Online* is a free web based service provided by Council which includes details of development applications, submissions and detailed decisions including court ordered decisions.
- Council meetings are open for public attendance.

4. Local Government Strategic Plans.

- A comprehensive citywide strategic plan consistent with the South East Queensland Regional Plan has directed Brisbane's growth throughout the life of the current planning scheme.

Appendix 1

Table 1 The aggregations used by Brisbane City Council Economic Development Unit by SLA and aggregation name

SLA Number	SLA Name	Aggregation Name
305031255	Hamilton	Australia Trade Coast
305071467	Pinkenba-Eagle Farm	Australia Trade Coast
305091397	Morningside	Australia Trade Coast
305111265	Hemmant-Lytton	Australia Trade Coast
305111413	Murarrie	Australia Trade Coast
305011067	Bowen Hills	City and City Fringe
305011143	City - Inner	City and City Fringe
305011146	City - Remainder	City and City Fringe
305011187	Dutton Park	City and City Fringe
305011227	Fortitude Valley	City and City Fringe
305011274	Herston	City and City Fringe
305011277	Highgate Hill	City and City Fringe
305011304	Kangaroo Point	City and City Fringe
305011315	Kelvin Grove	City and City Fringe
305011378	Milton	City and City Fringe
305011421	New Farm	City and City Fringe
305011427	Newstead	City and City Fringe
305011454	Paddington	City and City Fringe
305011481	Red Hill	City and City Fringe
305011525	South Brisbane	City and City Fringe
305011528	Spring Hill	City and City Fringe
305011607	West End	City and City Fringe
305011631	Woolloongabba	City and City Fringe
305071167	Darra-Sumner	South West Industrial Gateway
305071451	Oxley	South West Industrial Gateway
305071596	Wacol	South West Industrial Gateway
305111001	Acacia Ridge	South West Industrial Gateway
305111023	Archerfield	South West Industrial Gateway
305091015	Annerley	Southern Inner Brisbane
305091214	Fairfield	Southern Inner Brisbane
305091247	Greenslopes	Southern Inner Brisbane
305091282	Holland Park	Southern Inner Brisbane
305091285	Holland Park West	Southern Inner Brisbane
305091391	Moorooka	Southern Inner Brisbane
305091563	Tarragindi	Southern Inner Brisbane
305091645	Yeerongpilly	Southern Inner Brisbane
305091648	Yeronga	Southern Inner Brisbane
305071176	Doolandella-Forest Lake	Southern Outer Brisbane
305071203	Ellen Grove	Southern Outer Brisbane
305071288	Inala	Southern Outer Brisbane
305071484	Richlands	Southern Outer Brisbane
305111012	Algester	Southern Outer Brisbane
305111094	Calamvale	Southern Outer Brisbane
305111198	Eight Mile Plains	Southern Outer Brisbane
305111331	Kuraby	Southern Outer Brisbane
305111356	MacGregor	Southern Outer Brisbane
305111372	Mansfield	Southern Outer Brisbane
305111402	Mount Gravatt	Southern Outer Brisbane

SLA Number	SLA Name	Aggregation Name
305111405	Mount Gravatt East	Southern Outer Brisbane
305111416	Nathan	Southern Outer Brisbane
305111456	Pallara-Heathwood-Larapinta	Southern Outer Brisbane
305111463	Parkinson-Drewvale	Southern Outer Brisbane
305111492	Robertson	Southern Outer Brisbane
305111495	Rochedale	Southern Outer Brisbane
305111503	Runcorn	Southern Outer Brisbane
305111511	Salisbury	Southern Outer Brisbane
305111541	Stretton-Karawatha	Southern Outer Brisbane
305111547	Sunnybank	Southern Outer Brisbane
305111552	Sunnybank Hills	Southern Outer Brisbane
305111588	Upper Mount Gravatt	Southern Outer Brisbane
305111615	Willawong	Southern Outer Brisbane
305111626	Wishart	Southern Outer Brisbane
305091042	Balmoral	Eastern Inner Brisbane
305091086	Bulimba	Eastern Inner Brisbane
305091108	Carindale	Eastern Inner Brisbane
305091113	Carina	Eastern Inner Brisbane
305091116	Carina Heights	Eastern Inner Brisbane
305091157	Coorparoo	Eastern Inner Brisbane
305091195	East Brisbane	Eastern Inner Brisbane
305091258	Hawthorne	Eastern Inner Brisbane
305091432	Norman Park	Eastern Inner Brisbane
305111057	Belmont-Mackenzie	Eastern Outer Brisbane
305111091	Burbank	Eastern Outer Brisbane
305111123	Chandler-Capalaba West	Eastern Outer Brisbane
305111251	Gumdale-Ransome	Eastern Outer Brisbane
305111337	Lota	Eastern Outer Brisbane
305111364	Manly	Eastern Outer Brisbane
305111367	Manly West	Eastern Outer Brisbane
305111394	Moreton Island	Eastern Outer Brisbane
305111571	Tingalpa	Eastern Outer Brisbane
305111601	Wakerley	Eastern Outer Brisbane
305111637	Wynnum	Eastern Outer Brisbane
305111642	Wynnum West	Eastern Outer Brisbane
305031004	Albion	Northern Inner Brisbane
305031007	Alderley	Northern Inner Brisbane
305031026	Ascot	Northern Inner Brisbane
305031031	Ashgrove	Northern Inner Brisbane
305031048	Bardon	Northern Inner Brisbane
305031151	Clayfield	Northern Inner Brisbane
305031206	Enoggera	Northern Inner Brisbane
305031244	Grange	Northern Inner Brisbane
305031271	Hendra	Northern Inner Brisbane
305031312	Kedron	Northern Inner Brisbane
305031345	Lutwyche	Northern Inner Brisbane
305031424	Newmarket	Northern Inner Brisbane
305031446	Nundah	Northern Inner Brisbane
305031533	Stafford	Northern Inner Brisbane
305031536	Stafford Heights	Northern Inner Brisbane
305031618	Wilston	Northern Inner Brisbane
305031623	Windsor	Northern Inner Brisbane
305031634	Wooloowin	Northern Inner Brisbane

SLA Number	SLA Name	Aggregation Name
305071034	Aspley	Northern Outer Brisbane
305071037	Bald Hills	Northern Outer Brisbane
305071045	Banyo	Northern Outer Brisbane
305071064	Boondall	Northern Outer Brisbane
305071072	Bracken Ridge	Northern Outer Brisbane
305071075	Bridgeman Downs	Northern Outer Brisbane
305071078	Brighton	Northern Outer Brisbane
305071121	Carseldine	Northern Outer Brisbane
305071135	Chermside	Northern Outer Brisbane
305071138	Chermside West	Northern Outer Brisbane
305071173	Deagon	Northern Outer Brisbane
305071211	Everton Park	Northern Outer Brisbane
305071217	Ferny Grove	Northern Outer Brisbane
305071236	Geebung	Northern Outer Brisbane
305071326	Keperra	Northern Outer Brisbane
305071353	McDowall	Northern Outer Brisbane
305071383	Mitchelton	Northern Outer Brisbane
305071435	Northgate	Northern Outer Brisbane
305071442	Nudgee	Northern Outer Brisbane
305071514	Sandgate	Northern Outer Brisbane
305071556	Taigum-Fitzgibbon	Northern Outer Brisbane
305071567	The Gap	Northern Outer Brisbane
305071585	Upper Kedron	Northern Outer Brisbane
305071593	Virginia	Northern Outer Brisbane
305071604	Wavell Heights	Northern Outer Brisbane
305071653	Zillmere	Northern Outer Brisbane
305071222	Fig Tree Pocket	Western Outer Brisbane
305071386	Moggill	Western Outer Brisbane
305071408	Mount Ommaney	Western Outer Brisbane
305071465	Pinjarra Hills	Western Outer Brisbane
305071473	Pullenvale	Western Outer Brisbane
305071487	Riverhills	Western Outer Brisbane
305071517	Seventeen Mile Rocks	Western Outer Brisbane
305071612	Westlake	Western Outer Brisbane