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Performance Benchmarking Australian Business Regulation  
Productivity Commission  
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To Whom It May Concern

**Submission: Performance Benchmarking of Australian Businesses Regulation:  
Planning, Zoning and Development Assessments**

The NSW Business Chamber welcomes the opportunity to provide comment on the Productivity Commission's draft report *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*. This submission follows on from our submission made to the Productivity Commission's discussion paper in July 2010.

The NSW Business Chamber is the peak industry body representing business in all industry sectors. The NSW Business Chamber operates across the State and throughout metropolitan Sydney.

**Compliance costs**

The Commission's report identifies the range of compliance costs faced by business. The recent NSW Business Chamber Red Tape Survey found that local councils and the NSW Department of Planning were ranked in the top five government organisations responsible for increasing the red tape burden on NSW businesses.

Increasing red tape burdens imposed on business means increased compliance costs. Eliminating red tape is an important element in ensuring that NSW businesses are able to remain competitive with businesses both interstate and internationally.

**Impact on competition**

The NSW Business Chamber believes that current restrictive zoning practices, such the use of highly prescriptive zoning by local councils, can lead to negative impacts on competition. These practices need to be eliminated to ensure existing businesses are allowed to adapt and innovate to changing market needs, and ensure that new businesses do not face barriers to entering the market.

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## Impact on functioning of cities

The NSW Business Chamber believes planning reform is critical to positioning Sydney as a leading global city. The long lead times on projects means that the longer they are delayed the greater the pressure on current infrastructure. The NSW Business Chamber advocates local government reform to more closely align State and local government responsibilities to link growth and development with infrastructure and the needs of local communities. More detail on these reforms are outlined under 'Leadership and Governance'.

### **Leading Practice Recommendations**

The NSW Business Chamber supports the Commission's efforts to identify leading practices to be adopted. The adoption of these practices by governments and councils will lead to increased consistency in planning regulations and processes, which improve business confidence.

#### *1. Early resolution of land use and coordination issues using strategic plans*

The NSW Business Chamber supports the use of integrated planning that aligns land use and infrastructure planning to deliver sustainable outcomes for the economy, the environment, business and the community.

As the Commission found, a large proportion of businesses and residents in NSW perceive the management of current state plans and urban growth as poor. A large reason behind this is the lack of coordination between the three levels of government, but especially between local governments and the NSW Government. For example, one respondent in the March 2011 NSW Business Chamber-Commonwealth Bank *Business Conditions Survey* cited local council opposition to the development of two of their businesses as being the main factor to affect their total business performance.

#### *2. Engaging the community fully and early*

Community and business consultation is critical to timely decision making and successful development outcomes. The NSW Business Chamber supports the recommendation for governments and councils to engage with the community at all stages of development, including at the strategic planning level. To ensure sufficient and timely consultation by councils, it may be beneficial to provide assistance to councils to develop protocols on planning processes which support engagement with business and the broader community.

#### *3. Broad and simplified zones*

The NSW Business Chamber supports the recommendation to broaden zoning definitions and define zones in terms of broad uses, rather than using prescriptive definitions of building types and land uses. The NSW Government should encourage business and households to locate in preferred areas through the provision of quality commercial and social infrastructure rather than through the direct use of planning restrictions.

#### *4. Rational and transparent allocation rules for infrastructure costs*

The NSW Business Chamber supports the recommendation to establish a designated infrastructure body. The NSW Business Chamber advocates the establishment of *Infrastructure NSW* as a single agency responsible for the oversight and management of infrastructure planning, development, funding and implementation in NSW.

Modelled on *Infrastructure Australia*, we propose that this body would operate at 'arm's length' from government and provide detailed cost-benefit analysis for major projects, including consideration of the potential economic and social benefits to communities and regions. Based on this analysis, *Infrastructure NSW* would recommend projects to Cabinet for funding. Drawing on effective government models used elsewhere, the establishment of *Infrastructure NSW* would provide a robust, transparent and competitive structure for responsibly planning, procuring, funding and delivering infrastructure projects.

The NSW Business Chamber believes the establishment of this body would significantly address the 'start-stop' approach to infrastructure planning which NSW has experienced in recent years. This would help restore confidence in the development and delivery of infrastructure which will lead to positive flow on effects for business investment and development.

#### *5. Improving Development Assessment criteria and processes*

The NSW Business Chamber supports the recommendation to establish clear and concise pro-forma DA conditions as well as the adoption of streaming applications and electronic DA systems to improve the development assessment process. If implemented correctly, these efforts will improve consistency and fast track the approval process which will help minimise costs imposed on business. As an example of business views on the DA process, one respondent stated in the March 2011 *Business Conditions Survey*:

*The Act must be reviewed as it places an enormous burden on the developer to employ an army of consultants to report on every aspect of the development...In many cases we have had to pay the councils' independent consultants costs to speed up the assessment process and, after doing this at an additional cost of \$100,000, we have still been trying for two years to obtain an approval to expand a business we have been operating for 30 years.*

The NSW Business Chamber also notes that inconsistent requirements across local government boundaries for the same development approvals creates frustration amongst businesses, and leads to inequitable outcomes. These local government requirements are not only inconsistent, but are often unnecessary. For example, the NSW Business Chamber has been told of one instance where to approve the operation of a delicatessen, the council required a Sydney Water certificate despite it being a pre-existing shopfront. This contributed to a six month waiting period (leading to lost rental income to the property owner and lost income to the shop owner), and also incurred significant costs in putting together the information required to be awarded this certificate. In contrast, the adjacent local government area takes five to six weeks for the same development approval.

The NSWBC recognises that the appeal process, while necessary, may be manipulated to stall projects and is inherently biased to larger parties with more resources. The same respondent to the *Business Conditions Survey* also stated:

*The current process for trying to achieve development approval in this state is a disgrace and needs a complete overhaul with the objective of simplifying the processes. The appeals process should be streamlined to make it less expensive and faster.*

The NSW Business Chamber therefore supports the Commission's recommendation for increased use of arbitration. The NSW Business Chamber supports further examination of how to integrate increased arbitration within the current dispute resolution process. A mechanism for increased use of arbitration, whether as part of a new mechanism or through the extension of current conciliation and arbitration mechanisms, would decrease the need to go to the courts and ultimately save businesses time and money.

The NSW Business Chamber also agrees with the Commission's findings that the referral process leads to delays in approval times, particularly as NSW requires referral for a broader range of matters/activities compared with most other jurisdictions. While the NSW Business Chamber believes it is necessary to have mechanisms in place to consider projects of state significance, such as Part 3A, these mechanisms can lead to delays in projects awaiting approval. Therefore, the NSW Business Chamber would welcome further efforts to make this referral process more efficient, without reducing transparency and consistency.

#### *6. Disciplines on timeframes*

The NSW Business Chamber supports the Commission's recommendation to place statutory timeframes on approval processes. This will ensure that businesses have more certainty around development times and costs. In particular, placing statutory timeframes on Part 3A approvals in NSW, rather than the target system that is currently in place, will ensure that businesses do not face further costs as a result of these delays.

## 7. *Transparency and accountability*

The NSW Business Chamber agrees that NSW needs to improve its transparency and accountability. Having a transparent planning process whereby parties involved are accountable improves business confidence in the process. Regulators also need to be able to justify decisions, and be subject to public scrutiny to ensure the legitimacy of the process and maintain business and community confidence.

### **Leadership and Governance**

As part of our *10 Big Ideas to Grow NSW* campaign, the NSW Business Chamber advocates the following ideas which would help address issues caused by current governance arrangements.

#### *Local Government Reform*

The NSW Business Chamber advocates replacing Sydney's 41 Councils with ten strong regional councils. Currently, the NSW Government is too large to manage the multitude of decisions needed to grow Sydney, and local governments are trapped by crippling local community opposition and a lack of resources to make the right strategic decision. Establishing ten regional councils with stronger planning powers will strengthen the capacity of both local and state governments to make the right strategic decisions for Sydney's regions, and will provide the framework to strengthen infrastructure, services and outcomes throughout metropolitan Sydney.

#### *Metropolitan Sydney Planning Committee*

Recognising that major developments within one area often have an impact and importance beyond the local government area, the NSW Business Chamber supports the creation of the Metropolitan Sydney Planning Committee. The role of the Committee would be to assess all major projects within Metropolitan Sydney Councils where the projects have a value of \$50 million. The Committee would consist of representatives of the State Government and representatives of the area from which the project originates (such as from the relevant Regional Organisation of Councils).

This NSW Government has a Central Sydney Planning Committee (CSPC). The CSPC is made up of representatives of the State Government and the City of Sydney Council to assess major development applications which come before the City of Sydney Council. The CSPC has worked well and demonstrated how state and local government can develop a constructive relationship for major projects. Therefore, the NSW Business Chamber proposes that this system be expanded to include all metropolitan Sydney local areas.

#### *Economic Zones*

To address regulatory consistency issues for cross border towns, the NSW Business Chamber recommends the establishment of economic zones to overcome cross border regulatory issues. Businesses located within the Tweed and Albury-Wodonga regions are faced with the additional compliance costs associated with having to understand two different sets of State legislation and regulation, which impacts on a businesses' bottom line. Therefore, there is a role for the NSW, Queensland and Victorian Governments to work more closely together to remove these unnecessary barriers and create harmonisation. The NSW Business Chamber recommends the establishment of a pilot Regional Economic Zone in Albury Wodonga to recommend the most efficient and effective way to overcome these regulatory issues.

### **Conclusion**

The NSW Business Chamber supports a number of the findings of the Productivity Commission's draft report *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments* and welcomes the adoption of the leading practices which have been identified. The NSW Business Chamber would also welcome consideration of recommendations relating to the governance arrangements underpinning planning decisions, given that such arrangements are those subject to calls for reform.

The NSW Business Chamber also recommends establishing implementation arrangements, following the release of the final report. While this process has been driven by COAG's agreement to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden on business, the Commission has also identified leading practices in planning regulation which, generally speaking,



should be adopted by all levels of government where applicable. Therefore, it would be beneficial for each level of government in each jurisdiction to explicitly accept responsibility for implementing these leading practices. This will ensure that the endemic issues with planning systems will finally be addressed.

The NSW Business Chamber notes that following the recent election of the Coalition to the NSW Government, it is expected a review will be conducted into planning legislation which will overhaul the current system. The NSW Business Chamber believes this will be an excellent opportunity to adopt some of these leading practices into new legislation.

Thank you for your opportunity to comment on the draft report. The NSW Business Chamber will also provide the Commission with any further examples which arise of businesses who have found that planning legislation has constrained their business growth. Should you wish to discuss this matter further please do not hesitate to contact me on 02 9458 7462 or Larissa Cassidy, Policy Adviser – Infrastructure, on 02 9458 7359.

Yours sincerely

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