



**Australian Government**  
**Productivity Commission**

INFORMATION PAPER

# **Plan to identify planning and zoning reforms**

March 2021



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The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website ([www.pc.gov.au](http://www.pc.gov.au)).

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## Foreword

Planning and zoning policy has large impacts on patterns of economic activity, particularly in Australia's cities. It is important that planning systems are efficient and responsive to emerging and future economic trends.

In July 2020, the Council on Federal Financial Relations asked the Commission to prepare a plan to identify planning and zoning reforms that jurisdictions could consider as part of their response to, and recovery from, the COVID-19 pandemic. This paper is the result of that request. The project was undertaken in August and September 2020.

It was prepared as a guide to policy makers in the States and Territories, highlighting the key issues (as judged by us) and possible directions for reform. With a view to practicality, the paper includes a handful of 'litmus tests' which policy makers could apply in order to assess the performance of their planning systems and indicate areas for improvement.

States and Territories differ, both in the structure of their planning systems and the economic forces shaping their cities. Hence the Commission has aimed to balance the need for practical detail with the avoidance of prescription.

In doing so, we have drawn on our own past work, including *Shifting the Dial*, the recent case study on Victoria's commercial land use zoning, our 2011 performance benchmarking of planning, zoning and development assessments and our 2011 study on Australia's retail industry. We also made use of other publicly available reports and consultations with key stakeholders.

This paper differs from the Commission's traditional inquiry process. It involved a shorter timeframe, with targeted consultation, and it does not come to specific recommendations, as an inquiry report would do. It tries to identify reform directions that could be tailored by jurisdictions to suit their circumstances.

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# 1 Introduction

The severe impacts of the COVID-19 pandemic on the Australian economy, and the prospect of a prolonged recovery period, make it imperative that Australia has efficient and effective regulatory frameworks. This includes addressing outdated rules and regulatory practices that unnecessarily add to the cost of doing business and stifle the creation of businesses and jobs.

Given these challenges, Council on Federal and Financial Relations (CFFR) has requested that the Productivity Commission prepare ‘a plan to identify planning and zoning reforms to progress and implement over the next six months’.<sup>1</sup>

The Commission has prepared this paper to provide guidance on specific areas of planning and zoning regulation where CFFR members could uncover some ‘quick wins’ to boost economic activity. The paper presents a list of ideas that (i) are relevant to multiple jurisdictions, (ii) could contribute to economic recovery, and (iii) could be progressed over the next six months. It draws on desktop research and limited consultation with experts and government agencies.

Various studies, including the Commission’s *Shifting the Dial: 5-year productivity review*, have highlighted how planning and land use regulations, and regulatory practices, can adversely impact housing affordability, the cost of doing business and the economy generally (box 1).

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## Box 1 **Studies estimating the impacts of planning and land use regulations**

- Jenner and Tulip (2020) estimate the gap between what homebuyers pay for a new apartment and the supply cost to be about 68 per cent of costs in Sydney, 20 per cent in Melbourne and 2 per cent in Brisbane. They indicate these gaps are sustained by planning restrictions.
- Kendall and Tulip (2018) estimate that in 2016 zoning restrictions raised detached housing prices 73 per cent above the marginal cost of supply in Sydney, 69 per cent in Melbourne and 54 per cent in Perth.
- The Centre for International Economics (2013) estimated that Sydney’s land use restrictions were inhibiting between \$8 billion and \$16 billion in economic value when estimated in 2012 (or between \$665 million and \$1289 million each year).
- Better Regulation Victoria (2019) cites estimates that reducing unnecessary development delays could deliver between \$400 million and \$600 million per year in benefits.
- The Property Council of Australia (2017) modelling suggests that improvements to the efficiency of the agency referral process across jurisdictions could be worth as much as \$360 million per annum in additional economic value.

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<sup>1</sup> CFFR agenda paper, 17 July 2020.

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State and Territory governments could mitigate these impacts, and boost economic activity, by improving the operation of planning and zoning systems and development assessment (DA) processes (box 2). Although the evidence base is often patchy, commonly cited impediments to efficient planning and zoning systems include:

- conflicts between state and local-level strategies, which confound efforts to achieve development objectives such as providing for projected future housing demand
- overly prescriptive zoning systems, which create unnecessary barriers to business entry and diversification
  - prescriptive land use regulations can also contribute to greater reliance on rezoning, which is often a costly, time-consuming and uncertain process
- unnecessarily complex and onerous development assessment processes, which add to the costs of investment and housing. Specific concerns include:
  - some development proposals being subject to complex and lengthy assessment processes when they could be done via simpler and faster assessment processes
  - decisions taking much longer than necessary due to lack of coordination within councils and between relevant agencies (with regard to referrals and concurrent assessments) and use of outdated technology (such as paper forms and documents)
  - measures that facilitate community input into the DA processes (for example, the extent of third party appeal rights and notification requirements) which if not well designed can add to costs, delays and investment uncertainty, without improving outcomes.

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## Box 2      **Some standard terminology**

To help non-expert readers understand planning issues that affect multiple jurisdictions, this paper uses standardised terminology for broadly comparable planning instruments.

**State and regional strategic plans** — plans issued by State governments that set out state planning policy (including development objectives) to guide local government planning and development. Examples include Victoria’s *Victoria Planning Provisions* (state policy, which also sets out planning tools) and *Plan Melbourne* (regional policy); the Greater Sydney Region Plan in New South Wales and the ACT’s National Capital Plan.

**Local strategic plans** — plans developed by council for the future development of their municipalities and which guide the application of land use controls through a planning scheme. Examples include Local Strategic Planning Statements in New South Wales, and Local Government Infrastructure Plans in Queensland.

**Local land use plans** (often known as planning schemes) — planning instruments that outline land use controls at the local level. Examples include Local Environmental Plans in New South Wales, development plans in South Australia, and local planning schemes in Victoria, Western Australia, Tasmania, and Queensland. South Australia and Tasmania are in the process of replacing local planning schemes with state-wide schemes.

**Land use controls** — refers to zoning, overlays and other development controls used to determine the types of activity and/or development allowed (with or without a permit) or prohibited, on a given site. Each state and territory has a system of zoning, and most use overlays for considerations such as heritage and environment.

**Development assessment** — the process for assessing an application for consent to carry out development such as building works and, in some cases, change in land use. Common steps include preparation, assessment (with possible referrals and public notice), decision, appeals and post-approvals.

At a high level, the suggested reform directions outlined in the paper are about:

- aligning plans at different levels of government so governments are collectively better able to meet their development objectives
- creating land use regulations that allow for a broad range of uses and wherever possible limiting the need for rezoning or outright prohibitions on certain land uses<sup>2</sup>
- getting more of the simpler decisions out of the detailed assessment processes (through greater use of streamlined assessments or exemptions)
- making the administration of development assessments more efficient.

State and Territory governments have been grappling with these issues for many years. Over the past decade, for example:

- New South Wales has sought to establish a clearer and more integrated hierarchy of state, regional and local plans for the Greater Sydney region, with clearer links to local

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<sup>2</sup> Except where doing so is clearly against the public interest (such as uses that pose risks to public safety).

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planning controls. The Queensland Government has legislated to ensure better alignment of local development plans with state objectives

- Victoria has reformed its residential, industrial and commercial zoning regulations to reduce the number of restrictions and the degree of prescription on the intensity of land uses allowed in each zone type. Queensland’s zoning policy includes comparatively few outright prohibitions on land use, and prohibited development can be assessed. Local government can consider the merits of a proposal for development that is unanticipated for a zone (for a non-prohibited use) as part of the development assessment process (rather than a separate rezoning process) or through a ‘variation request’ to create a site-wide planning instrument
- all jurisdictions have, to varying degrees, implemented streamlined development assessment tracks for simpler proposals (though there are differences in their scope and design, depending on the scale of the developments)
- all jurisdictions have sought to refine the operation of their development processes, such as through greater use of expert panels in New South Wales, Western Australia and South Australia to improve the integrity and quality of decisions.

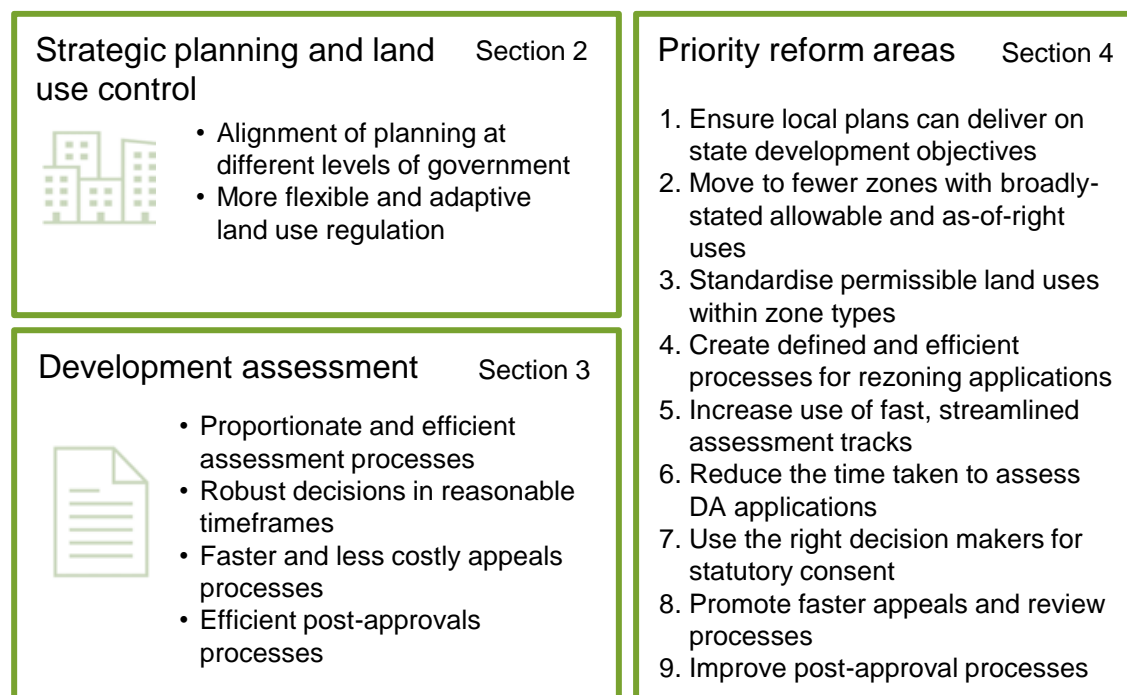
States and Territories have also taken steps to enable temporary changes or exemptions to regular planning regulations in response to the COVID-19 pandemic. For example, New South Wales has changed planning rules to make it easier to set up and operate food trucks and ‘dark kitchens’ (NSW Government 2020a).

State and territory planning systems are different in many respects. Consequently, promoting good practice is not necessarily as simple as importing something that works well in another jurisdiction. However, there are common reform priorities across multiple jurisdictions that may benefit from knowledge sharing across jurisdictions.

The rest of this paper examines potential barriers to economic activity (and reform options) associated with planning and zoning under two broad themes (figure 1). Section 2 relates to the broader architecture of the planning system (such as the strategic plans and instruments under which local governments make decisions). Section 3 covers the development assessment process. Section 4 describes nine priority reform areas for planning and zoning regulation (and associated questions or prompts to indicate where aspects of planning and zoning systems could be improved).

In considering options relating to planning policy, jurisdictions may also need to consider resourcing and planning capacity across specific local governments and state agencies. Given the timelines for this project, the Commission has not examined funding arrangements. Further, some of these reforms inevitably require a degree of judgment about the appropriate balance between community and private interests. Balancing these interests can, at times, require trade-offs in benefits and costs on both sides, and these trade-offs should be considered in determining a reform pathway.

Figure 1 Reform directions discussed in this paper



## 2 Strategic planning and land use controls

Planning and zoning systems guide and facilitate growth and development in cities, towns and regions. They comprise of various regulatory bodies, the rules that define their powers and roles, and the plans and instruments under which they make decisions.

- State Governments are generally responsible for strategic plans for metropolitan areas and regional areas, releasing land for new developments, making provision for major infrastructure and overarching planning and development policies, such as the broad objectives of and purposes for land use (whether residential, commercial, industrial, recreational or other), with which State or Local approval authorities must comply.
- Local Governments<sup>3</sup> generally have responsibility for developing and implementing land use plans at the local level, with local plans expected to be consistent with metropolitan strategic plans or regional plans and applicable State planning policies. Local Governments process the vast majority of development proposals (figure 2).

<sup>3</sup> In the Northern Territory and the ACT, land use planning is conducted at the Territory level. The NT has a single planning scheme (the NT Planning Scheme 2020), with land use and development assessment determined by the NT Government (DIPL 2020). The ACT has the Territory Plan, which establishes key planning strategy, zones and development categories for across the ACT (ACT Government 2008).

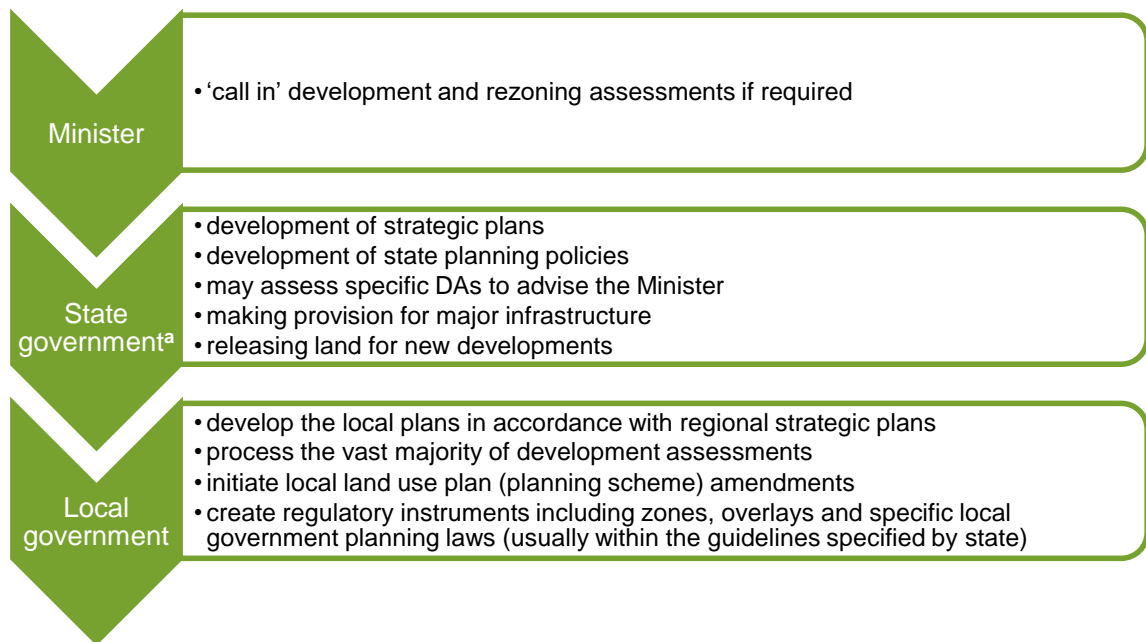


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The rest of this section considers two aspects of strategic planning and land use controls that can impede development: conflicts between different levels of governments on development objectives and overly prescriptive zoning systems.

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Figure 2 **Simplified planning functions and responsibilities**



<sup>a</sup> Responsibilities may be spread across the Minister, Planning Department/Commission, Supra-council decision-making bodies, State Government Developers, and State bodies with specific planning/development responsibilities.

Source: Adapted figure 1 from PC (2017).

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## Alignment of planning at different levels of government

Australia's cities have become more important over time as centres of jobs and populations, reflecting in part significant changes in Australia's comparative economic advantages. Several state governments have therefore implemented urban growth strategies that set out how projected population growth will be accommodated, including where new developments or land uses are likely to be required, and policies to achieve community-level objectives.

Even if Australia's rate of population growth was to slow for a sustained period, state governments will still have overarching policies and targets that seek to ensure that housing supply is responsive — in quantity, type and location of dwelling — to demand.

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Effectively meeting such housing and growth strategies at the metropolitan or regional level relies on coherence of planning strategies across State and Local Governments. However, conflicts on development objectives can arise between different levels of governments due to:

- different visions for urban areas, particularly how they accommodate population growth (there is often strong local opposition to increased density)
- the need for local governments to interpret how to implement State strategic plans and statutory planning requirements
- the discretion of Local Governments to determine local land uses in accordance with their particular community preferences.

That there often appears to be few consequences for Local Governments that do not ultimately seek to implement State-level policies can compound this issue. For example, in a review of planning arrangements across New South Wales, Victoria, Queensland and Western Australia, Mecone (2019) found the enforcement of alignment of local planning instruments with state objectives varies between jurisdictions. Queensland in particular was determined to have the strongest alignment of local and state planning strategy, in terms of having local governments demonstrate how they meet state planning objectives (Mecone 2019).

If not addressed, these conflicts could mean that state development strategies will not be realised or come at a significantly higher cost.

Alignment of strategic planning at the State and local level is also an important issue for industrial and commercial land use. In Victoria, for example, the Government recently released the Melbourne Industrial and Commercial Land Use Plan (DELWP 2020), which assesses current and future demand and supply for industrial and commercial land in the Melbourne metropolitan area, and provides a framework for local governments to manage industrial and commercial land supply. Challenges in industrial and commercial land use planning include ensuring appropriate sites for warehousing activity and other uses in appropriate locations, while making better (higher value) use of old industrial sites in built up urban areas.

### Ensure local plans can deliver on state development objectives

Genuine consultation and better guidance from States on their strategic objectives for cities could help promote mutual understanding and alignment of goals. State planning policies should provide clear guidance on how Local Government plans should be developed, including specification of policy priorities, preferred methods for achieving them, and the relevance of State planning policies to which local council must have regard.

Although most states have introduced or announced measures to align local and state planning (box 3), there may be room for further improvements. Despite having the strongest population growth rate in Australia in recent years, a recent report found Victoria lacks clear planning tools or mechanisms to require the provision of affordable housing as part of the planning process (Mecone 2019). Even in New South Wales, which on the face of it has relatively

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well-aligned local and state planning (via the Local Strategic Planning Statements), groups such as the New South Wales Productivity Commission (2020) and Property Council of Australia (2019) have highlighted some concerns. These concerns include:

- uncertainty over the ability of local governments to meet state-wide or regional planning objectives, and in particular, whether local governments can meet housing supply targets. There may be costs from uncertain local housing strategies, such as reduced receptiveness of communities to higher density residential development, which can constrain development and place upward pressure on the cost of housing
- lack of rigour and consistency in how local councils demonstrate their capacity to meet state development targets. This issue may create a risk of local government policy that is estranged from state-wide development targets and less local support for further development.

To address these issues, the NSW Productivity Commission recently recommended that:

- the State Government require councils to analyse housing supply capacity and show that planning controls are consistent with the dwelling needs identified by Greater Sydney's 20-year strategic plans for 5-year, 10-year and 20-year windows
- councils immediately update relevant planning instruments to meet 6-to-10-year housing targets and report housing completions by Local Government Areas every six months.

The NSW Productivity Commission also suggested that community attitudes to high density residential development could be made more supportive by careful integration of developments with infrastructure such as public transport, to minimise increased congestion.

Jurisdictions should consider whether their arrangements promote adequate levels of accountability for local plans to demonstrate they can deliver on development objectives. In particular, States could examine mechanisms — including penalties or rewards — to provide stronger incentives for local governments to adequately reflect state development objectives, such as those in housing supply policies, in local plans.

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**Box 3****Implemented or announced measures to align plans at different levels of government**

- New South Wales has sought to establish a clearer and more integrated hierarchy of state, regional and local plans for the Greater Sydney region, with clearer links to local planning controls. Local Governments prepare Local Strategic Planning Statements that must align with state strategies for land use (PC 2017).
- The Queensland Government has legislated to ensure better alignment of local development plans with state objectives. For example, Local Planning Instruments are required to be consistent with strategy in the State Planning Instruments, and meet requirements for how development assessment is conducted (PC 2017).
- Victoria commenced reforms in 2018 that will introduce an Integrated Planning Policy Framework, to be completed in 2021. The Framework will introduce three layers of planning strategy — state-wide, regional and local — which will be combined into a single planning framework in each local government area to increase strategic coordination (DELWP 2020).
- Western Australia is undergoing planning reforms that will include compulsory development requirements in local planning schemes, to improve the coordination of these schemes with wider planning strategy (DPLH 2019).
- Tasmania is in the process of replacing local council planning schemes with a single scheme across the state. Regional Land Use Strategies will also be required to align with state-wide planning policies (Tasmanian Government n.d.).

## More flexible and adaptive land use regulation

Most development and land use activities are carried out under the authority of local planning instruments that list the types of development that are allowed in each zone of a local government area.<sup>4</sup> Typically, State legislation sets out the types of allowable zones (whether residential, business, rural, environmental protection or other), allowable categories (or purposes) of activity within those zones, and the specific types of developments that may be carried out in accordance with the purpose of those categories of activity.

Zoning policies often exhibit four characteristics that may result in added costs to business and households that wish to make use of land:

- a proliferation of zone types
- a lack of standardisation in zone definitions across local government areas, adding to the proliferation of different rules about permitted land use
- excessive restrictions on land use enshrined in state-wide planning provisions or local planning schemes
- insufficient (or none at all) ‘as-of-right’ uses in various zone types.

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<sup>4</sup> The exception is state-significant developments.

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## Move to fewer (standardised) land use zones with broadly stated allowable uses

Although zoning plays an important role in managing land use conflicts, overly prescriptive zoning imposes costs and reduces land use flexibility and adaptability. For example, prescriptive rules about permitted land uses can limit new employment and productivity improvements in, and competition between, businesses.

State, Territory and Local Governments should move to fewer and more broadly-stated land use zones, which have a large range of ‘as-of-right’ uses (for which council approval is not required). This would allow greater diversity of land uses and would make it easier for new businesses to enter and for existing businesses to expand (PC 2017). It would also reduce administrative and compliance costs and enable planning systems to respond to changing land use activities. The Australian Government Competition Policy Review (the Harper Review) also recommended that ‘business zones should be as broad as possible’ (Treasury 2015, p. 45).

Currently, the number of zone *types* (commercial, industrial, residential) and range of restrictions in each zone varies considerably across jurisdictions (table 1 compares commercial, industrial and residential zones across jurisdictions). It is commonplace for:

- States to have a comparatively large number of zones of the same general type with seemingly granular distinctions (for example, the B1 and B2 zones in New South Wales are intended to facilitate commercial activity in ‘neighbourhood’ and ‘local’ centres, respectively)<sup>5</sup>
- local governments to apply restrictions for a wide range of activities on commercial and industrial land (for example, unless varied by local governments, the standard commercial and industrial zones in New South Wales still require all permissible activities to apply for approval when there is a change in land use)
- rules for similar or the same zone types to vary across local governments (for example, local governments in Western Australia and South Australia have the discretion to vary or tailor zone types, potentially leading to a significant degree of variation between different parts of the state — though both states are undergoing reforms to standardise zoning to some extent).

Different jurisdictions have approached these issues in different ways. Several States and Territories have recently implemented or signalled some changes to make zoning arrangements more standardised (box 4).

Queensland is notable in having minimal prohibited uses enshrined in zone definitions. This means that most proposals can move to ‘impact assessment’ (a formal DA process) even

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<sup>5</sup> The NSW Productivity Commission (2020) recently recommended the NSW Government rationalise zones and restrictions on permissible business activities and produce strategies to use commercial and industrial land more productively (p. 24; recommendations 7.3-7.5)

where not envisaged in the planning scheme. This appears to provide a degree of flexibility regarding potential land use.

Victoria is notable in having fewer commercial and industrial zone types, with a broad range of as-of-right uses and a broad range of permitted uses (but still a number of prohibited uses) in those state-wide zone definitions.

**Table 1 Commercial, industrial and residential zones in each jurisdiction<sup>a</sup>**

<i>Jurisdiction</i>	<i>No. commercial zones</i>	<i>No. industrial zones</i>	<i>No. residential zones</i>	<i>Standardised zones?</i>
New South Wales	8	4	5	Yes
Victoria	3 <sup>b</sup>	3	6	Yes
Queensland	6	9	7	Partial <sup>c</sup>
Western Australia	~100 <sup>d</sup>	~100 <sup>d</sup>	~100 <sup>d</sup>	No – reforms underway
South Australia	Several hundred <sup>e</sup>	Several hundred <sup>e</sup>	Several hundred <sup>e</sup>	No – reforms underway
Tasmania	5 <sup>f</sup>	2 <sup>f</sup>	~5 <sup>f</sup>	No – reforms underway
ACT	6	2	5	Yes
Northern Territory	4	3	8	Yes

<sup>a</sup> The count of zones does not include zones such as ‘special purpose’ zones that may allow some commercial, industrial or residential activity, among other uses.

<sup>b</sup> Victoria introduced a new, third commercial zone in 2018, though it is yet to be implemented by any local government.

<sup>c</sup> Queensland has standard zone categories, however each local government determines which uses are anticipated or unanticipated (where unanticipated uses may be assessed under the ‘impact assessable’ track). There are limited prohibited developments, which are determined at State level.

<sup>d</sup> Western Australia announced a Planning Reform Action Plan in 2019 which will include the introduction of a standard set of zones. Currently, there is variation in zoning across local governments and the exact number of each zone category is not available.

<sup>e</sup> South Australia is undergoing planning reforms that will replace 72 development plans with a single state-wide Planning and Design Code. This Code will include a standard set of 55 zones (from about 1500 zones in existence pre-reform due to local governments determining their own zoning).

<sup>f</sup> Tasmania is undertaking reforms that will include a standard set of zones across the state. Currently, zoning varies across local governments so within similar zones there may be differing permissibility of uses across local governments.

*Sources:* NSW Government (2020b); DELWP (2015); DSDMIP (2020); DPLH (2019); SA Government (2019); DJ (2017); ACT Government (2008); DIPL (2020).

The prospect of moving to fewer zones with broader ranges of uses sometimes raises concerns about adverse impacts on urban amenity, as there is less scope for councils to tailor rules to local circumstances. That is, increased flexibility in land use means denying councils flexibility to design their own zones. However, the Commission’s recent case study for

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CFFR on Victoria’s commercial zoning arrangements illustrates that it is possible to introduce greater flexibility into zoning arrangements with positive outcomes. In particular, the merging of the previous five business zones into two standard commercial zones in 2013 (along with amendments to industrial zones to provide more flexibility for office and some retail uses) have increased the availability of suitable sites and reduced set-up costs for small-scale supermarkets and large format retailers. Consumers now have greater access to these type of retailers. The significant negative impacts predicted to result from the reforms do not appear to have come about.

**Box 4                      Announced zoning reforms in different states**

- Western Australia has signalled that it will implement a suite of standard zones and land use definitions. There is currently significant variation in how zones, land uses, permissibility and development standards are applied across local planning schemes, with possibly hundreds of variations of zones. This reform may make the planning system simpler to navigate for developers and businesses.
- South Australia is implementing a single state-wide planning rule book, the Planning and Design Code, to replace 72 highly complex and variable ‘development plans’ (which had more than 2500 zone combinations in 2014). This should represent a significant simplification of the planning system, by introducing a standard state-wide set of zones (which would substantially reduce the number of zones) and improve planning consistency across local government areas.
- Tasmania is implementing the Tasmanian Planning Scheme, a single state-wide planning scheme that will replace 30 local planning schemes and standardise zones and allowable uses across local government areas. This reform should see a reduction in the number of zones across the state through standardisation, which may increase clarity in zoning and development.

*Sources:* DPLH (2019); SA Government (2019); Tasmanian Government (n.d.).

## Create defined and efficient processes for rezoning applications

Land use is typically governed by local land use plans (such as planning schemes) that set out objectives, policies and provisions for the use, development and protection of land. If an owner of land (or local council) wishes to use land for purposes that are inconsistent with the rules in the existing local plan, such as changing the land use from agricultural to residential or commercial, they will typically need to make a request to government for an amendment to the land use plans (planning scheme).

Rezoning can be a time consuming, costly and uncertain process, particularly for infill development where there is greater potential for delays due to community objections — in major cities such as Sydney and Melbourne the process can take several years (BRV 2019; PCA 2019).

Moreover, unlike a DA application, which generally involves some rules around process and timeframes (and can include deemed approval or refusal provisions), applications for rezoning often lack these procedural rules, or impose timeframes for only certain parts of the

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assessment process. Consultation for this study found processes around rezoning are often a major barrier for delivering housing in areas close to transport in several states (BRV 2019; Urban Taskforce 2019). Some stakeholders noted that Queensland’s planning system avoids some of the problems associated with rezoning because local government may consider the merits of unanticipated uses in a zone as part of the development assessment process (provided it is not a prohibited use). Proponents of a development in Queensland can also apply for a ‘variation request’ to vary the levels of development assessment on a site (DILGP 2016).

Although there are often calls to make developer-led or ‘spot’ rezoning easier, such rezoning is ultimately a second-best solution. Ideally, governments would adopt policy settings that avoid or minimise the need for spot rezoning by developers. This can be done through having fewer land use zones with broadly stated allowable uses (such as Victoria as described above), or a system that actively facilitates impact assessment of unanticipated uses (such as Queensland). This would arguably be more transparent and equitable. It would also reduce costs, delays and investment uncertainty associated with rezoning.

To the extent spot rezoning is necessary, there may be scope to shorten the associated timeframes without compromising the overall integrity of the process. These include:

- reviewing rezoning processes to remove, or redesign, any redundant requirements for intermediate approvals
- applying statutory timeframes for decisions to provide some discipline to the regulatory process and provide developers with a better idea of the timeframes they should allow for in their planning and due diligence.<sup>6</sup>

Some stakeholders were optimistic about the New South Wales government’s announced plan to improve the timeliness of the rezoning process by introducing a new class of rezoning appeals. The NSW government estimates this measure could decrease rezoning timeframes by one-third (191 days), by expanding the role of the Land and Environment Court with an additional appeal class for rezoning, to speed up rezoning and allow proponents to appeal or have proposals reviewed (DPIE 2020d). The NSW Productivity Commission recently noted that this reform seems particularly beneficial among recent reform announcements in New South Wales (NSW PC 2020). The Commission was unable to consider this option in detail or its broader applications to other jurisdictions, as the NSW government only recently announced this proposal and there is limited detail in public documents.

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<sup>6</sup> Most jurisdictions impose statutory timeframes for at least part of the rezoning process. Victoria specifies timeframes for some stages of rezoning (DPCD 2013), and the Northern Territory mandates a timeframe of 90 days for the Planning Minister to decide on a planning scheme amendment after receiving the report from the NT Planning Commission (NT Government 2020). In South Australia, timeframes are agreed between local government and the proponent and can only be extended with permission from the Planning Minister (DPTI 2013).



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## Other strategic planning issues

Stakeholders raised a number of other strategic planning issues that potentially act as a barrier to development activity, including current approaches to developer contributions (infrastructure funding) (Urban Taskforce 2019) and the large number of small councils in some cities (which affects planning capability and can contribute to conflicts between local and state plans). Given the timelines for the project and absence of obvious ‘quick wins’, this paper does not examine reforms in these areas.

## Summary

Conflicts on development objectives between different levels of governments and overly prescriptive land use regulations can both act as substantial barriers to economic activity. Given this, jurisdictions could further investigate whether there is scope to improve their planning and zoning systems in the following priority areas:

- ensure local plans can deliver on state development objectives
- move to fewer zones with broadly-stated allowable and as-of-right uses
- standardise permissible land uses within zone types
- create defined and efficient processes for rezoning applications.

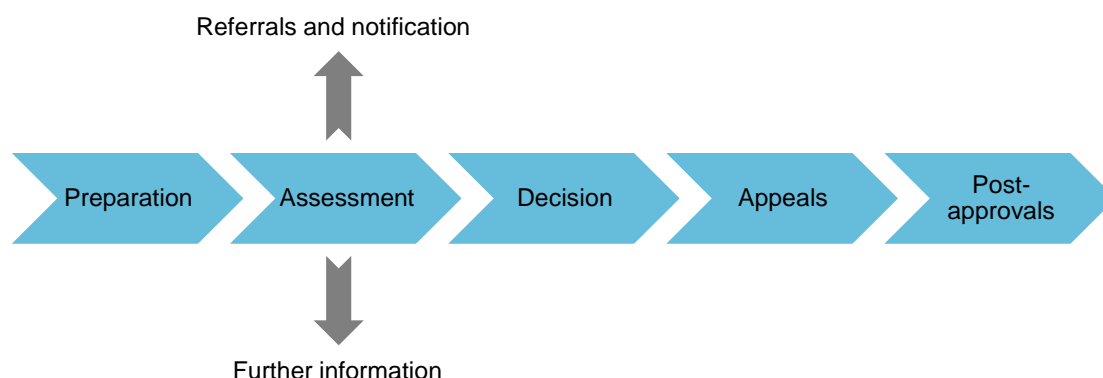
## 3 Development assessment

Development assessment is the process for assessing an application for consent to carry out development such as building works, and, in some cases, change in land use and land subdivisions. It ensures that a proposed development on land is consistent with the plans, zones and other instruments specifying how the land is to be used. Members of the community will most often encounter the land planning system at this stage. While the detailed DA design varies in each jurisdiction, the general process applicable to all includes preparing an application by the user, followed by lodgement, assessment (with possible referrals and public notice) and decision by consent authority (either local government or Minister), appeals and post-approvals (figure 3).

There are many paths through the DA process, depending on the nature and scale of the proposed development. Some developments do not require formal assessment while others go through a very lengthy and complex process; certain developments are fast-tracked as ‘state significant’ projects whereby a decision is made by the Minister rather than the council or the usual assessment authority.

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Figure 3 **Steps in development assessment**



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Applicants generally need to submit multiple documents as part of the development assessment process, often to multiple agencies.

Stakeholders and independent authorities in various jurisdictions have highlighted how existing development assessment processes are resulting in unnecessary delays and resulting in target timeframes being routinely breached.<sup>7</sup> Common causes of delays in the development assessment process can include:

- lack of clarity on application requirements
- disproportionate requirements for users to meet at each stage of the DA process
- insufficient coordination between and within agencies involved in the DA process
- limited accountability in monitoring and adhering to timeframes.

Inefficient development assessment processes can put added pressure on systems that are already under strain and impose unnecessary costs on applicants and the broader community. The NSW Productivity Commission and Grattan Institute noted that unnecessary delays associated with development assessment ultimately restricts housing supply and reduces affordability (Grattan Institute 2018; NSW PC 2020).

Development assessment design involves judgments about how to balance community and private interests. However, there is room for jurisdictions to improve their development assessment systems to be faster and more responsive, not necessarily by diluting regulatory requirements — which may be essential for ensuring quality outcomes — but instead by streamlining and being more disciplined in how development applications are assessed.

The Development Assessment Forum (DAF), which was formed in 1998 to reduce the length and complexity of development assessment processes, produced a ‘Leading Practice Model’

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<sup>7</sup> Due to ‘stop the clock’ provisions, the actual time taken to assess a DA can be much longer than the statutory time (BRV 2019).

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for planning systems, which was endorsed by State and Territory planning ministers in 2005 (DAF 2005). The model included ten leading practices that would assist in a more efficient development assessment system and proposed six development assessment ‘tracks’ that would direct development applications based on their relevant assessment pathway.

The rest of this section considers steps that government could take to reduce the compliance costs and delays at each stage of the DA process.

## **Proportionate and efficient assessment processes**

There are two broad ways government can potentially enhance the effectiveness of the assessment process:

- better categorising and treating assessments according to risk
- improving administrative efficiency when processing development applications.

### **Increase use of fast, streamlined assessment tracks**

Development proposals vary in their complexity and risk. Governments can reduce the costs and timelines of development assessment applications in their jurisdictions by scaling the degree of scrutiny that proposals receive to match their complexity and risk. By doing so, jurisdictions can free up resources that would otherwise have been allocated to assessing simpler proposals and redirect them to progressing assessment of more complex proposals.

This approach is reflected in the leading practice model for development assessments developed by the Development Assessment Forum, which provides for categorising development applications into assessment ‘tracks’ (or ‘pathways’) that correspond to project complexity and impact, and hence the level of assessment required to make an informed decision.<sup>8</sup>

While all jurisdictions have, to varying degrees, implemented streamlined development assessment tracks for simpler proposals, there are differences in their scope and design, depending on the scale of the developments. For instance:

- Queensland has ‘code’ and ‘impact’ assessable pathways where applications that meet codes are deemed to be approved if the targeted time period has lapsed, and those that

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<sup>8</sup> The assessment tracks envisioned under the leading practice model are (in order of complexity): exempt (development may proceed without assessment) or prohibited (development cannot proceed); self-assess (self-assessment by the applicant against clear quantitative criteria, may require certification that criteria have been met by qualified person); code assess (the assessor considers the proposal against objective criteria and performance standards); merit assess (expert assessment against complex criteria); and impact assess (complex, technical assessment for proposals that may have significant impacts on surroundings).

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exceed certain thresholds or are not envisaged by the planning scheme are assessed on their merits through the impact assessment pathway, which includes third party appeal rights.

- Victoria has VicSmart, a 10-day development assessment pathway for simple and relatively minor applications (e.g. removing a tree, building a house extension), which are assessed against a limited set of criteria where public notice is not required and there are no third party appeal rights (unlike conventional permit applications). DELWP is consulting on a potential new assessment pathway, VicSmart Plus, which would feature a 30-day turnaround time and have targeted notice provisions.
- New South Wales' 'exempt' pathway allows developments without any planning or building approvals. The 'complying' development pathway is a combined planning and construction approval for straightforward projects that can be determined by a council or an accredited private certifier. These approvals can be issued in as little as 20 days. In 2017-18, about 30 per cent of development applications were fast tracked through exempt and complying development (DPIE 2020b).<sup>9</sup> The complying development track can effectively bypass the council because it allows private certification of planning compliance, which is not the case for most other jurisdictions' code assessment tracks
- in 2020, the Northern Territory Government introduced new merit and impact assessment pathways to focus scrutiny on proposals with a greater potential for impact and allow further streamlining of the assessment of proposals unlikely to have impacts.
- under South Australia's new planning system (scheduled to be fully implemented sometime in 2021), a streamlined 'deemed to satisfy' pathway under the code assessment will be available for developments that meet measurable requirements. The pathway will have no public notification requirements or third party appeal rights (DPTI 2018).

During consultations, several stakeholders highlighted the challenges associated with comparing the fast track assessment systems across different jurisdictions and advised caution when using simple indicators to draw inferences about the relative merits of different approaches. However, there was also strong interest in investigating what each state could do to make greater use of fast tracks (and exemptions) to reduce delays and compliance costs.

On its face, allocating a greater proportion of development proposal to fast track or exempt status (by relaxing the related eligibility criteria) and streamlining standards could be particularly effective options for cutting overall DA times. For an appreciable impact on DA time, however, reforms may have to involve more than tweaks around margins of existing tracks.

Relaxing the criteria for developments that qualify for fast track assessments or exemptions and streamlining standards would mean regulators would have less scope to scrutinise and/or manage risks associated with a subset of projects. However, it is important to clarify the nature and size of these risks. The notion of 'risk' in this context can be seen in two ways:

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<sup>9</sup> The New South Wales government has recently announced its Planning Reform Action Plan, which includes reforms to complying development for employment areas that will fast-track low impact development (DPIE 2020c). Under this reform, developments that meet construction and building standards will be signed off by council or an accredited certifier faster.

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one is the scale or complexity of the development; the other is the consistency of the proposed development with local plans and the envisaged purposes of the applicable zone. Most jurisdictions appear to reserve code assessment tracks for minor developments. Arguably, greater use of the code assessment track could be used for more significant developments where they are clearly consistent with the intent of the local planning scheme and associated policies. Governments could also consider pursuing streamlined assessment for works such as building or fit-outs for uses that are as-of-right in a zone — particularly those uses in commercial and industrial areas.

To the extent jurisdictions' priorities are shifting towards economic recovery, recalibrating DA assessment pathways to get more of the simpler decisions out of the detailed assessment processes offers a potentially powerful tool for reducing delays and regulatory burden.

### Reduce the time taken to assess DA applications

Moving the more straightforward applications into fast track assessment processes can make a significant difference to the speed of assessment. However, a number of applications will remain in the conventional DA process (described as 'impact assessment' in some jurisdictions).

Indeed, to the extent that prohibited land uses are minimised and permitted uses expanded, more proposals — often of a reasonably complex nature — are likely to come into the DA stream.

Speeding up the DA process for these applications is not straightforward. There is no single lever which, of itself, can make the process more efficient. Most jurisdictions have statutory timeframes for the consideration of DAs, and some stakeholders can be attracted to simply reducing the stipulated timeframes. While this could have merit in some instances, experience suggests that it is unlikely to be a sufficient response. Existing timeframes are often breached, for a range of reasons associated with requests for further information, state agency referrals and slow processes within councils.

While some jurisdictions have sought to discipline the process through 'deemed refusal' — effectively allowing applicants to move straight to an appeal if the application is not approved within the statutory timeframe — in practice this is rarely used (BRV 2019).

Improving the speed and efficiency of the DA process requires a number of individual steps. There are a range of potential impediments relating to processing development applications that could be addressed through a combination of better coordination between agencies, greater transparency and accountability as applications progress through different stages, and greater flexibility in meeting requirements.

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*Helping applicants provide the required information with the least amount of fuss*

Lack of clarity on application requirements, combined with the complexity of navigating the planning system, can mean applicants fail to complete relevant forms or provide all relevant documents. This may require the consent authority to go back to the applicant for this information, resulting in delays.

Strategies to reduce these types of delays include:

- using pre-lodgement meetings to clarify requirements
- issuing guidelines to local councils to ensure quality online information about requirements.<sup>10</sup>

While pre-lodgement meetings are offered in some jurisdictions, they are not mandatory and not always offered across all consent authorities. Feedback from stakeholders suggests that even in cases where these meetings are offered, proponents may not be aware of this option and so they are not used routinely.

The Western Australian government's current proposed reforms aim to utilise pre-lodgement meetings to facilitate better outcomes, with a view to rollout the option state-wide and potentially incorporate into the legislation if a trial period is successful (DPLH 2019).

Greater use of pre-lodgement meetings would help ensure application completeness, leading to a reduced need for additional information requests from referral agencies once the DA process has begun. During these meetings, consent authorities could go a step further by engaging specialist staff to address any shortcomings and risks of the proposed developments in order to ensure the application meets the planning and building requirements. This approach would minimise delays and costs as the application would have a greater chance of being approved the first time. Care would need to be taken to ensure that pre-lodgement meetings do not turn into a pseudo-development assessment process. In pursuing this option, jurisdictions would need to resolve whether the council or applicant should bear the costs of these services.

*More accountability in timeframes through digitisation and more disciplined targets*

In order to ensure timely decision making, many jurisdictions have set timeframes and targets for each part of the development assessment process. These timeframes can either be guidelines or enforced through statutory rules. To promote greater adherence to timelines, jurisdictions need to know the main sources of delays in the DA process. However, in many cases this information is not collected or available.

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<sup>10</sup> For example, in a review of NSW's DA processes, Mecone (2019) recommended investigating the potential for the state to set guidelines relating to what information is required for different types of development application.

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More robust data reporting would allow states and territories to monitor, identify and analyse areas where most delays occur in order to come up with more targeted and effective solutions. Governments could also collect other metrics such as the proportion of applications going through different assessable pathways, outputs and post-approvals timeframes.<sup>11</sup>

Such data can be acquired and monitored through the adoption and use of technology. Greater use of online systems to track applications and their progress by both consent authorities and applicants offers many potential benefits (BRV 2019). Digital planning portals offer the possibility for real-time monitoring of the progress of applications. They can also provide visible dashboards for all parties involved in the process, including for referral authorities and the community to input their responses or objections and for councils to publish decisions and reports. Fully digitised planning portals would also enable improved monitoring and performance reporting.

Examples of digital planning portals employed by jurisdictions include:

- Northern Territory's The Development One Stop Shop allows lodgement and tracking for developers and the general public. It can also be used to book meetings online and arrange pre-DA sessions (PCA 2015).
- New South Wales' Planning Portal allows community, industry and government to work together on proposed developments. Processes such as lodging, tracking, and reporting the progress of DAs have been digitised and integrated into one central system. There is greater accountability through the provision of a payment gateway for the referral process and automatic notification emails at key stages of the process. According to the NSW Productivity Commission, this saves up to 11 days in assessment time. Additionally, the Government recently announced that it would expand the portal to all 42 councils in Sydney, Illawarra, Newcastle and the Central Coast (DPIE 2020a). The NSW Productivity Commission expects that a single state-wide portal would simplify the lodgement process, promote consistency and assist in expediting assessments (NSW PC 2020).

Governments could also consider whether there is scope to create greater discipline on decisions by implementing target timeframes to make timely decisions at each stage of the process. For instance, as a part of the COVID-19 emergency response, the South Australian government has imposed a 20 business day requirement for a referral agency to provide its response (SA Government Gazette 2020). Some jurisdictions use 'deemed approvals' where the application is considered approved if the target time is lapsed by an agency. However, in determining the timeframes, jurisdictions would need to consider whether they are appropriate based on the complexity of the application and the appropriate amount of time and resources needed by each agency to meet the target timeframes.

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<sup>11</sup> Some jurisdictions (such as Queensland) currently collect information on the time taken for DA applications, while others — such as Western Australia — are planning on acquiring such data through their proposed reforms (DPLH 2019).

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### *Greater coordination through concurrent assessments and parallel referrals*

Often application processing occurs sequentially, where the assessment process for one entity can begin only after another entity has completed their assessment. This is often the case during the internal referrals (that is, within a consent authority, such as a council) as well as external referrals processes, even when a referral is not dependent on advice from the other party, leading to unnecessary delays. The NSW Productivity Commission estimates that about 15 per cent of development applications in New South Wales require referrals to various state agencies (NSW PC 2020).

Employing concurrent assessment would speed up approvals by enabling multiple steps in the planning, building and referral process to be undertaken at the same time. A more integrated assessment process could be facilitated by pre-lodgement meetings with proponents (as discussed above). Of note is that under concurrent assessments, the applicant may realise any risk and cost associated with having to redo designs due to changes needed on matters assessed by another agency. A potential route may include providing an option for sequential assessment for complex projects that may have a higher risk of redesign.

Delays in the delivery of an agency's advice or a lack of clarity in defining the agency's involvement can prevent the granting of development consent, create uncertainty, and increase costs for applicants. More coordinated state agency referrals would simplify the development assessment process.

Governments could look to increase efficiencies by using a single point of contact to coordinate referrals through various agencies. In Queensland, the State Assessment and Referral Agency (SARA) centrally manages the state's referrals. Their streamlined approach appears to have contributed to reduced delays in development assessment timeframes. Prior to the establishment of SARA, applicants needed an approval from individual authorities such as infrastructure, water and planning – which was inefficient and poorly coordinated (BRV 2019). The New South Wales government has recently announced its Planning Reform Action Plan, which includes reducing the number of applications that require concurrences and referrals, targeting a 25 per cent reduction over the next three years (DPIE 2020c). Similarly, the Western Australian government's recently announced reforms propose to develop a new, consistent and well-defined framework for referrals, including introducing timeframes for referral agency responses (DPLH 2019). The Property Council of Australia estimated that inherent efficiency savings from the introduction of similar centralised services in all jurisdictions could be about \$120m per year (PCA 2017). While a single referral agency may not necessarily be adequate for all jurisdictions, a more coordinated referral system can increase efficiencies and reduce delays significantly.

Governments could also look to apply a more coordinated internal referral process. Better Regulation Victoria (2019) suggested implementing a 'whole of project' approach to approvals within councils to provide oversight and coordination of internal approvals of planning, building, engineering, heritage and other specialist staff at councils. This could involve consolidating relevant planning and building council staff in one co-located



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‘development branch’ office. Such an approach could help in monitoring timeframes to ensure responses are provided in a timely manner and help broker compromises or alternative solutions when necessary.

*Requests for additional information should be disciplined*

Often timelines reported on paper do not reflect the real impost and time taken to process applications due to applicants’ ability to ‘stop the clock’ when agencies request additional information. The Commission has previously stated that ‘leading-practice use of stop the clock provisions means placing limits on when they can be used — when matters emerge that were not contained in the terms of reference or could not have been reasonably anticipated — and transparency about why the clock is stopped’. In the context of a business’ development application, this could include instances where additional complexities emerge during the assessment process, such as environmental or heritage issues.

The need for stop the clock provisions can also be reduced by ensuring applications are complete at the beginning of the DA process, making use of pre-lodgement meetings and consulting with specialists (as discussed previously). Further, a referral agency could seek expert input from the council (internal referrals) at an earlier stage through pre-application meetings (BRV 2019).

## **Robust decisions in reasonable timeframes**

### **Use the right decision makers for statutory consent**

The authority that decides on a development application can vary depending on the complexity of the decision and the jurisdiction. Current practice includes decision-making by local government, planning officers under delegation, expert panels or private certifiers. Typically, professional planning officers, under delegation, are responsible for most development assessment decisions.

Ideally, most development applications (particularly routine assessments against known policies and objective rules) should be assessed and determined by professional staff or private sector experts, as this establishes a clear separation of policy and decision making (DAF 2005) and allows councils to focus on high level strategic matters. However, there will also be applications that involve balancing competing policy objectives or raise issues of public interest. In such cases, expert panels may be of benefit. Ideally, most development applications (particularly routine assessments against known policies and objective rules) should be assessed and determined by professional staff or private sector experts, as this establishes a clear separation of policy and decision making (DAF 2005) and allows councils to focus on high level strategic matters. However, there will also be applications that involve balancing competing policy objectives or raise issues of public interest. In such cases, expert panels may be of benefit.

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### *Clearer and consistent delegation procedures*

One way to encourage good practice delegation procedures (which separate policy and decision making and reduce conflicts) would be to provide more detailed guidance on effective decision making under delegated authority and the appropriate exercise of call-in powers. The DAF recommended the development of such guidance in 2005.

In the absence of such guidance, local governments may have to resort to ad hoc practices. For example, Better Regulation Victoria (2019) found inconsistencies between local governments, where some councils delegate decision making to senior staff and planning officers, and reserve councillors for strategic planning matters, while others describe circumstances where councillors determine a DA application. It suggested implementing a model ‘deed of delegation’ where general guidelines would describe common criteria for which matters can be determined by the council’s CEO, the director of planning, other senior staff or council committees in order to triage matters and reduce delays.

### *Using expert assessment panels to improve the quality and timeliness of decisions*

Expert assessment panels have the potential to improve the quality, consistency and timeliness of more complex determinations. They can offer specialised technical expertise to complement local knowledge and promote public confidence that decision making is impartial (box 5).

However, their use can involve some trade-offs. Governments need to weigh the potential benefits of using expert panels against other considerations, such as the cost of resourcing panels and the impacts on the overall complexity of the development assessment process (relative to councils delegating determination authority to officers). There are also differing views around the extent that elected officials should cede control of the development assessment process, given their responsibility for ensuring developments are consistent with community expectations and broader policy objectives.

Many jurisdictions already use independent expert panels — exceptions include Queensland and the ACT<sup>12</sup> — though the precise functions, form and overall reliance on panels differ. For example, NSW Local Planning Panels determine development applications on behalf of council, whereas in Victoria expert panels’ role is limited to providing advice and making recommendations on permit applications (where requested by the Minister).

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<sup>12</sup> While there are no independent assessment panels in Queensland, the state has a Queensland Urban Design and Places Panel, which provides advice on the design of major infrastructure and urban-planning projects. Similarly, the ACT has the National Capital Design Review Panel, which is a single city-wide design review panel consisting of independent experts providing design advice to decision makers and developers.

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## Box 5      **Examples of independent panels in different jurisdictions**

- In **New South Wales**, local planning panels (LPPs) (formerly known as Independent Hearing and Assessment Panels or IHAPS) are panels of independent experts that determine development applications on behalf of Council and provide advice on other planning matters, including planning proposals. Regional panels determine regionally significant matters. The Independent Planning Commission (which replaced the Planning Assessment Commission) determines state significant matters.

In August 2020, the New South Wales Government introduced changes to the way LPPs work to make them more efficient, improve the assessment and determination times of development applications, and maintain panel oversight of sensitive and contentious applications.

- In **Western Australia**, Development Assessment Panels (DAP) determine development applications of a certain type and value. Operating under Development Assessment Panel Regulations, each panel determines development applications as if it were the responsible planning authority, against the relevant local or regional planning scheme.

In April 2020, the Western Australian government introduced a streamlined DAP structure to assist in improving the consistency of DAP procedures and decisions and address community concerns regarding perceived conflicts of interest, while retaining the benefits of the DAP system in considering proposals in a timely and independent manner with a balance between technical advice and local knowledge.

- In **South Australia**, the government is introducing Assessment Panels to make decisions on more complex developments. Each Assessment Panel will have an Assessment Manager who is an Accredited Professional. The Assessment Manager will help support, advise and coordinate the work of the Assessment Panel and will also be responsible for the assessment of certain types of applications as a decision authority in their own right. The Assessment Panel may review an assessment decision made by the Assessment Manager, if requested to do so by an applicant.
- In **Victoria**, the Minister for Planning may appoint a panel to consider planning permits that have been referred to, or called in by, the Minister, or applied for in conjunction with a planning scheme amendment. Planning panels provide advice and make recommendations. The final decision is made by the appropriate statutory bodies, or the Minister.
- In the **Northern Territory**, a panel of five members appointed by the Minister is the Development Consent Authority. Development Consent Authorities are the sole consent authority for most DAs.

Some past reviews and stakeholder surveys have found expert panels have had positive impacts on planning process. A 2015 survey by the Property Council of Australia found ‘the majority of respondents expressed a clear preference to deal directly with an independent panel or a state agency’ (PCA 2015). A 2019 review of NSW planning by Mecone found ‘NSW has made positive traction in removing politicians from the planning process at a local scale, through the introduction of planning panels’ (Mecone 2019). Several jurisdictions have found expert panels to be a good way to overcome the challenge of contentious local decisions.

Over the past decade, several States have sought to refine their expert panel arrangements to make them more efficient and effective. For example, in April 2020, the Western Australian government introduced a streamlined Development Assessment Panel (DAP) structure to

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assist in improving the consistency of DAP procedures and decisions and address community concerns regarding perceived conflicts of interest (DPLH 2020).

Given the benefits offered by expert panels, each jurisdiction could consider whether there is scope to expand their use. Options for making greater use of expert panels include introducing them in jurisdictions where they are not already in place or extending their functions. For example, some stakeholders have suggested lowering the threshold development value at which independent panel processes apply.

### **Faster and less costly appeals processes**

Development assessment decisions can be appealed by the applicant or third parties. Several stakeholders have noted that hold ups associated with the appeals process can be a major frustration and add to the cost of investment. Like other aspects of the DA process, however, the design of appeals and review processes requires balancing community and private interests.

#### **Promote faster appeals and review processes**

In some jurisdictions, once an appeal is lodged by an applicant, it can take between 6–12 months for a hearing (UDIA Victoria 2020). Moreover, feedback from stakeholders suggests that applicant appeals can be so common that often proponents account for an appeal process into their business investment and decision making. Such practices should be rare rather than routine.

While the nature of appeals and the associated processes are complex, there are some options that jurisdictions can implement to achieve efficiency gains. Efforts could focus on measures to improve the effectiveness and timeliness of the appeals process itself; for instance, fast tracking appeals after application approvals. Greater use of risk-based track assessments can also reduce the need for appeals for simpler applications, as discussed previously. For example, the Victorian Civil and Administrative Tribunal (VCAT) has a Short Cases List for those cases where the hearing and determination can occur within three hours, such as for VicSmart applications. The New South Wales government has recently announced expanding the role and resources of the Land and Environment Court to unblock built-up appeals, as well as establishing a new class of appeals for rezonings that have been delayed for too long (DPIE 2020c). Jurisdictions could investigate the potential to implement tribunals for development issues of a smaller scale and ensure that the number of tribunal members is commensurate to the scale of development being discussed.

#### **Consider whether the scope of third party appeal rights remains appropriate**

Third party appeal rights are a means of protecting the interests of neighbouring landowners or tenants, or members of the broader community who may be adversely affected by a proposed development (such as through negative impacts on the existing neighbourhood character, amenity, infrastructure or property values). However, if not well designed, third

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party appeal rights have the potential to lead to unnecessary delays, uncertainty and costs for development. For example, excessively broad rights of appeal may provide scope for third parties to lodge appeals based on vexatious or commercial interests (as opposed to genuine planning matters).

Third party appeal rights vary by state. For example, third party appeal provisions cover most developments in Victoria, whereas in Western Australia, there are generally no third party appeal rights in relation to planning decisions.

Reducing the scope of third party appeal rights could help reduce the cost of development approvals. Design options might include:

- excluding appeals for some types of minor developments, such as those assessed under fast track assessment pathways (for example, in New South Wales, third party appeal rights are limited to instances where the development is high impact and possibly of state significance)
- limiting appeals to residential areas (for example, in the Northern Territory, appeals are limited to developments in residential zones, unless the land is adjacent to or opposite a residential zone, in limited circumstances)
- having a short window in which to appeal (for example, 14 days).

The trade-off from such changes is that it increases the risk that a third party with a legitimate interest in a development is denied their right to appeal, thereby undermining the certainty they have in their investment.

Overall, the issue of third party appeal rights is best seen as part of a bundle of issues, along with (for example) the use of independent panels and delegation of decision making. States and Territories will wish to examine the trade-offs between these options and calibrate the best overall approach rather than treating them in isolation. For example, if a jurisdiction moved towards greater use of independent panels, it may wish to retain stronger third party appeal rights in order to strike the right balance between community input and efficient decision making.

### Increased flexibility for meeting notification requirements

Notification refers to the requirement to advise neighbours and other interested parties that someone has lodged an application for development and that they have the opportunity to comment. Notification gives the public an opportunity to influence development outcomes that may affect them or the community generally. The arguments both for and against notification are closely related to those surrounding third party appeal rights — that is, there is a trade-off (or judgement) between the benefits of community input on a specific development proposal and the costs to the applicant.

All jurisdictions have notification requirements for most types of applications. Typically, surrounding landowners are notified of developments that require consent for a period of 14 or 28 days (depending on the scale and classification of the development).

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During consultation for this study, stakeholders noted that notification and consultation requirements are sometimes disproportionate, with public notice requirements applying to low-risk, simple developments that generate very little public interest.

Options for reducing the regulatory burden or delays associated with notification include:

- removing public notice requirements for particular tracks that are low-risk (including those clearly consistent with the planning scheme and local planning policies), and increasing the amount of development that qualifies for these tracks where appropriate (see above)
- reducing the costs associated with public notification (for example, Mecone (2019) recommended that New South Wales should investigate the potential for applicants to undertake the public notification process and/or referral management, as is done in Queensland and Victoria).

## **Efficient post-approval processes**

At the time of application approval, if some details remain to be finalised, conditions may be imposed that require final plans to be approved. A typical application can have several conditions attached, which can often be complex. These can ultimately lead developers to make substantial changes to their plans and designs. This post-approvals phase can involve obtaining consent from authorities outside the planning process and sometimes from the Commonwealth (BRV 2019). In Victoria, some permit holders spend six to 12 months getting post-approvals for permit conditions before obtaining final consent (BRV 2019).

### **Improve post-approval processes**

Ideally, a system should be able to make a final decision at the end of the DA process without needing to pursue post-approval conditions. This would not only reduce timelines but also increase certainty for proponents. But often conditions are needed to ensure compliance and mitigate adverse outcomes for the environment, heritage and public health and safety.

Better Regulation Victoria (2019) found that conditions can be too complex, their wording can be ambiguous, there exist inconsistencies between and within councils about the type of matters that should have conditions attached, and the legislation may also be unclear on what are considered appropriate conditions. Due to the complexity of the conditions, sometimes assessing compliance can have a significant impost on both applicants and consent authorities. More consistency and clarity in post-approval conditions (including acceptable and unacceptable model conditions) would go towards addressing some of these concerns. The UK government's National Planning Policy Framework suggests that planning conditions should be kept to a minimum, and only used where they satisfy the following tests: necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects (MHCLG 2014). Governments could consider utilising expert panels in setting conditions to improve consistency and encourage impartial decision making.

Post-application approvals may also be needed in case the nature of the development changes or the proponent requests to make a variation to the original application. Making significant variations can lead to essentially going through a DA process again, causing substantial delays. Variations for minor changes could be streamlined by obtaining a ‘secondary consent’ from the relevant authority without needing to go through a DA process, with clear definitions on matters that would meet this pathway. As with DA applications, adopting greater use of electronic document lodgement as well as using technology to monitor and analyse timeframes would go towards improving delays in the post-approval stage.

## 4 Priority reform areas

Based on the preceding discussion, the Commission has identified nine priority reform areas for planning and zoning regulation. Under each priority area, there are some illustrative outcomes and questions (or prompts) to guide thinking about where planning and zoning systems could be improved. Some questions relate to filling existing information gaps.

The Commission recognises that several jurisdictions are already undertaking a range of planning reforms. However, there may be scope for further improvements by building on current efforts.

Table 2 **Priority reform areas and key questions**

Strategic planning and land use controls	
<b>1. Ensure local plans can deliver on state development objectives</b>	Local planning schemes, policies and statutory decisions align with overarching state policies, with strong accountability for outcomes.
a.	Do strategic local plans explicitly address state and regional development objectives?
b.	Are local plans scrutinised to ensure they can deliver on these objectives?
c.	Are there penalties or incentives to promote compliance? If not, why not?
d.	What other options exist to raise accountability for local government performance?
<b>2. Move to fewer zones with broadly-stated allowable and as-of-right uses</b>	A small number of commercial and industrial zones (2-3 respectively) — with a wide range of allowable uses — provide flexibility, certainty, and competition, and limit the need for significant spot rezonings. Prohibited uses are kept to a minimum and most uses are as-of-right.
a.	How many types of employment related zones are there in the jurisdiction? For example, are there more than 2 types of commercial zones and 2 types of industrial zones? Do they cater to materially different land uses?
b.	Where a particular land use is restricted in a zone (either prohibited or requires a permit), do planning policies clearly articulate the public benefit of this restriction and consider trade-offs? If so, is this information easily accessible to the public and other policymakers?
c.	Can a business change land use from one permissible use to another without the need for approval?
d.	To what extent are the following uses as-of-right on commercially-zoned land? <ul style="list-style-type: none"> <li>a. retail (including cafes, supermarkets and large format)</li> <li>b. offices</li> </ul>
e.	To what extent can retail businesses and offices operate in industrially zoned land?

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- f. If a café was to replace an office on a site zoned for commercial use, would it require a development assessment (DA)? How long would it typically take? If a dance studio replaced a hairdresser?
  - g. Which uses that currently require a DA in different commercial and industrial zones could be made as-of-right?
  - h. Are developer-led rezonings a common feature of the planning system? How many developer-led rezonings (or planning scheme amendments) are made per year?

### 3. Standardise permissible land uses within zone types

Zone definitions are as common and as consistent as possible across the state, and usually embedded in state government instruments, to provide clarity and certainty as to allowable land uses.

- a. Do zoning rules for the same zone type vary considerably between local government areas?
- b. Are any variations determined by state-wide policy/planning provisions or by individual councils?

### 4. Create defined and efficient processes for rezoning applications

To the extent that rezoning or planning scheme amendments are required to progress a development proposal, states ensure there is a clear process for applicants to pursue, with expected timeframes, criteria and appeal rights.

- a. Is there a clear pathway to apply for and get a decision on a change in land use, where this requires a rezoning or planning scheme amendment?
- b. Are there target timeframes for rezoning decisions? If so, are they being met?
- c. Have rezoning arrangements and process been reviewed in the past 5 years to ensure there are no redundant requirements?
- d. Can an applicant appeal a rezoning decision?

## Development assessment

### 5. Increase use of fast, streamlined assessment tracks

More proposals assessed in existing (or new) streamlined tracks following a recalibration of what constitutes low risk development (for example, by identifying those proposals as low risk that are clearly envisaged by local policies and the planning schemes).

- a. Are tracks clearly defined (in terms of the number of available tracks and the types of developments that can be assessed in each track)?
- b. Do fast track assessments require public notification, allow third party appeals and involve deemed approvals if the targeted timeframe has lapsed?
- c. What proportion of DAs go through the respective assessment tracks?
- d. What sort of developments can be dealt with through existing fast tracks, such as code assessment, exempt, and complying development?
- e. Would the following development applications typically undergo a fast track assessment?
  - a. building a warehouse in an industrial zone
  - b. expanding of a retail premises in a commercial zone
  - c. a new shop fit-out
  - d. constructing a new office building in a commercial zone

### 6. Reduce the time taken to assess DA applications

States adopt various measures to speed up the DA process, such as more concurrent decision making by councils and state referral agencies, pre-lodgement discussions, electronic lodgement and tracking.

- a. What is the average time taken for assessment under different assessment tracks? Are these within target timeframes?
  - b. Are timeframes for each part of the DA process being reported? If so, what is the average time for state referral agency responses? Are these within target timeframes? Is technology being used to monitor and analyse the time taken for each part of the DA process?
  - c. Are pre-lodgement meetings conducted for majority of applications? Are specialist staff involved in pre-lodgement meetings?
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- d. Can applications and documents be lodged electronically? Can applications be tracked by consent authorities, referral agencies and proponents in real-time?
  - e. Are assessments and referrals (by departments within the council as well as state referral agencies) conducted concurrently?
  - f. Is there a single state agency for coordinating referrals? If not, has the option been considered?
  - g. How many DA applications result in requests for further information from consent authorities?
  - h. What percentage of DA applications are incomplete?
  - i. How prevalent is the use of 'stop the clock' provisions (and resetting the clock for new information) by consent authorities?

#### **7. Use the right decision makers for statutory consent**

States adopt an appropriate mix of statutory decision making by independent panels, elected councillors, professional council staff and state government entities based on the value and complexity of proposals.

- a. Are there guidelines that describe common criteria for which matters can be determined by the council vs staff? Is there scope for standardised delegation rules?
- b. What is the role of independent panels in the DA process? Is there scope to expand their functions or improve their operation?

#### **8. Promote faster appeals and review processes**

Appeal rights are deployed as part of a suite of policies aimed at striking the right balance between community input and investment certainty.

- a. What proportion of development assessments are appealed each year (by the applicant or a third party)?
- b. Are third party appeals allowed on the merits of a decision, or only on points of law? Are third party appeals confined to a sub-category of complex, high impact proposals?
- c. How long does it typically take for appeals tribunals to reach a decision?

#### **9. Improve post-approval processes**

Post approval conditions are minimal and tightly targeted, rather than being used as a means to effectively prolong the assessment process beyond the granting of a DA.

- a. Are there consistent and clear guidelines for model conditions? What measures are in place to ensure conditions are kept to a minimum and used only when necessary?
  - b. Can variations for minor changes to applications be approved without needing to go through a DA process?
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## References

- ACT Government 2008, *Territory Plan 2008*, <https://www.legislation.act.gov.au/ni/2008-27> (accessed 1 September 2020).
- BRV (Better Regulation Victoria) 2019, *Planning and building approvals process review*, Melbourne.
- CIE (The Centre for International Economics) 2013, *Reform of the NSW planning system*, Sydney.
- DAF (Development Assessment Forum) 2005, *A leading practice model for development assessment in Australia*.
- DELWP (Department of Environment, Land, Water and Planning, Victoria) 2015, *Using Victoria's Planning System*, [https://www.planning.vic.gov.au/\\_\\_data/assets/pdf\\_file/0017/95012/Using-Victorias-Planning-System-2015.pdf](https://www.planning.vic.gov.au/__data/assets/pdf_file/0017/95012/Using-Victorias-Planning-System-2015.pdf) (accessed 1 September 2020).
- 2020, *Melbourne Industrial and Commercial Land Use Plan*, [https://www.planning.vic.gov.au/\\_\\_data/assets/pdf\\_file/0023/461723/MICLUP-FINAL-20042020-WEB-Part-A.pdf](https://www.planning.vic.gov.au/__data/assets/pdf_file/0023/461723/MICLUP-FINAL-20042020-WEB-Part-A.pdf) (accessed 1 September 2020).
- DILGP (Department of Infrastructure, Local Government and Planning, Queensland) 2016, *Fact sheet: Key changes in legislation*, <http://betterplanning.qld.gov.au/resources/planning/better-planning/key-changes-in-legislation-fact-sheet.pdf> (accessed 1 September 2020).
- DIPL (Department of Infrastructure, Planning and Logistics, Northern Territory) 2020, *NT Planning Scheme 2020*, <https://nt.gov.au/property/land-planning-and-development/our-planning-system/nt-planning-scheme> (accessed 1 September 2020).
- DJ (Department of Justice, Tasmania) 2017, *Tasmanian Planning Scheme*, [http://www.justice.tas.gov.au/\\_\\_data/assets/pdf\\_file/0007/370294/State\\_Planning\\_Provisions.PDF](http://www.justice.tas.gov.au/__data/assets/pdf_file/0007/370294/State_Planning_Provisions.PDF) (accessed 1 September 2020).
- DPCD (Department of Planning and Community Development, Victoria) 2013, *Ministerial Direction No. 15 - the planning scheme amendment process*, [https://www.planning.vic.gov.au/\\_\\_data/assets/pdf\\_file/0033/97575/AN48-Ministerial-Direction-No.-15-The-Planning-Scheme-Amendment-Process.pdf](https://www.planning.vic.gov.au/__data/assets/pdf_file/0033/97575/AN48-Ministerial-Direction-No.-15-The-Planning-Scheme-Amendment-Process.pdf) (accessed 1 September 2020).
- DPIE (Department of Planning, Industry and Environment, New South Wales) 2020a, *Important Changes to the EP&A Regulation 2000*, <https://www.planningportal.nsw.gov.au/eplanning-mandate> (accessed 1 September 2020).
- 2020b, *Local Development Performance Monitoring*, <https://www.planningportal.nsw.gov.au/local-development-performance-monitoring-ldpm> (accessed 1 September 2020).
- 2020c, *Planning Reform Action Plan*, <http://www.planning.nsw.gov.au/Policy-and-Legislation/Planning-reforms/Planning-Reform-Action-Plan> (accessed 1 September 2020).

- 
- 2020d, *Reforms for a world class planning system*, <https://www.planning.nsw.gov.au/News/2020/Reforms-for-a-world-class-planning-system> (accessed 1 September 2020).
- DPLH (Department of Planning, Lands and Heritage, Western Australia) 2019, *Action Plan for Planning Reform*, <https://www.dplh.wa.gov.au/action-plan> (accessed 1 September 2020).
- 2020, *About DAPs*, <https://www.dplh.wa.gov.au/about/development-assessment-panels/about-daps> (accessed 1 September 2020).
- DPTI (Department of Planning, Transport and Infrastructure) 2018, *Our New Assessment System*.
- 2013, *Guide: Development Plans and Development Plan Amendments*, [https://www.sa.gov.au/\\_\\_data/assets/pdf\\_file/0007/9961/Guide\\_to\\_development\\_plans\\_and\\_amendments.pdf](https://www.sa.gov.au/__data/assets/pdf_file/0007/9961/Guide_to_development_plans_and_amendments.pdf) (accessed 1 September 2020).
- DSDMIP (Department of State Development, Manufacturing, Infrastructure and Planning, Queensland) 2020, *Queensland zoning information*, <https://planning.dsdmip.qld.gov.au/planning/our-planning-framework/queensland-zoning-information> (accessed 1 September 2020).
- Grattan Institute 2018, *Housing affordability: Re-imagining the Australian Dream*, Melbourne, pp. 67–68.
- Jenner, K. and Tulip, P. 2020, *The Apartment Shortage*, Research Discussion Paper, Reserve Bank of Australia, Sydney.
- Kendall, R. and Tulip, P. 2018, *The Effect of Zoning on Housing Prices*, Research Discussion Paper, Reserve Bank of Australia, Sydney.
- Mecone 2019, *State development comparisons: A comparative review of the NSW planning system*, Sydney.
- MHCLG (Ministry of Housing, Communities & Local Government) 2014, *Use of planning conditions*, <https://www.gov.uk/guidance/use-of-planning-conditions#why-and-how-are-conditions-imposed> (accessed 1 September 2020).
- NSW Government (Department of Planning, Industry and Environment, NSW) 2020a, *Planning rules relaxed for food trucks and ‘dark kitchens’*, <https://www.planning.nsw.gov.au/News/2020/Planning-rules-relaxed-for-food-trucks-and-Dark-Kitchens> (accessed 1 September 2020).
- 2020b, *Standard Instrument - Principal Local Environmental Plan*, <https://www.legislation.nsw.gov.au/view/html/inforce/current/epi-2006-155a> (accessed 1 September 2020).
- NSW PC (New South Wales Productivity Commission) 2020, *Continuing the productivity conversation: Productivity Commission Green Paper*.
- NT Government (Northern Territory Government) 2020, *Request a planning scheme amendment (rezoning)*, <https://nt.gov.au/property/land-planning-and->

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development/planning-applications-and-processes/apply-for-a-planning-scheme-amendment (accessed 1 September 2020).

PC (Productivity Commission) 2017, *Realising the productive potential of land*, Supporting Paper, 10, Shifting the Dial, Canberra.

PCA (Property Council of Australia) 2015, *Development Assessment Report Card 2015*, Canberra.

— 2017, *Cutting the Costs: Streamlining state agency approvals*, Sydney.

— 2019, *Submission to New South Wales Productivity Commission discussion paper*, [http://productivity.nsw.gov.au/sites/default/files/2020-01/Property%20Council%20of%20Australia\\_Redacted.pdf](http://productivity.nsw.gov.au/sites/default/files/2020-01/Property%20Council%20of%20Australia_Redacted.pdf) (accessed 1 September 2020).

SA Government Gazette (South Australian Government Gazette) 2020, 'The South Australian Government Gazette', 9 April, p. 736.

SA Government (South Australia State Planning Commission) 2019, *Draft Planning and Design Code for South Australia*, [https://www.saplanningportal.sa.gov.au/\\_\\_data/assets/pdf\\_file/0006/587589/Community\\_Guide\\_-\\_Draft\\_Planning\\_and\\_Design\\_Code.pdf](https://www.saplanningportal.sa.gov.au/__data/assets/pdf_file/0006/587589/Community_Guide_-_Draft_Planning_and_Design_Code.pdf) (accessed 1 September 2020).

Tasmanian Government n.d., *Tasmanian Planning Reform*, <https://planningreform.tas.gov.au/> (accessed 1 September 2020).

Treasury (Department of Treasury, Australian Government) 2015, *Competition policy review*, Canberra.

UDIA Victoria (Urban Development Institute of Australia, Victoria) 2020, *Post-Permit Fast Track Process*.

Urban Taskforce 2019, *Submission to the New South Wales Productivity Commission discussion paper*, [http://productivity.nsw.gov.au/sites/default/files/2020-01/Urban%20Taskforce\\_Redacted.pdf](http://productivity.nsw.gov.au/sites/default/files/2020-01/Urban%20Taskforce_Redacted.pdf) (accessed 1 September 2020).