



PPL.016

9 July 2010

Ms Louis Sylvan
Performance Benchmarking
Australian Business Regulation
Productivity Commission
PO Box 1428
Canberra City ACT 2601

Dear Ms Sylvan

Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments

Please accept this letter as Fremantle Ports' submission on the Productivity Commission's Planning, Zoning and Development Assessments Issues Paper.

Western Australia's Port Authorities Act provides the major ports with the necessary authority to approve port works. This reflects the needs of ports to be able to quickly respond to trade needs, recognising also that specialised knowledge is required to design, assess and approve port works. We are concerned that certain planning approval and related processes are inconsistent with the intent of the Port Authorities Act.

The submission seeks to provide a port planning perspective, however many of the matters raised have a wider application. Key planning challenges are highlighted together with comments on opportunities for improving the planning system. The scope of comments has been broadened to include heritage matters which are considered part of the planning process.

With regard to The Productivity Commission's scope the focus of our submission is on: *"operations of the States and Territories' planning and zoning systems, particularly as they impact on business compliance costs, competition and the overall efficiency and effectiveness of the functioning of cities."*

Our key points are summarised below and are followed by further discussion and recommendations.

Summary points

Urban encroachment: transport corridors and ports.

With increasing urbanisation, transport corridors and intermodal activities such as ports face growing pressure from sensitive uses such as dwellings locating in close proximity. This is a national and international trend which has competitive and operational impacts on transport corridors and ports. Whilst the National Ports and Freight strategies currently being developed by Infrastructure Australia and the National Transport Commission will identify and propose responses to this challenge, further State level policy may also assist.

Policy compliance.

The Western Australian Planning Commission is responsible for setting policy and strategic planning direction within Western Australia. Unfortunately many of these policies and directions are not mandatory which results in sub-optimal planning outcomes of which urban encroachment is one. A mechanism that required compliance with WAPC policies would potentially create better planning outcomes across the State for ports and transport providers as well as giving greater certainty to public authorities and private interests.

Timeliness of planning processes.

Development proposals within the boundary of a port that are not directly port related are subject to local and State Government planning assessment processes. There is no disagreement that non port works should be externally approved, however to improve the planning process for non port uses it is suggested that the assessment process at both levels of government be reviewed with a view to eliminating any potential duplication of effort and achieving potential time and financial savings.

Heritage - non Indigenous.

Nationally each level of Government has separate heritage requirements. As a consequence there is the ability for a place to be listed by the three levels of Government, each with its own referral and assessment process. This introduces the potential requirement for three sets of approvals which in turn creates unnecessary time and financial burdens. For a working port this situation is unsustainable. With a view to creating more workable heritage the following are suggested:

- No multiple listings of a single place by more than one tier of government.
- No listings occurring without meaningful negotiation with the place owner.
- That management agreements where the responsibility for assessing and approving port and related works remains with the port be promoted as means of achieving heritage and working port needs.

Heritage - Indigenous. A key challenge with Indigenous heritage in Western Australia is the absence of a documented approval process and a defined list of Indigenous family groups that are to be consulted for specific locations or regions. The consultation and approvals process could be significantly improved if these gaps were to be addressed.

Discussion of these summary points follows.

Urban encroachment on transport corridors and ports

With increasing urbanisation transport corridors and nodes such as ports and other intermodal uses face growing pressure from sensitive uses such as dwellings. This problem is equally common to Perth as it is other urban centres nationally. The forces behind this include increasing population, rising land values, land availability, pressure from the land development sector and inadequate planning.

In the case of Perth, throughout the 1940s to early 1970s a combination of factors including lower transport volumes and land values, generally larger lot sizes and good supply of land meant that transport corridors were often developed with good separation from landuses, particularly sensitive uses.

With increasing population and economic activity new transport corridors have been developed and existing corridors expanded or intensified in use. Since the 1970s growth within Perth and other regions has been such that there have been increasing examples of development impacting on transport corridors and ports.

Urban encroachment is a lose – lose situation. Sensitive uses located near transport corridors and ports are impacted upon, and the transport corridor and port users suffer from trying to operate in what becomes an inappropriate environment.

The impacts of urban encroachment on ports and transport corridors include:

- A direct impact on the competitive ability of both the land transport sector and ports through a loss of potential to use the corridor and port for its current and future planned capacity.
- Operational impacts on the landuses that connect with the transport corridors and ports under threat.
- Generally, social, environmental and economic impacts for not using the corridors and ports as planned.
- Reduced amenity for the uses that have encroached on the transport corridor and port.

There is an inextricable link between the Perth metropolitan and wider regions achieving economic and social goals and well planned transport corridors and ports. Without good planning suboptimal social, economic and environmental outcomes result.

Urban encroachment manifests in ways including: road congestion, road access restrictions, rail curfews, and restrictions on the way in which ports operate including hours of operation, ability to use land for port purposes and types of trade imported and exported.

To work towards resolving this Infrastructure Australia and the National Transport Commission are progressing a "National Port Strategy." This will provide important direction from a national policy perspective. However at the State level there is further opportunity to develop clear policy direction to support land transport and port planning; such a policy could be used to provide firm planning direction to State and local governments and private interests.

In effect a local government or private proponent can chose to ignore the policies with no fear of repercussions.

There are many policies which support the planning for and around transport corridors and ports. If consistently applied these would have a significant positive impact on the urban encroachment challenge. However there are circumstances where the policies are either only partially or not applied which has a direct impact on the ability to move goods by road and rail and port operations. Whilst the focus of this submission is ports and their transport corridors, the consistent application of WAPC planning policies is a challenge wider than port planning.

The direct impact of non compliance has been increased costs to both ports and land transport providers (road and rail). These costs have arisen as a result of: rail curfews, road freight being banned from purpose planned freight routes, road freight having to take longer routes to access port facilities, and ports not being able to use or develop port land for port purposes.

If there was a mechanism requiring compliance with the policies of the WAPC there would be the potential to create better planning outcomes across the State for ports, transport providers and as well as giving greater certainty to public authorities and private interests.

Timeliness of planning processes

In Western Australia uses within the boundary of a port that are not directly port related have to go through two planning assessment processes. Proposals are first assessed by local government, they are then referred to the State planning agency, the Western Australian Planning Commission for assessment and approval. Both local government and the Western Australian Planning Commission have their own assessment and reporting processes, which in the case of local government may also include public consultation periods. Whilst it is considered appropriate that non port uses are assessed externally, the process may be considered somewhat lengthy and in turn inefficient.

As an island nation ports have a critical role in achieving social and economic objectives. To add to the urban fabric and improve liveability ports such as Fremantle Ports are seeking to sensitively introduce non port uses in a way that permits the core function of a working port to continue, whilst planning for uses that allows visitors to experience the port. This means there are increasingly more non port uses development proposals having to go through this two tier planning process.

To improve the planning process for non port uses it is suggested that the assessment process at both levels of government be reviewed with a view to eliminating any potential duplication of effort and achieving potential time and financial savings. Whilst the focus of this submission is on ports, this same duplicated assessment process applies to other reserved land including that for railways and select roads.

Heritage - non Indigenous

Nationally each level of Government has separate heritage requirements. Within Western Australia local governments develop Municipal Heritage Inventories, at the

assessment process applies to other reserved land including that for railways and select roads.

Heritage - non Indigenous

Nationally each level of Government has separate heritage requirements. Within Western Australia local governments develop Municipal Heritage Inventories, at the State level the Heritage Council of WA has its own heritage list whilst at the national level a third list is overseen by the Australian Heritage Council.

There is the ability for a place to be listed by three levels of Government, each with its own referring and development assessment process. If the responsible agency or landowner prepares a conservation plan the duplicated approval process stands. Aside from the bureaucracy of preparing, lodging and negotiating three separate development applications, this raises the question of what would occur if there was inconsistency between conditions of approval, or worse case scenario, one level of Government approves a proposal whilst another refuses it.

With multiple listings there would be a direct affect on the proponent's time and resources to prepare submissions, follow up, negotiate and ultimately clear conditions with the three levels of Government. In this scenario dealing with Federal Government officers would encounter the additional problem of overcoming distance between the assessing officer, applicant and the place.

There are also concerns in regard to the lack of transparency in the heritage processes at each of the levels of Government. A third party, with no obligation or connection to a place may anonymously refer a place, in either private or public or private ownership, to one, or more levels of Government with a recommendation that a place be heritage listed. This can initiate a heritage assessment process with the landowner placed in an unexpected position, with no accountability from the referrer.

For a working port this situation is unsustainable. Working ports need to be able to respond quickly to changing shipping needs, often on a daily basis. The impact of not being able to act quickly has flow on effects beyond the port boundary to those involved in the import and export of goods and the communities that rely on these goods. This is not unique to Fremantle Ports; this scenario can equally be applied to any port across Australia as well as other private or public landowners.

Fremantle Ports considers that working ports are critical to Australia. With a view to creating more workable heritage the following are suggested:

- No multiple listings of a single place by more than one tier of government.
- No listings occurring without meaningful negotiation with the place owner.
- That management agreements where the responsibility for assessing and approving port and related works remains with the port be promoted as means of achieving heritage and working port needs.

Heritage - Indigenous

The key challenge with Indigenous heritage in Western Australia is the lack of process clarity. Indigenous heritage is the responsibility of the Department of Indigenous Affairs. However unlike State planning or environmental approvals there is

an absence of a documented assessment process. This is compounded by the consultation process required to be undertaken prior to submitting a development proposal. There is no defined list as to which Indigenous family groups are to be consulted with for developments within given areas. Fremantle Ports experience has been that families that are excluded from the assessment process may threaten to take action which it is understood in a worse case scenario can result in Federal Government intervention and a project halted. However Fremantle Ports has included additional groups in consultation.

To prepare a development application report to the Department of Indigenous Affairs the ethnographer or anthropologist will seek a fee starting at about \$15,000. For Fremantle there are a minimum of 10 family groups to be consulted with, each family group includes a mandatory four members to meet with. The Indigenous groups fee is \$400 per person, which creates a total fee of \$16000. The total cost being about \$31,000. The time taken for the entire process can be six months or more.

The key matters pertaining to WA Indigenous Heritage are: lack of documented, transparent process, lack of clarity as to which Indigenous groups are to be consulted with, assessment and approval times and costs. It may be considered that these matters do not assist the advancement of Indigenous heritage and people. This could be rectified via developing a clear process including which Indigenous groups need to be consulted with, which in turn may lead to better streamlining of approval times.

Recommendations

With the intent of seeking to develop better planning outcomes the following recommendations are put forward:

1. That the importance of Infrastructure Australia and the National Transport Commission's "National Port Strategy" be recognised and that a complementary State level policy be investigated with a view to developing clear direction to support land transport and port planning.
2. That the potential to make the policies of the Western Australian Planning Commission mandatorily complied with be investigated.
3. That investigation be undertaken to determine if there is opportunity to improve the timeliness for the planning assessment process for non port uses by local and State Government planning agencies.
4. To achieve better heritage outcomes for working ports the following are suggested
 - No multiple listings of a single place by more than one tier of government.
 - No listings occurring without meaningful negotiation with the place owner.
 - That management agreements where the responsibility for assessing and approving port and related works remains with the port, be promoted as a means of achieving heritage and working port needs.
5. With a view to achieving better Indigenous heritage outcomes that a clear, documented Indigenous heritage process be developed for Western Australia including which Indigenous groups needs to be consulted with

Thankyou for the opportunity to comment on the Productivity Commission's Planning, Zoning and Development Assessments Issues Paper. This paper presents an important opportunity to improve planning processes and outcomes across Australia. I trust these comments offer constructive input whilst assisting to explain Fremantle Ports' position and the needs of a working port.

Yours sincerely

~~Chris Leatt-Hayter~~
Chief Executive Officer