

COMPETITIVE PROJECT APPROVALS



Business Council
of Australia

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About this publication

The Business Council of Australia is a forum for the chief executives of Australia's largest companies to promote economic and social progress in the national interest.

This publication was prepared with the assistance of Kirstie Allen, formerly Executive Consultant, City Plan Services. The report proposes a best practice approach to major project planning approvals by drawing upon the findings and recommendations in the Productivity Commission's report on *Major Project Development Assessment Processes* (2013) and from best practice in Australian and international jurisdictions.

OVERVIEW

COAG should urgently reform major project approvals

The Business Council is urging the Council of Australian Governments (COAG) to commit to reforms to improve the global competitiveness of Australia's major project planning approvals systems.

We acknowledge the states and territories have made progress on improving their systems in recent years. But performance remains inconsistent and there needs to be greater uniformity around a best practice approach.

We are not seeking harmonisation, but implementation of best practice standards that will make it easier to invest, while maintaining Australia's high standards for environment and community protection.

Problems with current practice

There are an estimated 31 different pathways for major project approval across Australia. Planning approvals can take too long, impose too much cost and create a disincentive to invest. It should take no more than 12 months to assess and approve a major project, but it often takes multiple years and sometimes five years or more.

The Productivity Commission estimated the societal cost of a one-year delay in approvals for an average major project is up to \$59 million, and for a large project up to \$2 billion.

Australia faces tough global competition for capital investment. The harder and more costly it is to navigate Australia's multiple approvals systems the greater the risk that multinational companies will choose to invest elsewhere. Or that Australian companies will go offshore.

Persisting with sub-optimal approvals processes puts at risk the estimated \$375 billion of major project investments currently under consideration across Australia. This serves neither proponents nor the wider community.

Grasping the opportunity

A better approach will enable us to take advantage of our competitive advantage in energy and resources by streamlining approval for new and renewed mines and energy projects such as LNG facilities and wind and solar farms.

It will facilitate investments in transport, energy and water to complement housing development and meet the needs of a growing population, and support transformational infrastructure projects like Western Sydney Airport.

Risks and impacts will be well managed, jobs will be created and our cities and regions will become more liveable. Major projects will underpin growth in government revenues and returns to shareholders, including the superannuation balances of all Australians.

Best practice approach

Jurisdictions should move in a coordinated way towards adopting the best practice model outlined in this paper, underpinned by a COAG national agreement. 'Productivity payments' should be made by the Commonwealth to states and territories to share the gains from progress, a concept recommended by the Competition Policy Review.

The best practice model draws from the proposals put forward by the Productivity Commission in 2013 and the leading features of Australian and international jurisdictions. It is consistent with the findings of the Competition Policy Review that planning and zoning regimes should be reformed to support competition.

The model places a greater emphasis on upfront strategic planning, introduces a lead agency framework and umbrella timeframe and follows the principle of one project application, one assessment and one approval. Key elements include:

- More use of strategic planning to weigh up decisions about land use permissibility and conditions, allowing streamlined assessment of individual project applications.
- Strengthened consultation, with the community engaging meaningfully in decision making at the strategic planning, pre-application and project assessment phases.
- A dedicated assessment track for major projects applying a single application, single assessment framework and managed by a lead agency. An umbrella timeframe applies.
- Standardised and risk-based approach to project assessment, with timely provision of technical information by proponents so agencies can complete their responsibilities.
- A single project approval made by a minister, with judicial review only available to proponents and those directly affected by the decision.
- Standardised, targeted conditions of approval with streamlined compliance reporting.
- Ongoing planning system performance monitoring and improvement.

Figure 1 provides an overview of the model. The full set of recommendations are set out in the accompanying report.

Broader reforms

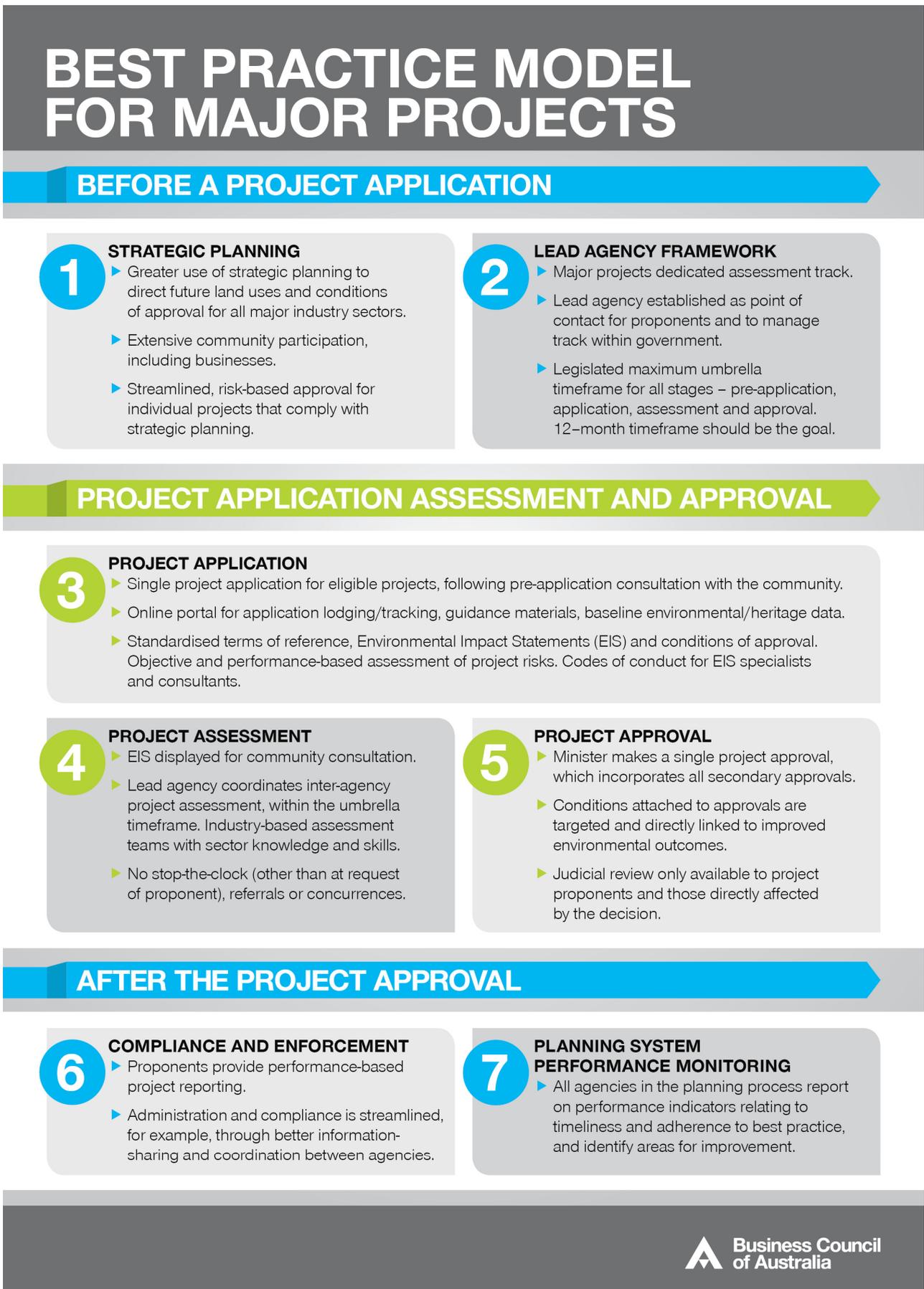
These reforms should be complemented by the completion of the one-stop shop reforms under the *Environment Protection and Biodiversity Conservation Act 1999* and the changes to limit standing provisions for interested persons that were proposed in 2015.

Planning approvals are not the only factor affecting the competitiveness of major projects. Australia will also need an integrated energy and climate change policy and pro-competitive taxation, skills development and workplace relations policies to create a more conducive environment for investment.

Time for action

Business investment growth is falling at a rate not seen since the 1990s. Australia needs to improve the ease of doing business to invest in our competitive advantages and grow our economy. There is no better time to reform major projects approvals. State governments need to work together towards best practice and improve competitiveness, while protecting the environment.

Figure 1: Best practice model for state and territory planning approval systems



EXECUTIVE SUMMARY

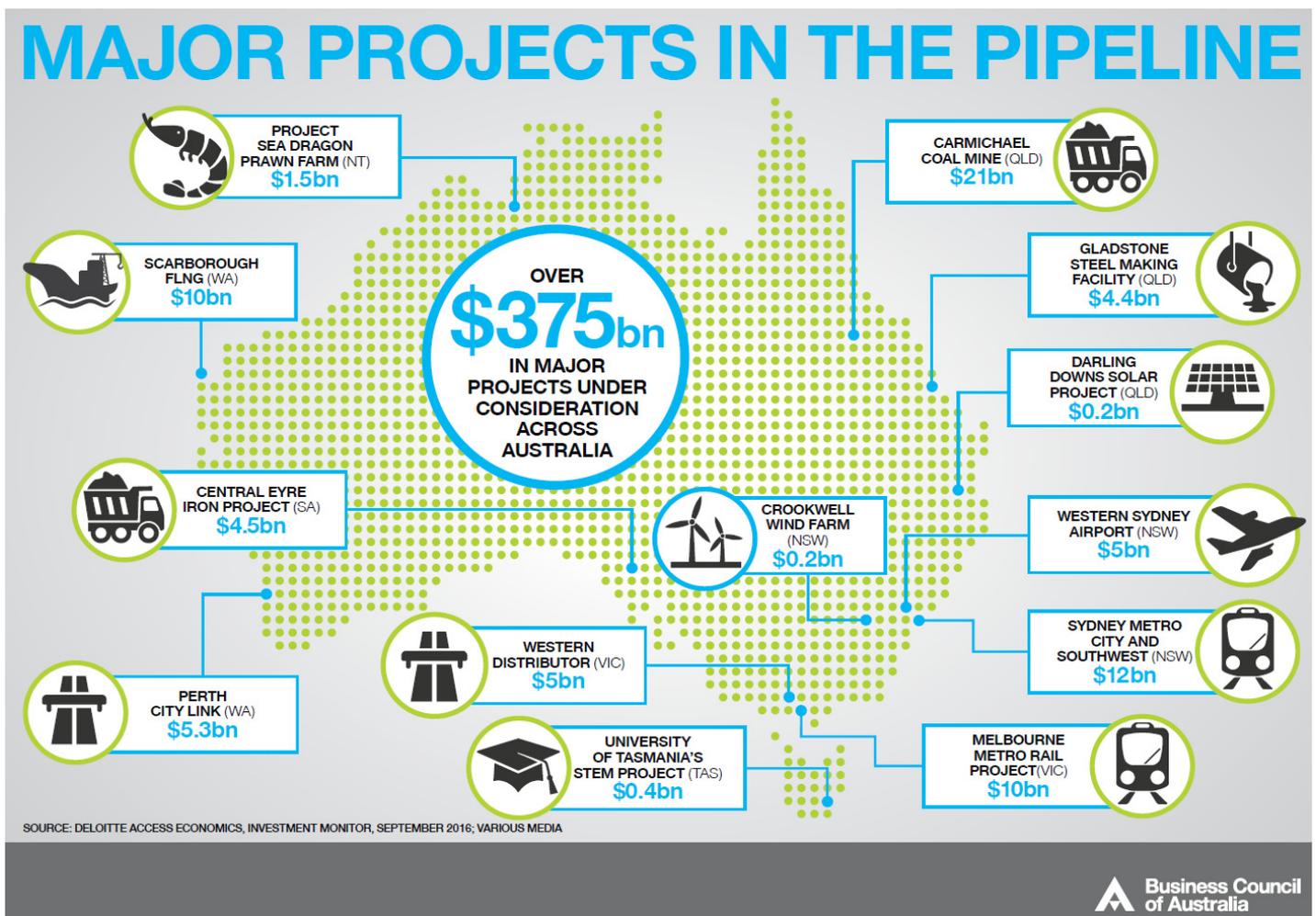
Major capital projects are essential for economic growth

Boosting the living standards of Australians requires investment in the growth of our economy.

Australia has a large land mass with a relatively small but growing population and substantive investment needs. The growth of our nation has been built on major projects such as the Snowy–Hydro scheme, the Princes–Pacific Highway, national rail networks, public transport systems, the freeways of our major cities, large scale resource developments, fixed and mobile telecommunications networks, the national energy grid, wind farms and solar projects.

More investment in major capital projects will be needed over the coming decades to expand the capacity of our economy. Potential investment in major projects under consideration in Australia is estimated at over \$375 billion.¹ Selected major projects are shown in Figure 2.

Figure 2: Selected major projects in the pipeline



¹ Deloitte Access Economics, *Investment monitor – September 2016*, DAE, Sydney, September 2016. 'Major projects' are defined in the DAE report as requiring \$20 million or more of capital expenditure.

Major capital projects, if successfully delivered, will build our nation's productive capacity and provide essential infrastructure to deliver services to people living in our cities and regions. They will create jobs and earn income for Australia that will flow through to higher wages and shareholder returns.

The many benefits to Australians include:

- Provision of vital infrastructure and services. The current infrastructure stock will not be sufficient to cater for a growing population. Without action, congestion alone could cost the economy more than \$50 billion annually in 2031.²
- Generation of jobs and wealth. For example, major infrastructure and resources projects during the mining boom contributed to a 13 per cent rise in real per capita household disposable income, 6 per cent rise in real wages, and 1¼ percentage point fall in the unemployment rate.³

Contributions to government revenue through royalty and tax payments (such as company tax, payroll tax, personal income tax) during the construction and operation phases of each project, and from economic growth.

² Infrastructure Australia, *Australian infrastructure plan: priorities and reforms for our nation's future*, IA, Sydney, February 2016. p. 47.

³ P Downes, K Hanslow & P Tulip for the Reserve Bank of Australia, *The effect of the mining boom on the Australian economy*, RBA, Melbourne, August 2014, p. 1.

Planning systems are hindering our ability to attract and deliver major projects

By their nature, major capital investments can have substantial impacts on the environment and the community, and these impacts need to be assessed and approved under planning legislation. This includes the technical assessments of project impacts and community consultation to address concerns and build social licence for an investment.

However, in many cases assessment and approval processes take too long, impose too much cost, and result in unpredictable outcomes. These inefficiencies create costs that are borne by project proponents and, ultimately, the community itself, through delayed or forgone investment, employment and government revenue. For example:

- The societal cost of a one-year delay in approval of a project of average size (capex \$473m) is \$26 million to \$59 million. For a large project like an offshore liquefied natural gas project, the cost can be between \$0.5 and \$2 billion.⁴ Drafting environmental impact statements (EIS) can cost proponents as much as \$15 million.⁵
- Processes usually take several years, and can be up to 10 years, which delays the benefits to the users of the infrastructure.⁶

Poor regulatory processes hinder Australia's ability to deliver the investment needed in our growing economy to improve living standards.

The need for reform of state and territory planning systems has previously been identified by the Business Council, the Productivity Commission and the Competition Policy Review. The Productivity Commission's 2013 Major Project Report put forward a number of recommendations that are still to be adopted. It identified at least 31 different pathways across Australia to assess and approve major projects and substantial scope to achieve greater uniformity around a best practice approach.⁷

This report sets out the Business Council's recommendations for improving the performance of approvals processes without lessening the strong environment and community protections that are highly valued by all Australians. We are concerned in this report with major developments rather than residential projects, however, we consider that both forms of development are heavily intertwined and critically important to Australia's future growth. The recommended changes will improve confidence in the planning system and bring forward in time the benefits of major capital projects for both the community and investors.

All states and territories should lift their systems to best practice

The Business Council has developed a best practice model for planning systems (see Figure 1 in Overview), which draws from the best features of each Australian jurisdiction, international jurisdictions, and the proposals put forward by the Productivity Commission.⁸

⁴ Productivity Commission, *Major project development assessment processes*, PC, Melbourne, November 2013, p. 201.

⁵ *ibid.* p. 139.

⁶ Business Council of Australia, *Submission to the Productivity Commission study of major project development assessment processes*, BCA, Melbourne, April 2013. p. 9.

⁷ Productivity Commission, *op cit.*, p. 102.

⁸ *ibid.*

The key themes underpinning the model are:

- Greater use of strategic planning to weigh up long-term decisions about land use, allowing faster assessment of individual project applications.
- Strengthened consultation, with the community engaging meaningfully in decision-making at three key points: the strategic plan, pre-application and assessment phases.
- A risk-based approach to project assessment that applies objective and performance-based standards for assessing project risk. A legislated umbrella timeframe applies to the overall process. The minister grants the approval and judicial review is only available to proponents and those directly affected by the decision.

Achieving best practice will require fundamental changes

States and territories have improved their planning systems in recent times, however, there remains a need for further improvement by identifying best practice and applying it across each jurisdiction's planning system. The model contains three fundamental changes for all jurisdictions.

A much greater role for strategic planning

The first fundamental change is taking a mechanism that exists in most jurisdictions – strategic planning – and putting it at the centre of the planning system. Strategic planning spells out the potential impacts of plans, policies and programs over the long term (rather than just individual projects) for a specific area.

Much strategic planning in use today is either: (1) not sufficiently integrated, so communities are subject to different and possibly conflicting plans for transport, resources, environmental assessments or other factors; or (2) not substantive.

Strategic planning documents may make broad statements about the need for development, but stop short of specifically defining permissible uses of land and the relevant environmental and community conditions. Because they are not substantive, specific project applications are still relied upon to make determinations about permissible land use.

Under our proposal, all major industry sectors and prospective land uses would be included in strategic planning.

Strategic plans and assessments would ensure a lot of the work that currently needs to be done by a project proponent each time they submit a project application is done upfront, in particular, community consultation and determination of environmental targets. This would generate significant benefits:

- Communities will have earlier and more substantive participation in decisions about permissible land uses.
- Environmental targets can achieve better environmental outcomes, because the cumulative impact of all development in the area can be considered, rather than on a case-by-case basis.
- Communities and project proponents will have more long-term certainty about the types of permissible development in each area.

- The assessment process for each individual project can be significantly shorter. Project proponents should only need to demonstrate compliance with the strategic plan, rather than re-prosecute the need for development.
 - A shorter process can result in significant benefits: for example, the strategic assessment for Melbourne’s Urban Growth Boundary yielded cost savings of around \$500 million.⁹
- Land use conflicts are more avoidable because governments have made determinations about how land can be used upfront, with input from all possible parties.

Improve coordination to shorten timeframes

The second fundamental change for jurisdictions in the model is a restructure of planning institutions and assessment and approvals processes.

Development assessment is often fragmented across multiple agencies within government and is challenging for project proponents to navigate. A range of mechanisms exist in law (for example, ‘stop-the-clock’ provisions, referrals or concurrences) that can delay the process and prevent timely coordination across agencies. Even after the development is approved, a large number of secondary approvals may be required (meaning a total of up to 70 approvals may be needed).¹⁰ This adds further to unnecessary delay.

The best practice model aims to encourage vastly better coordination and accountability, through a number of methods:

- a lead agency is assigned to: oversee development assessments; coordinate the process; and regularly liaise with the project proponent on the progress of the application. Major project assessments would be prioritised over other determinations within planning systems.
- a separate, dedicated assessment pathway for major projects where they meet certain criteria, including capital value and industry type. Structured pre-application consultation occurs with the lead agency and with the community before the project application.
- Terms of reference, Environmental Impact Statements and conditions of approval are standardised by industry and by key issue (e.g. water, noise and air quality) to simplify the process.
- a legislated, maximum umbrella timeframe for decision-making, ideally set at 12 months. The timeframe applies to the pre-application, application, assessment and approval stages. If the minister does not make a final decision within the legislated timeframe, then the recommendation by the assessment body (along with their reasons and any conditions) should be deemed to be the decision.
- it follows the principle of one project application, one assessment, one approval. It recommends abolishing stop-the-clock (except where the proponent requests it), referral or concurrence provisions, and integrating all approvals into one approval, made by one minister.

Together, these changes provide a framework for agencies to improve coordination and timeliness. Project proponents too have an onus for timely provision of technical information so agencies can complete their responsibilities within the legislated timeframe.

⁹ *ibid.*

¹⁰ Business Council of Australia, *op cit.*, p. 9.

Improve predictability of reviews

The third change relates to the ability for approval decisions to be reviewed.

Currently, depending on the jurisdiction, decisions can be subject to merits review (a consideration of the merits or wisdom of the actual decision itself), judicial review (examination of the conduct undertaken for the purpose of making a decision) or no review by the judiciary.

If better community participation processes are established upfront through the development of a strategic plan, a specific project approval made by the minister does not require merits review, as the merits have already been assessed through the strategic plan and the approval process.

Instead, as recommended by the Productivity Commission, it should only be eligible for judicial review, to determine whether the specific approval process was carried out in accordance with legislation.

This change reduces the cost, risk and unpredictability that can arise in review processes, without compromising the quality of decision-making.

The model is an integrated package

These core changes – along with a range of other complementary changes contained in the model – would cumulatively generate significant economic benefits and improve the competitiveness of state and territory planning systems. For example, the implementation of only some aspects of the model (like online performance assessment and monitoring or greater use of codes) has been estimated to yield \$350 million annually in economic benefits.¹¹

Jurisdictions should commit to ongoing system performance monitoring by measuring planning outcomes, timeframes and costs and identifying opportunities for ongoing improvement.

Next steps

The national competition policy discussions occurring at the Council of Australian Governments (COAG) offer a timely opportunity to significantly improve planning systems in every jurisdiction.

We recommend that COAG pursue planning reform by establishing a national agreement that implements the key components of the best practice model, supported by bilateral agreements with each jurisdiction that promise productivity payments to jurisdictions that adopt best practice. To potentially inform these bilateral agreements, we have assessed the jurisdiction's systems against the best practice model recommendations based on available information (see **Table 1** below). If COAG agrees to reform major projects it should start with a fully informed assessment of state and territory performance as the basis for a reform agenda.

¹¹ Productivity Commission, *Impacts of COAG reforms: business regulation and VET* (Volume 2), May 2012, p. 283.

Table 1: Summary of state and territory planning systems against the best practice model

ELEMENT	BEST PRACTICE MODEL RECOMMENDATIONS	QLD	NSW	ACT	VIC	TAS	SA	WA	NT
1	STRATEGIC PLANS								
2	LEAD AGENCY FRAMEWORK								
3	PROJECT APPLICATION								
4	PROJECT ASSESSMENT								
5	PROJECT APPROVAL								
6	COMPLIANCE AND ENFORCEMENT								
7	PLANNING SYSTEM PERFORMANCE MONITORING								

SUBSTANTIALLY ALIGNS WITH BEST PRACTICE PARTIALLY ALIGNS WITH BEST PRACTICE REQUIRES FURTHER REFORM

Recommendations

The Council of Australian Governments (COAG) should commit to a national agreement under which jurisdictions will implement the best practice model for assessing and approving major projects.

The Commonwealth should make available productivity payments to incentivise and reward jurisdictions that move towards the best practice model.¹²

The Commonwealth Government should task an independent body, such as the Productivity Commission, with quantifying the benefits that will accrue from reforms to major project planning systems, to inform the use of productivity payments.

Detailed recommendations for reforming planning systems

All jurisdictions are encouraged to implement the best practice model by making the following changes to their planning systems.

1. Strategic planning

1.1 Jurisdictions should adopt the use of **strategic planning** with the following features:

- i. strategic identification of what development is allowed to occur, where it can occur and under what conditions, in key geographic areas
- ii. high-quality upfront participation by the community, including businesses
- iii. evidence-based strategic assessment to reduce land use conflicts and identify regional environmental targets

¹² S Morrison, *Joint press conference Canberra*, transcript, Australian Government, Canberra, 24 November 2015.

- iv. geoscience information and identification of locations to be avoided or available for potential exploration and production
 - v. identification of existing resources, industrial and infrastructure developments and acknowledgement that they may be further developed to meet market demand
 - vi. preservation and prioritisation of existing and future infrastructure corridors that are essential for future economic and residential developments
 - vii. a clear reduction in the regulatory burden experienced by project applicants who submit applications that are aligned with strategic plans.
- 1.2 Jurisdictions should ensure **regional plans** reflect strategic plans, and introduce statutory mechanisms to ensure strategic plans are adopted in local land use plans.

2. Lead agency framework

- 2.1 Jurisdictions should develop a **dedicated assessment track** for major projects, with objective eligibility criteria based on capital value and industry type.
- 2.2 Jurisdictions should introduce a comprehensive program for improving the delivery of planning services based around a **lead agency framework**. This should include:
- i. The establishment or designation of a lead agency reporting to the first Minister or Cabinet subcommittee.
 - ii. Coordination of application assessment across government (including case management services) and oversight of the dedicated major projects assessment track. The planning agency or department can continue to have primary responsibility for project assessment.
 - iii. Investment attraction initiatives.
 - iv. Major project inventories.
 - v. Structured pre-application consultation.
- 2.3 Jurisdictions should legislate a maximum **umbrella timeframe** that covers pre-application, application, assessment and approval phases of the dedicated assessment track. Jurisdictions should abolish stop-the-clock provisions (except by proponents) and referrals and concurrences to improve coordination and accountability within government.

3. Project application

- 3.1 Proponents with eligible projects should be required to submit a **single application**.

- 3.2 Jurisdictions should utilise **standardised** terms of reference, EIS guidance and conditions of approval. These should be specific to each industry sector and key issues such as air, noise and water impacts.
- 3.3 Jurisdictions should require **objective and performance-based** assessment of the risks to the environment or community that may arise from the project.
- 3.4 Jurisdictions should **publish** online environmental requirements, baseline environmental and heritage data, and maintain online planning application and tracking systems (as previously agreed at COAG).
- 3.5 Jurisdictions should improve the flexibility of **environmental impact statements** (EISs) to ensure they are relevant over the life of a major project.
- 3.6 Jurisdictions should develop **codes of conduct** for specialists and consultants who assist with preparing EISs to encourage high levels of performance and ethical behaviours.
- 3.7 Jurisdictions should ensure guidelines for public consultation are in place that contain clear **engagement** principles and key performance indicators for consultation.

4. Project assessment

- 4.1 **Industry-based assessment teams** should be established so that agencies develop industry sector knowledge and skills (e.g. mining, transport infrastructure) and have a better understanding of how best to assess major projects.
- 4.2 Jurisdictions should **improve governance** by separating institutional roles that are located in single agencies and present conflicts of interest.

5. Project approval

- 5.1 Jurisdictions should ensure there is only **one approval** required, and ministers have final accountability for planning approvals. Secondary approvals should be incorporated into the primary approval.
- 5.2 **Conditions of approval** should be drawn from the standardised set of conditions applying to industry sectors and key issues. The conditions should be targeted to address specific issues identified in the strategic assessment and project assessment.
- 5.3 Jurisdictions should continue **publishing reasons** for planning decisions, along with submissions and supporting assessments.
- 5.4 Jurisdictions should amend, where required, provisions on **legal standing** so that judicial review is the appeal mechanism. Standing should be available to project proponents and those directly impacted by the decision.

6. Compliance and enforcement

- 6.1 Jurisdictions should complete the implementation of **online** compliance and reporting systems (previously agreed by COAG).

7. Planning system performance monitoring

- 7.1 Jurisdictions should implement reporting frameworks for **monitoring and performance** of agencies involved in the planning process. Key performance indicators should be produced for approval times and adherence to best practice. Every agency involved in any part of assessments and approvals should be part of this reporting framework.

The reform of state and territory planning systems should be complemented by the completion of the one-stop shop reforms under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC). The Commonwealth, state and territory governments should sign and implement bilateral approval agreements so that the Commonwealth fully delegates assessment and approval for projects under the Act and EPBC approval can form part of a single project approval. In addition, current standing provisions under section 487 are not working and need to be reformed in line with the lapsed legislative changes introduced in 2015 which sought to repeal the section.

1. THE CASE FOR REFORM

Introduction

State and territory major project planning systems play a critical role in authorising investment in wealth-generating major projects while also giving the community the confidence that potential environmental and social risks have been identified and will be properly managed.

It is crucial for economic growth that these planning systems are as efficient as possible so that unnecessary costs, uncertainty and delays do not diminish the flow of benefits from major projects to investors, employees or the wider community.

There is an overwhelming case for improving the competitiveness of current state and territory major project planning systems.¹³

In its 2013 report, the Productivity Commission found considerable scope to improve state-based major project planning systems.¹⁴ It argued that reform is needed to encourage best practice community participation and encourage the development of the pipeline of major projects that Australia needs.

The Commission's practical recommendations retain the core risk management function of planning approvals systems, but address a number of key deficiencies like delay, uncertainty, duplication, excessive conditions and a lack of confidence in the administration of planning processes and governance. This was just the latest of a series of reports and analysis calling for reform.

The cost of major project assessment complexity and delay can be significant for large major projects – as much as \$2 billion, depending on their capital value, complexity and length of any delays. Worse still, the cost of uncertainty has led companies to defer or redirect investment to international jurisdictions (over \$150 billion of resources projects in recent years). This represents lost economic growth, jobs and taxation revenue, all of which would be of significant benefit to the community.

Major projects are critical for meeting the economic growth objectives of states and territories. Few jurisdictions have taken the opportunity to deliver the state budget priorities for business investment and economic growth through improving the competitiveness of major project planning systems.

International jurisdictions tackle these issues differently to Australia. In the United States, for example, states aim to improve future economic performance through their major project planning systems. In particular, there is a strong customer focus towards a consolidated set of services and incentives that attract business investment.

¹³ The definition of major projects varies. The Productivity Commission (December 2013) indicated that BREE currently considers a resource project to be a major project if it involves \$50 million or more in capital expenditure. Deloitte Access Economics maintains the Investment Monitor database, which includes large investment projects in Australia. The threshold for inclusion in this database is a gross fixed capital expenditure of \$20 million or more. The Australian Government publishes the National Infrastructure Construction Schedule for government infrastructure projects. It includes all public infrastructure projects valued at \$50 million or more.

¹⁴ Productivity Commission, *Major project development assessment processes*, PC, Melbourne, November 2013.

Major projects and the Australian economy

Australia faces a growth challenge, both in terms of our ability to lift economic growth and to accommodate a growing population.

Our ability to plan for and deliver major projects will be critical in meeting both aspects of this challenge.

Australia has seen several decades of uninterrupted growth which has increased living standards across the community, but our future success is not assured. It is essential that Australia has in place the incentives and infrastructure that are vital prerequisites for a strong, agile and resilient economy that serves the interests of the wider community.

By growing Australia's capital stock, major projects can lift productivity and help build our regions and cities. Infrastructure Australia projects that \$377 billion of GDP in the Australian economy in 2031 will be derived from infrastructure, up from \$187 billion in 2011.¹⁵

More infrastructure will also be required to accommodate population growth. The latest Intergenerational Report predicted Australia's population would reach 32 million in 2034-35 and almost 40 million in 2054-55.¹⁶ Economic activity, as measured by real Gross Domestic Product (GDP), is projected to grow only 2.8 per cent on average each year over the next 40 years.¹⁷ At this lower rate of growth, Australian governments will struggle to provide the services and infrastructure that we have come to rely upon, as the gap between revenue and expenditure ever widens.

Growing demand for Australian goods and services from developing economies in Asia and further abroad will provide Australia with an opportunity to achieve higher economic growth. But Australia's success in securing a share of this demand is not assured: we will face fierce and sustained competition from other economies, including in our region.

Our competitiveness – driven by our ability to successfully attract major capital investment, plan and deliver major projects – is key to unleashing the drivers of growth:

- New infrastructure is needed to allow Australian businesses to expand, invest, export and participate in sophisticated and innovative global value chains.
- Australian cities and regional communities need investment in public infrastructure to keep them at their most liveable and productive.
- A well-planned pipeline of major projects will need to be brought online to keep pace with growth.

Summary of major projects across the jurisdictions

Selected examples of potential future major projects are displayed by jurisdiction below (except the Australian Capital Territory). The maps identify where major projects that are yet to enter the approvals

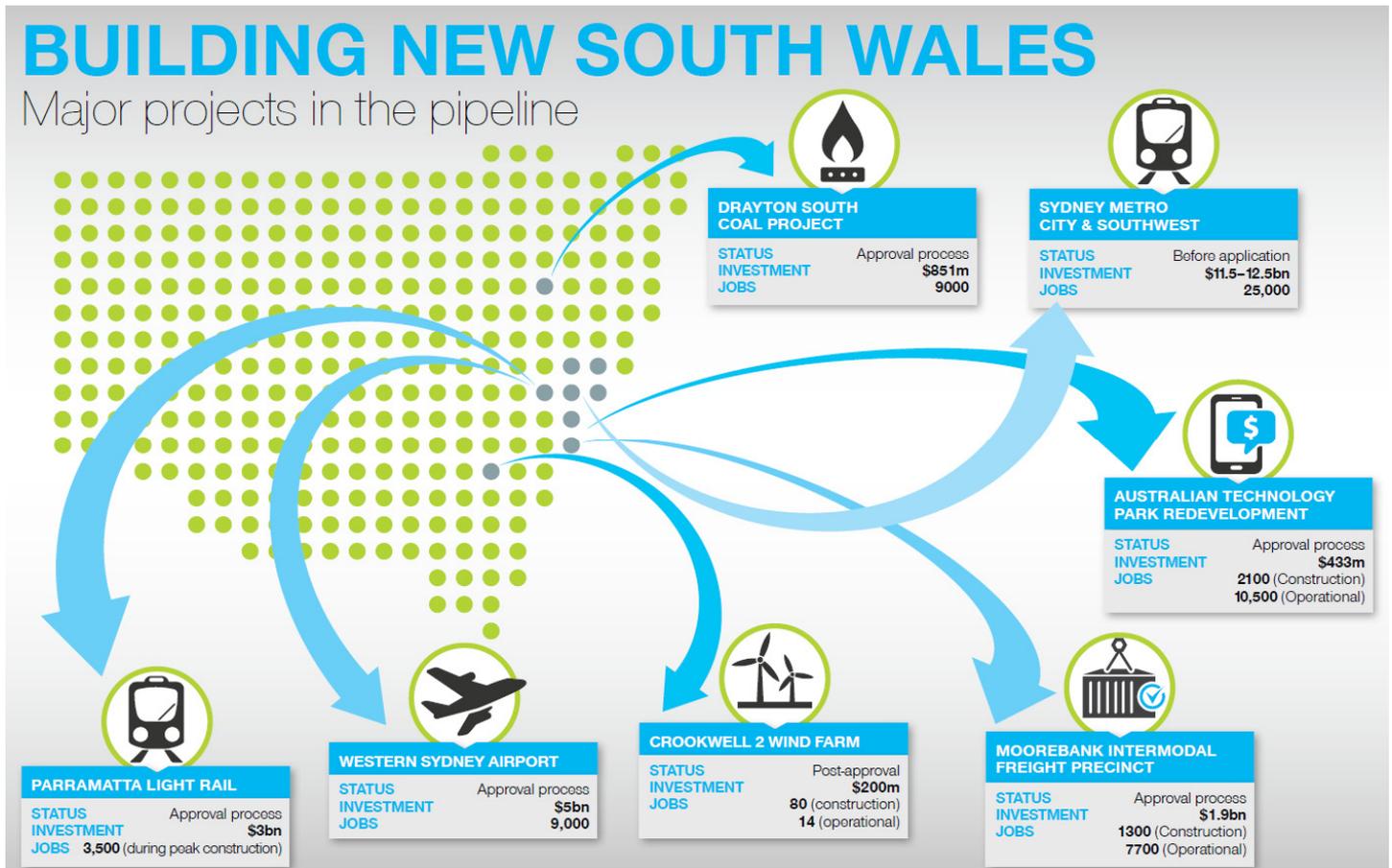
¹⁵ Infrastructure Australia, *Australian infrastructure audit: our infrastructure challenges*, IA, Sydney, April 2015, <http://infrastructureaustralia.gov.au/policy-publications/publications/files/Australian-Infrastructure-Audit-Executive-Summary.pdf>

¹⁶ Australian Government, *2015 intergenerational report: Australia in 2055*, The Treasury, Canberra, March 2015, http://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/2015%20Intergenerational%20Report/Downloads/PDF/2015_IGR.ashx

¹⁷ *ibid.*

process ('Before application'), are being assessed for approval ('Approval process') or have recently been approved (Post-approval).

The information in these maps has been sourced from media statements, government websites and the Deloitte Access Economics' Investment monitor (September 2016). Queensland leads the way in providing a major project directory website that clearly lays out the various stages of the application process, including the date of initial application for approval.



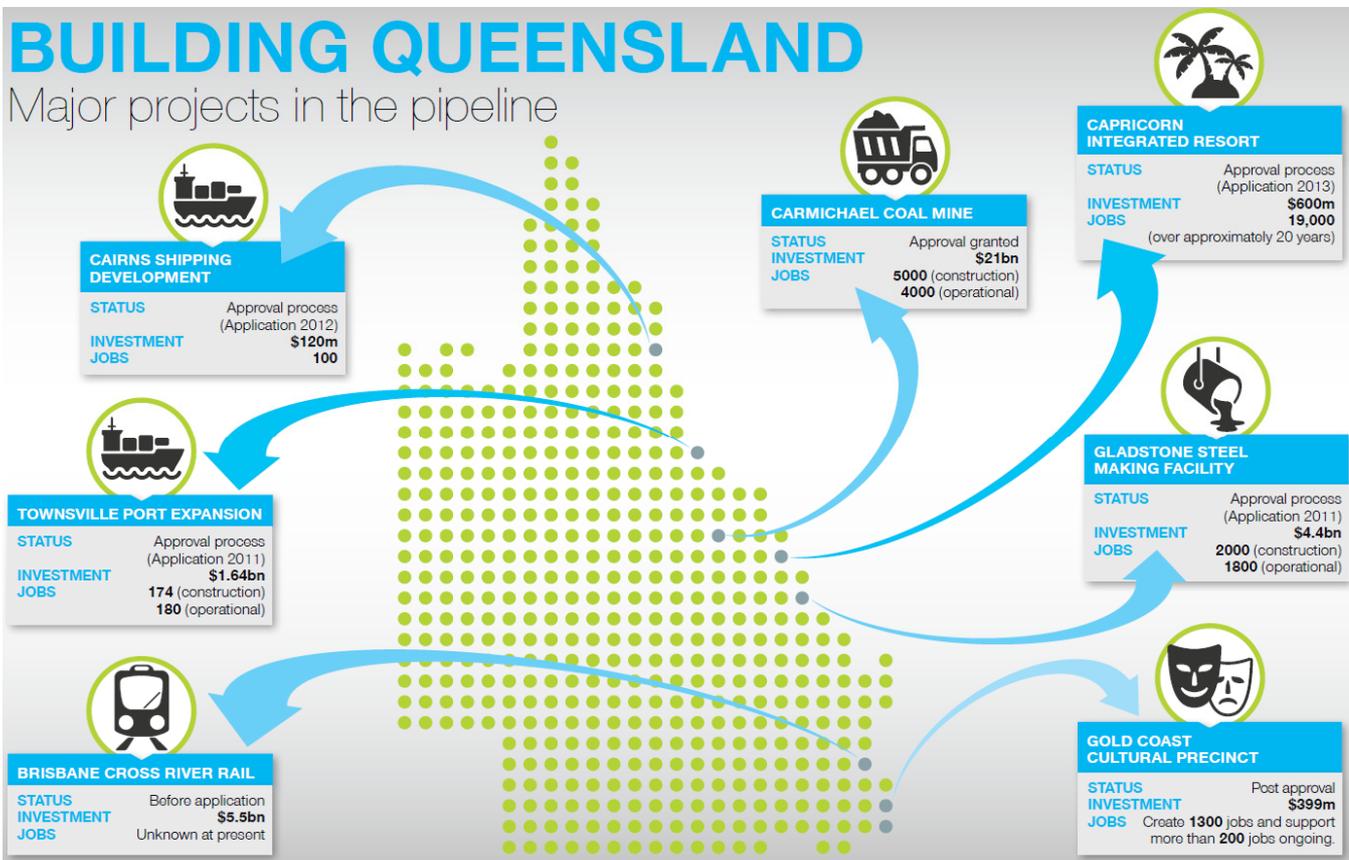
BUILDING VICTORIA

Major projects in the pipeline



BUILDING QUEENSLAND

Major projects in the pipeline



BUILDING WESTERN AUSTRALIA

Major projects in the pipeline



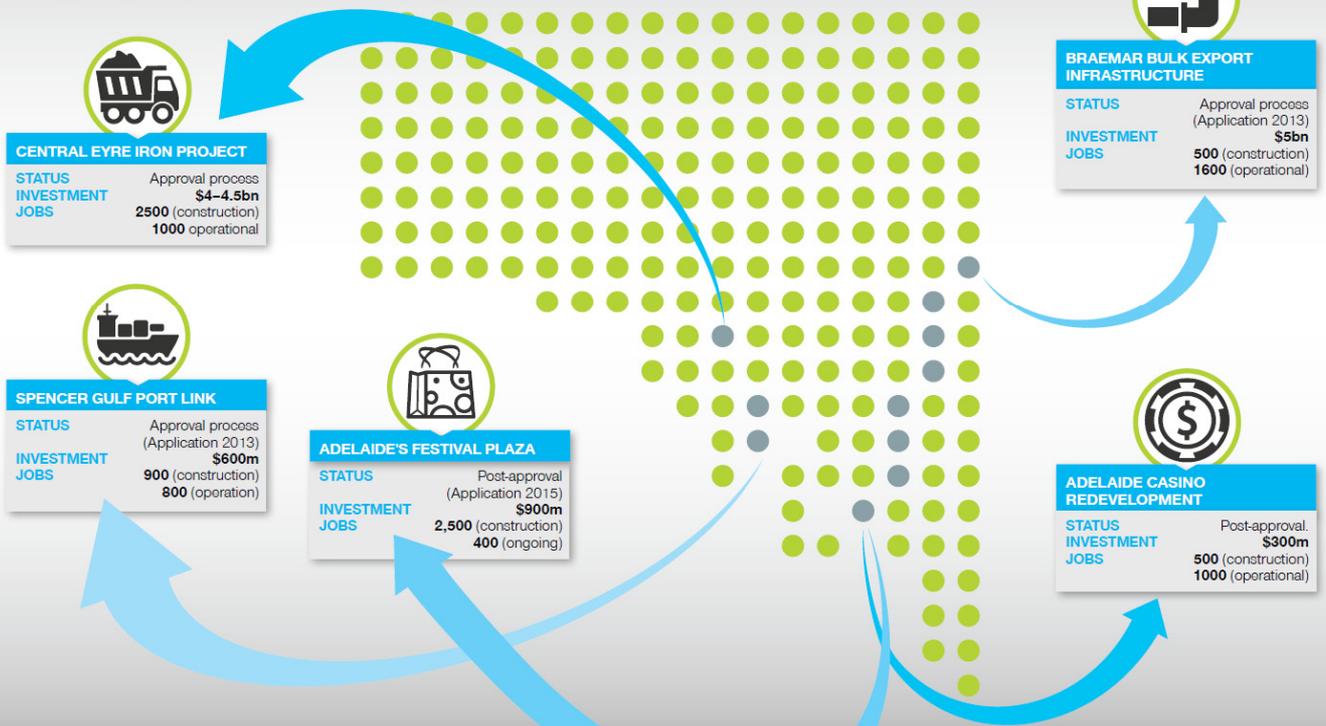
BUILDING THE NORTHERN TERRITORY

Major projects in the pipeline



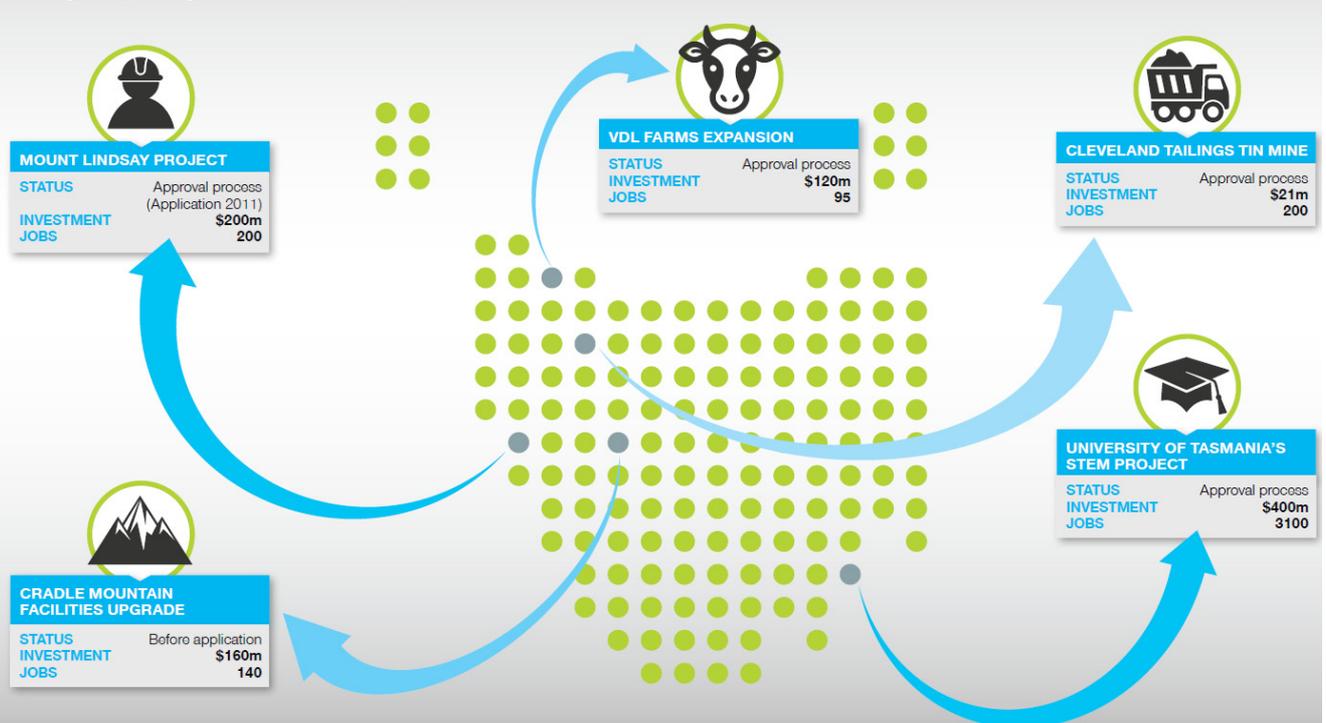
BUILDING SOUTH AUSTRALIA

Major projects in the pipeline



BUILDING TASMANIA

Major projects in the pipeline



A number of actions are required by governments to encourage required major projects, including: appropriate governance around needs assessment and prioritisation, ensuring appropriate funding and financing, and determining risk-sharing between public and private sectors on varying stages of production and ownership. Efficient and effective planning systems for major projects is another essential component.

Australia's competitors have recognised the critical contribution efficient and effective major project planning systems make to national competitiveness, economic growth and community amenity. In particular, more coordinated and effective regulatory systems and incentives to attract and retain business investment are common approaches. Australia has yet to embrace these types of service models.

Exhibit 1: What is a competitive planning system?

The competitiveness of state government planning systems is vital to the nation's economic prosperity. Uncompetitive state planning schemes and major project approval processes can cause unnecessary delays, increase costs to project proponents, increase investor uncertainty and detract from community confidence.

A competitive state planning system and major project approvals process will be oriented to facilitate economic development and attract investment while balancing risks to the environment, community and amenity. Its objectives would be clear and it will be efficient, transparent and predictable. Regulatory agencies operating within a competitive state planning system should operate within a risk-based regulatory framework and, above all else, be service focused, responsive, consistent and transparent.

The need to improve

Australia is becoming a less attractive destination for investors, falling from a global ranking of 9 in 2009, to 15 in 2017 in the most recently released World Bank Group's 'Doing Business' ranking. Australia is now ranked behind Macedonia, Taiwan, Estonia and Latvia.¹⁸

In May 2016, research released by the Institute of Public Affairs found that red tape cost the Australian economy \$176 billion in foregone economic output every single year. That's the equivalent of 11 per cent of GDP and equates to \$19,334 in regulatory costs per household'.¹⁹

In November 2016, the Infrastructure Partnership Australia/Perpetual Australian Infrastructure Investment Report found that among those surveyed, the appetite for single investments between A\$1 billion to \$2 billion had halved from 50 per cent in 2015, to 25 per cent in 2016.²⁰

¹⁸ World Bank Group, *Doing Business: Measuring business regulations*, October 2016, accessed on 18 November 2016 at www.doingbusiness.org/data/ExploreEconomies/australia.

¹⁹ Dr Mikayla Novak, Institute of Public Affairs, *The \$176 billion tax on our prosperity*, May 2016, p. 4.

²⁰ Infrastructure Partnerships Australia/Perpetual, *Australian Infrastructure Investment Report 2016*. November 2016, p. 4.

In a competitive global economy, Australia cannot afford a regulatory system that deters investment in major projects. Although recent planning and approval reform initiatives in some jurisdictions are promising, insufficient progress has been made in improving the effectiveness of major project planning and approvals processes.

While all state and territory governments seek to promote economic growth through state budget measures (such as major investments in public infrastructure, attracting new industrial development to the state or unlocking new resources for extraction), few have taken this opportunity to improve the competitiveness and performance of major project planning processes.

In contrast, many state and territory governments have supported their economic strategy through improving planning systems that relate to housing. For example, in the Western Australian 2013-14 budget, the government launched plans to deliver more affordable rental properties, aligning the First Home Owner Grant to encourage first home buyers into newly constructed homes, and simplifying residential planning and building approvals processes to ensure the supply of new housing.²¹ The Regulatory Gatekeeping Unit of the Department of Finance is developing reforms that are intended to deliver overall planning reforms.²² The proposal to streamline planning processes by reducing red tape is a crucial measure to ensure that the government's investment into housing supply is delivered to meet demand.

Furthermore, the NSW State Priorities guide the government's policy and budget decisions. Among the priorities are those aimed at creating jobs, building infrastructure and expediting housing approvals so that 90 per cent of housing approvals are determined within 40 days.²³ In the NSW budget, there have been ongoing funding measures for increasing housing supply.²⁴

However, similar reform has not been undertaken for the assessment and approval processes that govern other types of major projects.

The consequences of poor planning systems

Poor planning systems impose substantial direct costs and delays, leading to material lost or reduced economic benefits. These costs can range from the cost of meeting inefficient or ineffective environmental planning regulations, delay costs and – worse – decisions to defer or redirect investment to another jurisdiction. The impacts of cost and delay include:

- reduced flexibility for companies to respond to changing market conditions and opportunities
- tied-up capital and reduced capacity for companies to finance other major projects; and
- reduction in the present value of major projects.

²¹ Government of Western Australia, *Budget paper 1, 2013-14, State Budget*, Perth, 8 August 2013.

²² Government of Western Australia, *Planning makes it happen: Phase 2, blueprint for planning reform*, Department of Planning, Perth, August 2014.

²³ Government of New South Wales, *State priorities*, Sydney, 14 September 2015, accessed on 15 November 2015 at <https://www.nsw.gov.au/making-it-happen>

²⁴ Government of New South Wales, *Budget statement, 2015-16 State Budget*, Sydney, 23 June 2015; *Budget overview, 2015-16 State Budget*, Sydney, 23 June 2015.

Together, these discourage the development of required major projects, and the costs are ultimately borne by the community in lost employment and economic growth opportunities or low-quality infrastructure services. Poor planning systems also contribute to diminished community confidence in planning decisions.

Environmental planning regulations: It is essential to consider the potential environmental impacts when assessing a major project proposal, and this will incur some level of costs. However, there are a range of costs associated with meeting the environmental planning regulations, including those incurred during assessment processes and to implement project approval conditions, that do not result in any improvement in environmental outcomes.

The Productivity Commission heard that the typical costs for a proponent in consultancy fees alone to prepare an environmental impact statement (EIS), supplementary EIS and negotiate a Coordinator-General's report in Queensland for a new coal mine, rail or port can range from \$3 million to \$15 million per development type.²⁵ The Business Council has cited an environmental assessment process that took more than two years, involved more than 4,000 meetings, produced a 12,000-page report and resulted in 1,500 conditions and 8,000 sub-conditions attached to the approval.²⁶

Often, environmental conditions attached to approvals can be extensive and duplicated in secondary approvals. For example, major projects are routinely set 1,200 or more specific conditions – which collectively require hundreds of subsidiary assessment processes, such as the preparation of a social impact management plan.²⁷

A 2009 survey conducted by the Australian National University that found 81 per cent of respondents whose actions were subject to conditions under the *Environment Protection and Biodiversity Conservation Act 1999*, as well as state and territory planning and environment permits, reported some or substantial overlap in the conditions.²⁸

Extensive and duplicated conditions lead to significant compliance costs and interfere in the efficient and effective implementation of a project, without necessarily any improvement in protecting the environment. Moreover, duplicated conditions and unclear agency compliance and enforcement roles can lead to confusion and uncertainty for the proponent, the community and stakeholders.

Smarter condition setting can reduce project cost, materially enhance benefits to the community and have no reduction in environmental outcomes.

Delay costs: Major projects are often delayed due to uncertain government processes and agency requirements.

Even where statutory steps are clear, uncertainty and delay can occur during the assessment process when regulators (including concurrence and referral agencies) seek new information and new assessments that could have otherwise been requested upfront.

²⁵ Productivity Commission, *Major project development assessment processes*, PC, Melbourne, December 2013, p. 101.

²⁶ Business Council of Australia, *Pipeline or pipe dream? Securing Australia's investment future*, June 2012, p. 16.

²⁷ Productivity Commission, *Major project development assessment processes*, PC, Melbourne, December 2013, p. 302.

²⁸ *ibid*, p. 226.

This uncertainty can often lead to confusion regarding the requirements for a planning assessment for both project proponents and the community.

The time taken for major project decisions is lengthy. For example, the South West Rail Project assessment took four and a half years.²⁹ The Western Australian Department of Mines and Petroleum indicates it takes an average of 28 months to gain approval for a mine in Western Australia.³⁰ This timeline includes the time taken by government, the proponent and required public consultation processes. Business Council members have indicated that the time taken to obtain an approval has increased substantially and that major project approvals can often take 1.5 to 3 years. Some individual projects have taken a lot longer, with examples ranging up to 10 years. It is rare to have a major project approval within a year.

The problem with the long time taken to make a decision and its variability is the inherent uncertainty for investors – not knowing how long the approval process will take is a deterrent to business investment.

The Productivity Commission has estimated that the indicative cost of a one-year delay to a major offshore liquefied natural gas project could reduce its net present value by between \$0.5 and 2 billion, with a central estimate of \$1.1 billion (or around 9 per cent). The equivalent cost of delay for a major project of more average size (with capital expenditure of \$473 million) might be around \$26 million to \$59 million.³¹ These estimates relate to costs borne by the project proponent (from delayed profits) and the wider community (through delayed royalty and tax revenue). Delay may also result in higher financing costs and commercial risks.

Ultimately it is the community that bears the cost, through lower job creation, delays to services, more expensive infrastructure and fewer economic opportunities.

Deferred investment decisions: Regulatory uncertainty can lead to decisions to halt or redirect investment. Investment may be redirected to other jurisdictions with regulation that is more settled and supportive of development, many of whom are Australia's competitors.

In 2013, for example, Dart Energy – a coal seam gas producer – made 'a decision to suspend field operations in Australia until there is clarity and certainty around State and Federal policies to support the industry'. Dart Energy indicated that:

the consequence is that investment is leaving the country, field operations are being suspended, Australian jobs are being lost, and the impending energy crisis in New South Wales is not being addressed, and indeed, will only get worse. This is in direct contrast to the United Kingdom, where the government is actively seeking to support the responsible development of unconventional gas resources.³²

²⁹ Government of New South Wales, *White paper: a new planning system for New South Wales*, Department of Planning and Infrastructure, Sydney, April 2013.

³⁰ Chamber of Commerce and Industry of Western Australia, Submission to the Productivity Commission issues paper: major project development assessment processes, CCIWA, Perth, 26 March 2013.

³¹ Productivity Commission, *Major project development assessment processes*, Melbourne, December 2013.

³² Dart Energy, *Dart Energy – Australasia*, webpage, accessed on 20 March 2014 at <http://www.dartgas.com/page/Australasia/Australia/>.

The Business Council's Project Cost Taskforce report spelt out the consequences of projects not proceeding.³³

The Olympic Dam expansion project, which has now been halted due to subdued commodity prices and higher capital costs³⁴, was projected to have provided.³⁵

- over 15,000 jobs in South Australia (above the business-as-usual case) after seven years
- an average of \$190 million per year in royalties over a 30-year period, and an increase in Australian Government revenue of over \$200 million each year after seven years; and
- an \$18.7 billion boost to Australia's GDP over 30 years.

Similarly, in 2013, Woodside Petroleum announced that the \$43 billion³⁶ Browse LNG project, of which the downstream components were to be located at James Price Point in the Kimberly Region, will not proceed as originally planned.³⁷ In its advice to market, Woodside noted that, 'the development would not deliver the required commercial returns to support a positive final investment decision'. This project would have created around 8,000 jobs during the construction phase and around 700 jobs during the estimated 40 years of operation, as well as indirect jobs in transportation, maintenance and minor capital projects.

Previous reports on state and territory major project systems

The need to improve planning systems for major projects has been fully considered in numerous reports, including:

- *Mineral and Resource Exploration (2014)*
- *Benchmarking major project approval processes (2013)*
- *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments (2011)*
- *Review of Regulatory Burden on the Upstream Petroleum (Oil and Gas) Sector (2009); and*
- *COAG review of Capital City Strategic Planning Systems.*

Among these reports, common recommendations have been that jurisdictions should:

- implement lead agency frameworks
- clarify regulatory objectives
- introduce performance (outcome), risk-based environmental regulation
- set timeframes for regulatory decisions
- electronically track and publish target timeframes for approval processes; and

³³ Business Council of Australia, *Securing investment in Australia's future: report of the project costs task force*, Melbourne, August 2013.

³⁴ BHP Billiton, *Olympic Dam Update*, media statement, BHP Billiton, Melbourne, August 2012.

³⁵ BHP Billiton, *Olympic Dam Supplementary Expansion Economic Impact Statement*, chapter 21, accessed at <http://www.bhpbilliton.com/home/aboutus/regulatory/pages/default.aspx>.

³⁶ Deloitte Access Economics, *Investment monitor December 2012*, available by subscription.

³⁷ Woodside Energy, *ASX announcement*, accessed on 22 November 2016 at <http://www.woodside.com.au/Investors-Media/Announcements/Documents/12.04.2013%20Woodside%20to%20Review%20Alternative%20Browse%20Development%20Concepts.pdf>.

- measure and report on overall timeframes taking into account all regulatory steps.

No Australian jurisdiction has fully implemented these recommendations, nor can any jurisdiction's planning and major project assessment system be considered as displaying all elements of best practice.

The Productivity Commission's 2013 benchmarking of Australia's major project planning systems is the most comprehensive recent report. The purpose of the study was to assess the efficiency and effectiveness of government processes and measure Australia's performance relative to international best practice.

The Commission expressed the view that 'economic efficiency suggests that major project assessment processes should only be as rigorous (and expansive) as necessary to ensure that regulatory objectives are met'.³⁸

It is clear from the Commission's study that industry, environment and community groups alike are dissatisfied with state and territory major project planning systems. Industry argued that there is an excessive regulatory burden caused by: onerous environmental impact statement requirements; regulatory duplication; lack of coordination; and poorly crafted offsets and conditions.³⁹

Community and environmental groups indicated that regulatory outcomes fall short of environmental objectives and attributed this to: the inadequacy of baseline environmental data; perceived consultant bias; governance and procedural gaps; and lack of appeal rights and consultation.⁴⁰

Both industry and community and environmental groups share a common goal. Both are seeking significant improvements to major project planning systems. All participants involved in major project planning systems want a fair, efficient process that delivers certainty and protects the environment and the community.

The Commission found that none of the jurisdictions' planning systems stood out as performing better overall. It did find that there was substantial scope, without relaxing the stringency of regulations, to improve efficiency of planning systems so that regulatory goals are achieved at a lower cost to both proponents and communities.⁴¹

Some of the Commission's recommendations designed to achieve this efficiency included:

- greater use of strategic planning, to reduce the number of issues that need to be considered at the project level on a case-by-case basis
- provision of clear, upfront information and guidance on the development assessment and approval pathways that apply to major projects, including details about the processes, the generic information requirements, the assessment criteria, the standard and model conditions and the statutory timelines that apply under a given pathway
- ensuring that key stakeholders (including local governments, the public and project proponents) have input to the draft terms of reference for primary assessments and that the input, and how it has been addressed, should be made public

³⁸ Productivity Commission, *Major project development assessment processes*, PC, Melbourne, December 2013. p.169.

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ *ibid.*, p. 5.

- publication of assessment reports and statements of reasons (including identification of the risks being mitigated) for approval decisions and conditions for all major projects
- clear specification and communication of agency responsibilities and strategies for the monitoring of compliance and enforcement in relation to project conditions; and
- judicial review for major project primary approval decisions where a minister is the decision-maker.

The Commission indicated that these improvements would help Australia secure the benefits of major projects and remain an attractive destination for international investment, while at the same time protect the nation's environmental, heritage and cultural assets.⁴²

These recommendations are reflected in the Business Council's best practice model.

International approaches

A number of international jurisdictions have introduced institutional and regulatory reforms tailored to increase their competitiveness and encourage economic development. While some measures will not be appropriate for Australia, the following two examples indicate how two subnational governments are encouraging economic growth through reform of their planning systems.

Louisiana, United States of America: Louisiana Economic Development is a government entity established to foster economic development and job creation.⁴³ Staff offer services to encourage new and existing businesses to relocate or expand, with a focus on attracting major projects, aligned with state economic plans. These services include:

- site selection service supported by a:
 - Sites and Buildings Database⁴⁴ that includes property related demographic and business data and certified site information – qualified by zoning restrictions, title information, environmental studies
 - Geographic Information System mapping for every region of the state.
- expedited environmental permitting – where an application has been made to the Louisiana Department of Environment and Quality (DEQ), interested proponents reimburse the Department for contracted resources or overtime costs incurred by DEQ employees that work overtime to expedite a permit (see **Exhibit 2**)⁴⁵
- competitive projects tax exemption – a 10-year property tax abatement on qualifying capital investments of at least \$25 million in targeted non-manufacturing industry sectors
- competitive projects payroll incentive – a payroll rebate of up to 15 per cent in target sectors for up to 10 years; and
- FastStart – a workforce development program providing businesses with customised employee recruitment, screening and training. It is a free service for qualifying companies.

⁴² *ibid*, p. 11.

⁴³ Louisiana Economic Development, *About Louisiana Economic Development*, webpage, accessed on 28 March 2014 at <http://www.louisianaeconomicdevelopment.com/index/about-led>.

⁴⁴ Louisiana Economic Development, *Sites and Building*, webpage, accessed on 28 March 2014 at <http://www.louisianasiteselection.com/led/buildings-and-sites.aspx>.

⁴⁵ Louisiana Department of Environment and Quality, *Expedited Permit Processing*, presentation made 11 August 2010, accessed at <http://www.deq.louisiana.gov/portal/NEWS/Publications.aspx>.

Exhibit 2: Expedited Environmental Permitting Program

Introduced in 2006, the Expedited Environmental Permitting Program allows interested proponents to reimburse DEQ for overtime costs incurred by employees that work outside of normal business hours to expedite a permit, modification, licence, registration or variance. This program shortens the time between application receipt and a final permit decision by 6-8 weeks, off the total timeframe (typically 6 months).

The Expedited Environmental Permitting Program is available for air and water permit applications.

Alberta, Canada: In response to an upstream oil and gas review, the Alberta Government launched a reform project (the Regulatory Enhancement Project) in 2010.⁴⁶ The project's aim was to ensure that Alberta's resource policies, public consultation, and regulation of development were efficient and competitive while managing impacts on the community (including landowners) and the environment. The project aimed to address the complexity and lack of regulatory coordination for an industry that is a cornerstone of Alberta's future economic growth.

Key initiatives included:

- establishing a new Policy Management Office to ensure the integration of natural resource policies and ensure policies are achieving expected performance outcomes
- establishing Alberta Energy Regulator. The AER is a single independent regulator with entire accountability for development assessment and approval processes, compliance, enforcement and reclamation for all oil, gas and coal developments (absorbing powers held by Alberta Environment, the Ministry of Sustainable Resource Development, and the Energy Resources Conservation Board)
- providing a systemic and common risk assessment and management framework (based on the international ISO 31 000 Risk Management Standard) to evaluate natural resource policies and identify and assess risks associated with specific oil and gas developments; and
- readjusting public engagement processes to better target stakeholders on the basis of their interest: either wider policy development or a specific project.

While a new Alberta Government is reviewing the role of the Alberta Energy Regulator, the model has attracted support in Alberta and has been adopted elsewhere in Canada (including British Columbia).

Summary

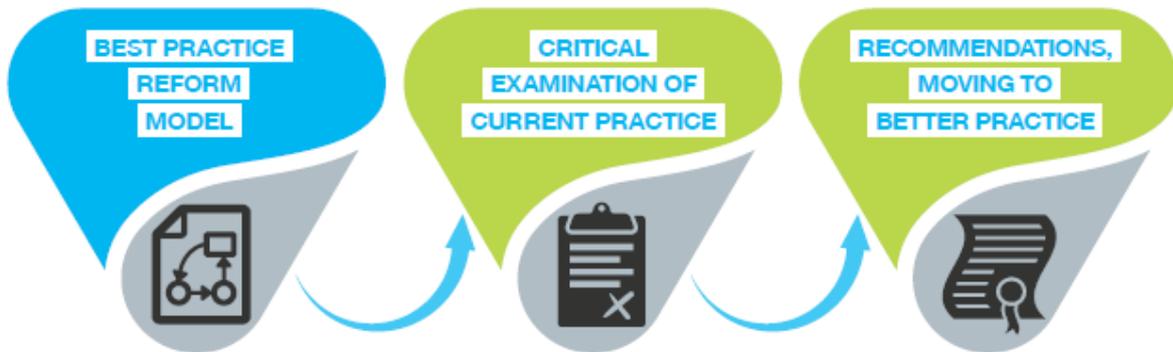
In short, Australian state and territory major project planning systems are far from high performing and do not provide predictability and certainty for investors or the community.

⁴⁶ Government of Alberta, *Enhancing assurance: report and recommendations of the regulatory enhancement task force to the Minister for Energy*, 10 December 2010, accessed on 22 November 2016 at <http://www.energy.alberta.ca/Org/pdfs/FinalEnhancingAssuranceReportREP.pdf>.

Their deficiencies result in high costs, uncertainty and a lack of confidence. This is despite numerous independent reports calling for reform and reform efforts by jurisdictions.

After a discussion of the best practice model in Chapter 2, a more detailed critical examination of each jurisdiction against the model is provided in Chapter 3.

2. A BEST PRACTICE REFORM MODEL



Principles for reform

This section provides a reform model that attracts, retains and better enables major projects that contribute to economic growth and competitiveness, while effectively managing potential impacts on communities and the environment.

The principles for reform, and performance objectives for the model, are:

- transparent and participatory – encourage participation by both project proponents and the community, and have credibility with all stakeholders
- certain and predictable – reduce complexity, remove red tape and approach decisions consistently
- integrated – ensure all environmental, heritage and amenity regulatory requirements are integrated into assessments and decisions
- productive – facilitate effective and efficient planning assessments and decisions; and
- competitive – promote domestic and international investment.

The best practice reform model

The best practice reform model is a **one project, one assessment, one decision** model for major projects. It is a performance-based, single major project approval incorporating all secondary approvals. It offers a dedicated assessment track for major projects of state and national significance.

A lead agency is part of a significantly different service culture. It provides a gateway to business investment, facilitated by a single point of contact to manage major project assessment and approval. This lead agency coordinates with other parts of government and provides investment attraction services.

The model does not require state and territory governments to harmonise planning processes. Instead, the reform model outlines key principles and concepts to promote a common approach that would not be dependent on intergovernmental agreement. States and territories could implement the model unilaterally, quickly and in a way that suits the specific circumstances of each jurisdiction.

Elements of the best practice model

1. Strategic planning

Lifting the performance of strategic planning: Strategic planning provides a regional spatial representation of the economy and the land use settings for where future growth will occur. Strategic plans are a growth strategy and they should base objectives on delivering a growing economy, social outcomes and environmental sustainability. It is crucial that these objectives link to the strategic policy priorities of government – particularly those for economic growth – in order to provide a strategic context for major projects, and proactively communicate the benefits of development to the community.

Strategic planning in this context represents the range of planning instruments used by governments from strategic assessments to strategic land use planning. Strategic plans should provide land use permissibility for economic development in the same way as currently done for future housing settlements. This change will provide certainty and the strategic basis for future major project developments.

Strategic plans provide evidence-based policies and targets including regional environmental targets to guide the spatial location for future economic development and employment generation (e.g. the *30-Year Plan for Greater Adelaide*). Arbitrary buffers to residential areas and agricultural areas should be avoided. Among other things, these buffers reflect exclusion areas at a certain point in time. Subsequent greenfield residential rezoning decisions will mean these buffers will shift periodically and risk the existing rights to undertake economic development.

Strategic plans are underpinned by strategic assessments (refer **Exhibit 3**), which should be used to:

- assess the trade-offs associated with competing land uses
- allocate future land uses
- set regional environmental targets that either conserve sensitive environmental areas or mitigate environmental risks; and
- link land uses to corresponding development assessment tracks.

Underpinning the development of these assessments requires strong participation by the community, including businesses, to help shape the future growth directions and settings of targets. These are pragmatic assessments steps to improve overall outcomes for a region and lighten the load of subsequent Environmental Impact Statements (EISs). Therefore, these assessments do not examine and define environmental impacts with the detail expected at the EIS stage of the process.

Exhibit 3: Strategic assessments

Strategic assessments can mean different things to different people. Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth), strategic assessments have been used to allow concurrent environmental assessments for different levels of government. They scientifically assess cumulative impacts and provide baseline data. While they are important, there is evidence that strategic assessments can currently take many years to complete and can be seen as an additional layer of regulation.

Strategic assessments should be prepared concurrently with strategic plans and take some six months to prepare. Strategic assessments should not purely be a scientific evaluation of ecological matters but a growth management strategy that provides the evidence base to identify and address potential risks.

Strategic plan outcomes should:

- allocate land uses and permissible developments, following evaluation through strategic assessments
- set regional environmental targets, such as a major transport corridor meeting a noise target, a regional air quality target, or a regional target to achieve no net loss of threatened species, and
- link land uses to relevant development assessment tracks.

While there are areas identified for growth, such as a freight rail corridor, strategic assessments should consider the likely amenity risks to neighbouring land uses and set regional or subregional air quality targets (e.g. for dust) that future major projects must meet. These ensure conditions are clear, consistent, predictable and provide the community with greater confidence.

These important features will provide the strategic basis for future major projects and minimise the need for proponents to contest the need and purpose for each individual project.

This approach would also involve earlier and more substantial participation by the community (including businesses), easing any potential concerns earlier in the process of developing a major project.

Sophisticated strategic plans would:

- link with infrastructure needs assessment and prioritisation, as done by Infrastructure Australia and state and territory counterparts
- recognise the potential for future strategically important resources developments (such as energy security or export-oriented developments). These developments need to be considered very differently from conventional approaches to strategic planning, because they are limited to where the resource is located and proximity to available freight infrastructure. To prevent eroding the prospect of future strategically important resource exploration and production activities, geoscience information should be integrated into strategic plans. This would mean that strategic plans include land uses above the ground and below the ground – something which is yet to be embraced in Australian strategic planning

- make the community aware upfront of the context, need for development and any possible risks. Strategic plans should incorporate evidence-based land use principles to guide the development assessment decision-making for future resources projects. These principles need to include coexistence and a staged utilisation of land. This means for example, land could be set aside for greenfield housing development in the long term, say in 20 years or more. However, the land in question could in the interim be used for a resource project
- document the location of existing resources, industrial and infrastructure developments (like in the 30-Year Plan for Greater Adelaide⁴⁷) and analyse where brownfield developments are likely to occur to meet market demand. This is important, particularly given the recent shift by resources companies to invest in brownfield development⁴⁸
- document and preserve existing infrastructure corridors and reserve locations for future infrastructure corridors. This should pave the way for corresponding budget funding and agency business planning for land acquisitions.

To ensure strategic planning has have effect, it is important that statutory mechanisms are available to ensure that the land use directions, principles and targets established in strategic plans are adopted in local land use plans (as is currently the case in Queensland). This removes the potential for misalignment between different levels of government.

2. A lead agency framework

Coordination of planning services: To better coordinate whole-of-government management of major projects, all states and territories should adopt a lead agency framework. A lead agency provides industry with a single point of contact and involves case management and pre-application advice to facilitate approval requirements and assessment timelines. These frameworks can have limitations where lead agencies have few, if any, powers to ensure other agencies meet agreed service arrangements and timelines.

Therefore, there are two options available to strengthen this framework:

1. legislate the lead agency framework with accountability to the first Minister; or
2. chaired by the first Minister, a Cabinet subcommittee is established to oversee major project developments.

In either option, the roles, responsibilities and timelines should be defined and published, with the progress of major projects under this framework publicly reported.

⁴⁷ The Government of South Australia, *The 30-year plan for greater Adelaide*, Department of Transport, Planning and Infrastructure, Adelaide, 2008.

⁴⁸ Productivity Commission, *Mineral and energy resource exploration*, Productivity Commission, Melbourne, 27 September 2013.

Change in service culture: To improve the way stakeholders perceive and engage in the planning and approval process, a change in service delivery and culture is required. This idea is not new and has been a key plank of recent planning reforms initiated in some jurisdictions.

But such reforms need to be designed to provide a whole-of-government improvement in service delivery. Various elements of the model would directly improve the service delivery culture, such as:

- providing a suite of services that promote investment attraction, including:
 - a pre-application advisory service providing proponents with assistance on application requirements, referral agency advice and supporting guidance.
 - case management services – providing a single point of contact to facilitate the assessment and approval process
 - competitive incentives such as skills development, education services, and financial incentives
 - coordination with independent infrastructure assessment bodies
 - industrial land availability that includes zoning information and site analysis
 - enterprise zones for specialised growth areas
 - streamlined and improved environmental assessment processes
 - major project inventory including greenfield and urban renewal projects (see **Exhibit 4**⁴⁹).

Exhibit 4: Major project inventories

Major project inventories promote investment in state and territory major projects.

South Australia has a Major Developments Directory covering a range of projects with capital expenditure of \$5 million or more.

The Alberta Government prepares an Inventory of Major Projects, summarised spatially by sector and status. It covers all major projects including: agriculture, biofuels, chemicals and petrochemicals, commercial/retail, forestry, infrastructure, institutional manufacturing, mining, oil and gas, oil sands, industrial pipelines, power residential, telecommunications and tourism/recreation. The Inventory is prepared by Alberta Innovation and Advanced Education to assist companies in identifying potential supply opportunities, as well as informing Albertans of the current status of projects in the province.

- improving the efficiency of planning systems through:
 - clear agency roles and responsibilities
 - transparent timelines, information and procedural requirements (with consequences for poor performance)
 - online project application and tracking system (e.g. Victoria)

⁴⁹ South Australian Department Manufacturing, Innovation, Trade, Resources and Energy, *South Australian major developments directory 2014/1*, webpage, accessed on 27 January 2015 at <http://www.dmitre.sa.gov.au/directory/entry>; Government of Alberta, *Inventory of major projects*, webpage, accessed 21 March 2014 at <http://albertacanada.com/business/statistics/inventory-of-major-projects.aspx>.

- online industry sector based standardised assessment guidance
- approved environmental performance standards and referral agency guidance
- online baseline regional environmental and heritage data and information (e.g. an environmental data repository has been recommended by the NSW Chief Scientist⁵⁰ and the National Data Initiative promoted by the COAG Energy Council⁵¹)
- online project performance monitoring and reporting.
- moving to a performance based system (see **Exhibit 5**) where:
 - proponents are accountable to transparently demonstrate compliance
 - regulators are more accountable to meet timeframes; and
 - governments provide a customer service model that promotes business confidence and investment.

Exhibit 5: Rewarding performance

With more major project monitoring reports publicly available, the community, regulators and other stakeholders are in a position to routinely review the performance of firms that use the planning system.

Once states and territories have fully established transparent performance monitoring systems, incentives should be developed to reward industry where there is objective evidence that proponents meet or exceed expected levels of performance.

Rewards may include reduced timeframes for a planning approval. This will be possible since regulators are not otherwise tied up with lengthy assessments, because the proponent continues to meet expected performance requirements.

3. Project application

Dedicated assessment track and eligibility: The model recommends the introduction of a dedicated assessment track for state and territory major projects.

Major projects are projects of state significance. Major project eligibility should be based on objective criteria. This means a description of the major industry sectors with capital value thresholds (e.g. NSW approach).

While some jurisdictions already have mechanisms to declare major projects (or 'state significant projects'), these are determined through subjective assessment on a case-by-case basis. The recommended approach removes subjectivity to determine whether the project is significant and therefore receives major project status. This cuts the time for evaluating and notifying whether a project is eligible.

⁵⁰ Government of NSW, Initial report on the independent review of coal seam gas activities in NSW, NSW Chief Scientist & Engineer, Sydney, July 2013.

⁵¹ COAG Energy Council, *Meeting communique*, Perth, 23 July 2015.

Ministerial call in powers should remain for unforeseen major projects, such as emerging industries. The criteria for calling in projects should be legislated and the reasons for decisions should be published.

Community participation: Under the model, a significantly greater proportion of community participation should occur upfront, in the strategic assessment phase, to proactively communicate the benefits of development. There is, however, still a place for some public consultation once a specific project has been identified and is being assessed.

The two stages in the best practice model for further public consultation are: during the pre-application consultation phase, and during the assessment phase when the EIS is on public display.

The practice of pre-application consultation is encouraged for all major projects in order to establish early ongoing communication and consultation, and to help identify major risks and impacts to support the preparation of EISs.

All states and territories have statutory requirements for public consultation and EIS exhibition. However, few jurisdictions provide up-to-date public consultation guidance. Where such guidance is available, it is prepared without underlying principles that promote best practice, such as the right to be informed, transparency and proportionality. A key reform for all jurisdictions is the development of best practice guidance with key performance indicators. This guidance should be heavily informed by the experience of industry, which routinely conducts consultation as part of their business.

Environmental impact statements: EISs are an important tool for ensuring environmental outcomes and maintaining community confidence.

EISs should be a performance-based assessment tool (see **Exhibit 6**) capable of addressing the operating life of major projects, with limited need to modify the approval during the project.

Exhibit 6: Performance-based assessments

Performance-based assessments are those where all participants have clear, certain expectations for the identification, assessment and management of environmental impacts. It means that EISs are underpinned by:

- standardised risk assessments that determine the high-risk, high-impact aspects of a major project. This will lead to better environmental assessments that concentrate on genuine risks, allowing low-level risks to be managed through standard industry practices; and
- evidence-based guidance containing clear benchmarks or criteria on the expected performance to eliminate, mitigate or manage high risks and high impacts. This will mean that proponents and the community know the basis on which regulators conduct assessments.

There should be one type of performance based EIS enabling development over the life of a project, rather than preparing different assessment documents based on risk. Currently, different assessment documents (including the EIS) are needed, depending on the level of risk. The test for determining the level of risk is often subjective. Instead, more consistency should be applied: EIS guidance should provide a standard methodology to determine the level of risk and impact of a proposed project. The extent of information provided is then scaled according to the objective level of risk and impact, and the prior performance of the project proponent (refer **Exhibit 7**).

Exhibit 7: Assessing and managing risk

The Productivity Commission recommended that regulators establish measures that 'scale' aspects of the major project assessment requirements, based on the risk and significance of expected impacts. Criteria for determining the level and scope of assessment should be identified and publicly available.

Identifying, assessing and managing risk is core for a range of business obligations; it is a standard tool for assessing risk in other areas like workplace safety. States and territories do not, however, have a standard methodology to identify and assess environmental risks: rather, the guidance is generic and not underpinned by a standard methodology. Standards Australia publishes risk management principles, guidelines and risk management techniques in AS/NZS ISO 31000:2009 and ISO/IEC 31010:2009. Jurisdictions should look to apply a standard methodology for risk management that is adopted for the assessment of projects. The identification of risk should occur at the earliest stages – during pre-application meetings, in the project application and in EIS preparation and assessment.

It is crucial that this methodology is adopted for EIS guidance, terms of reference and conditions of approval to give the community and industry certainty and predictability.

EIS guidance, terms of reference and conditions of approval should also be standardised based on industry sectors. All should be prepared with upfront consultation with industry and the community and should be risk and performance based. This approach moves away from generic requirements and tailors assessment requirements to industry sectors: it has the benefit of eliminating the uncertainty that exists with assessment and condition requirements.

To maintain community confidence in the use of consultants, jurisdictions should establish codes of conduct for specialists that set standards for quality of service and ethical behavior, such as dealing with conflicts of interest and success fees.

EISs should document the alignment with strategic plans by demonstrating the contribution to approved land uses, regional environmental targets, social outcomes and economic priorities, without needing to prosecute the strategic context.

4. Project assessment

Statutory umbrella timeframe: In order to achieve a single assessment, all concurrences and referral requirements should be removed. This does not remove

assessment or advice by agencies currently receiving referrals: it only requires that the primary agency take full accountability for coordinating with referral agencies within one timeframe. Where necessary, the role of concurrence agencies should be transferred to referral agencies.

Once this is done, the role of referral agencies needs to be refined to provide advice and conduct assessments in accordance with relevant legislation. The role of referral agency should be towards contributing to pre-application meetings (e.g. Northern Territory approach), the preparation of standardised terms of reference, the assessment of an EIS, and preparation of standardised conditions of approval. The timeframes for providing assessment and advice should be established in the primary assessment legislation to achieve better coordination within government. Where there are delays by assessment and referral agencies, there should be a mechanism for proponents to launch an appeal due to non-compliance in meeting statutory timeframes.

To help industry and the community better appreciate referral agency requirements, these requirements should be consolidated into a plain English risk and performance based guidance.

In its report, the Productivity Commission stated that it 'favours the wider use of statutory timelines in development assessment and approval processes and believes that any perverse incentives that they create can be limited through good design.

Jurisdictions could utilise statutory umbrella timeframes before all elements of the best practice model is implemented. For example, the implementation of statutory umbrella timeframes could be put into effect before strategic plans, the lead agency framework and compliance measures are implemented.

Avoiding institutional conflicts: In some jurisdictions, environmental agencies perform both environmental protection and nature conservation roles. These dual roles represent a conflict for environmental agencies when assessing the merits of a proposed development.

Environmental protection is a different concept from nature conservation. The two are in fact competing concepts that are not compatible. Environmental protection is about allowing development to be undertaken in a manner that takes reasonable steps to protect the environment. Nature conservation, on the other hand, is about conserving biological diversity and ecological integrity and is about not having development in areas that are set aside for conservation.

Because these are competing concepts, it places environmental officers in a challenging position when discharging statutory duties⁵² in terms of whether an agency is assessing a development with a view to protecting the environment or for nature conservation.

Governments should retain the institutional roles of nature conservation and environmental assessment, but locate them in separate agencies to avoid conflicts of interest.

⁵² For example, section 4A of the *Environmental Protection Act 1986 (WA)*, refers to the principles of ecological sustainable development which includes that 'Conservation of biological diversity and ecological integrity should be a fundamental consideration'.

Assessment teams: Industry-based assessment teams should be implemented so that agencies develop industry sector knowledge and skills (e.g. mining, transport infrastructure) and have a better understanding of how best to assess major projects. Where there are multiple major projects proposed, agencies should assess the need to second staff from other agencies or contract-in skills to enable timely integrated assessments. This may have a budgetary impact and so, agencies are best placed to identify and plan for these impacts. Establishment of a lead agency will alert assessment agencies to projects coming down the pipeline, and allow for upfront assessment of the required resourcing and skills based on the scale and potential level of risk.

Assessment body and determinations: The assessment body differs among jurisdictions and can be effectively conducted by a planning agency or an independent body. The final approval decision, however, should be undertaken by the relevant minister because these projects are of state significance, and to allow for proper political accountability.

5. Project approval

One single, integrated approval: Major projects approval should be subject to a single, integrated approval, encompassing all current secondary approvals, similar to the approach for major transport projects in Victoria.

After an approval has been granted, sometimes proponents seek to modify projects. This can be due to fluctuating economic conditions, requiring different staging or modifications to accommodate changes to the expected rate of return on investment or other genuine changes in circumstance. Efficient processes are needed to accommodate project modifications. Within the new performance and risk-based framework, the use of standardised conditions mean that project modifications should follow a more certain and predictable process. Since extensive participation by the community will have occurred upfront at the strategic plan stage, timeframes for public consultation should be reduced to 14 days and supported by targeted consultation.

Conditions: Conditions should be categorised based on key issues, like air, noise and water, with a clear assignment of primary accountability to one agency. Clearly identifying the primary agency responsible for safety, environmental management and public consultation will eliminate overlapping or duplicative conditions and reporting requirements.

Review of decisions: Unnecessary costs or delays in the judicial review of approvals should be avoided as they add significant costs to investment. In determining the scope of standing for judicial review, the legitimate objectives of government accountability and community participation should be balanced with the need to avoid creating opportunities for legitimate processes to be frustrated.

As found by the Productivity Commission, judicial review should be the appeal mechanism for approval decisions, not merits review:

Allowing merits review of ministerial primary approval decisions would allow the decisions of an elected official to be challenged by an unelected body, potentially undermining parliamentary accountability. (The same argument applies to decisions that have been

ratified by Parliament.) However, ensuring the legality of, and public confidence in, the decision-making process is important and hence judicial review should be allowed.⁵³

The Commission concluded that 'judicial review is appropriate for major project primary approval decisions where a Minister is the decision maker.'

A number of elements of the model improve community participation and safeguard environmental standards in major projects processes, further lessening the need for merits review, including:

- increased early and ongoing community participation
- the use of strategic plans to establish land use settings for future development
- standardised risk and performance based guidance
- approved published environmental approval requirements
- publicly available baseline environmental and heritage data; and
- accountability for Ministerial decisions to parliament and the electorate.

In relation to judicial review, standing should be limited to proponents and persons directly affected by a project. Under common law a person is required to have a 'special interest' to be granted standing, not 'merely intellectual or emotional concern' in a matter (*ACF v Commonwealth* 1980). This is to prevent frivolous or vexatious appeals of ministerial decisions.

6. Compliance and enforcement

Compliance and enforcement: Compliance with conditions is based on the achievement of outcomes and not process. Results of compliance and enforcement actions should be made publicly available as should all project reporting required by conditions of approval. Clear enforcement accountability should be assigned to responsible agencies/regulators.

7. Planning system performance monitoring

Planning system performance: All jurisdictions should provide performance reporting on the achievement of key regulatory milestones by the assessment agency and referral agencies. Milestones should commence with pre-application consultation through to the issue of a major project approval. This approach represents all the fundamental regulatory and administrative milestones undertaken by assessment agencies. This information will be crucial to better manage major project planning systems and identify areas needing improvement.

Summary

The key phases and steps involved in the best practice model are outlined in more detail on the next pages.

⁵³. Productivity Commission, *Major project development assessment processes*, PC, Melbourne, December 2013, p. 263.



Table 2: Phase 1 – Pre-assessment and application (5–8 months)

Major step	Time	Description
Pre-application community consultation	4 weeks	<ul style="list-style-type: none"> - Early community consultation to identify community issues and environmental risks. - Provide a mechanism to establish early ongoing communication and consultation with local communities.
Pre-application consultation	2 weeks	<ul style="list-style-type: none"> - Structured pre-application advice and guidance with referral agency advice at pre-application meeting. - Planning agency provides written confirmation of risk- and performance-based advice 5 days after meeting.
Major project eligibility	Automatic	<ul style="list-style-type: none"> - Specific criteria based on industry type and threshold capital value. - Ministerial call in powers available (e.g. to accommodate emerging industry) based on published criteria.
Application	Determined by proponent	<ul style="list-style-type: none"> - Application statement contains, for example: <ul style="list-style-type: none"> ▪ Performance outcomes, functional components, urban form, outline of project staging and delivery ▪ Alignment with strategic plan – such as land use permissibility or land use principles. - Statement of high-level risks and fundamental benefits (e.g. contribution to exports, jobs, etc.).
Terms of Reference Request for information	2 weeks	<ul style="list-style-type: none"> - Standardised performance, risk-based terms of reference. No consultation required because upfront standard terms of reference are established. - Request for information forms part of the terms of reference issued to proponent. - Terms of reference are published on a web based portal.
Preparation of risk-based EIS	Determined by proponent (say 3–6 months)	<ul style="list-style-type: none"> - Performance, risk-based EIS with mitigation measures. - Only the proponent can stop-the-clock. - EIS consultant certifies compliance with terms of reference. - Agency review of EIS before exhibition based on compliance with terms of reference only. - If EIS is inconsistent with terms of reference, application is withdrawn.



Table 3: Phase 2 – Assessment and approval (4 months)

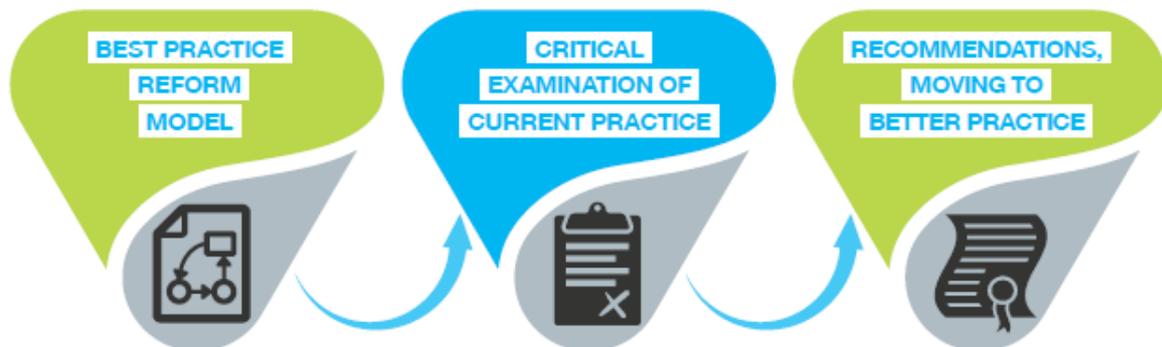
Major step	Time	Description
CLOCK STARTS – 17 week period commences		
EIS exhibition	Maximum 6 weeks	<ul style="list-style-type: none"> - EIS is published on a web based portal. - Community consultation. - Request for advice per legislative roles and timeframes.
Referral agency advice	3 weeks (within exhibition period)	
Assessment of EIS	Maximum 8 weeks	<ul style="list-style-type: none"> - Proponent prepares a submission report answering issues raised by submissions. - EIS may be assessed by a planning agency or by an independent body such as a Planning Commission or Environment Protection Authority.
Approval	3 weeks	<ul style="list-style-type: none"> - Minister determines project. - Decision, reasons for decision, assessment reports and studies are published on a web based portal.
Conditions of Approval		<ul style="list-style-type: none"> - Standardised performance, risk based conditions based on industry sectors. - For major public infrastructure requirements, the conditions are Ministerial project requirements that are enforceable.
CLOCK STOPS – Maximum 17-week period concludes		



Table 4: Phase 3 – Post approval (ongoing)

Major Step	Timeframe	Description
Performance reporting	Annually and where a breach of a condition has been identified	<ul style="list-style-type: none"> - Proponent undertakes performance monitoring and provides publicly available reporting (available on a web based portal).
Compliance & Enforcement	Determined by conditions	<ul style="list-style-type: none"> - Conditions make it clear agency responsibility for compliance (through separate schedules). - Compliance and enforcement actions available on a web based portal.
Appeals	6 months	<ul style="list-style-type: none"> - Judicial review as primary appeal mechanism - Judicial review standing limited to proponents and persons directly affected.

3. THE STATE OF AUSTRALIAN PLANNING SYSTEMS COMPARED TO THE BEST PRACTICE MODEL



Introduction

Major project planning approval processes differ by jurisdiction and all fall short of best practice. They are complex, often unclear, incur unnecessary cost and delay, do not encourage best practice community participation and inhibit the development of the pipeline of major projects that Australia needs.

Specifically, they are characterised by:

- uncertain land use permissibility
- limited community participation with nearly all participation occurring at a stage too late in the assessment process
- limited public access to baseline environmental data and information
- inconsistent planning process steps and requirements between jurisdictions
- subjective procedures to determine major project eligibility and environmental requirements
- poor guidance and negligible methodologies to assess upfront environmental risks
- long and uncertain timeframes
- high costs in meeting unexpected and overlapping environmental requirements (both in the assessment phase and in conditions of approval)
- limited customer-focused services for businesses and stakeholders; and
- patchy major project performance reporting.

Over the last decade, state and territory governments have embarked upon a range of significant planning system reforms to meet the demands from changing economic, social and environmental conditions.

There is still more to be done. While there are instances of best practice, no state or territory's planning regime comprehensively follows the leading practices set out in the model.

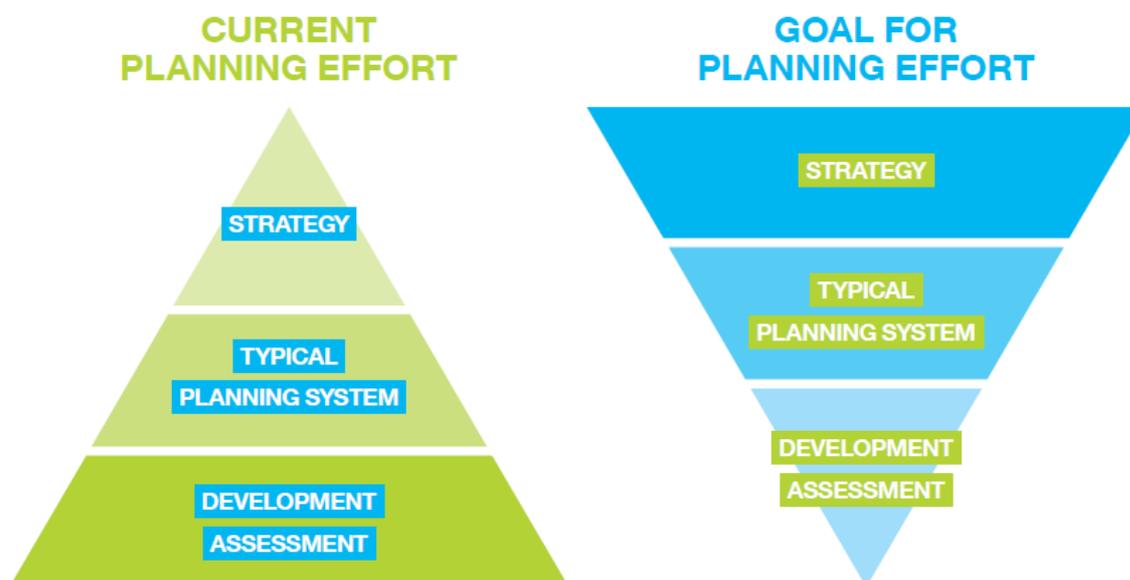
And while jurisdictions have comparable planning systems and processes, but each differs in the way they are implemented, leading to subtle but important differences in the

way the community and business respond. **Annexure A** contains more detail on jurisdictional planning systems.

Recent developments in jurisdictions' reform of planning systems

Greater emphasis on strategic planning: Planning reforms have seen a change in emphasis towards upfront strategic planning coupled with strong public consultation. This change in emphasis and planning effort paves the way for greater certainty and predictability for future planning assessment decisions for new major developments, as well as low-risk developments (e.g. new single dwellings).

Figure 3: Changing the focus of planning effort⁵⁴



However, this change in approach at the strategic planning level is largely geared towards settlement planning to meet the demand for much needed new housing supply and supporting economic and social infrastructure. While the priority towards delivering new housing is commended and needed, these reforms have yet to extend to other types of major developments that support economic growth, productivity and competitiveness.

Moreover, strategic plans do not necessarily include feasibility assessments that assess the market's ability to deliver future development.

The Business Council supports the shift in emphasis to strategic planning and has made it an integral part of the best practice model.

New assessment models for major projects: Some state and territory governments are making progress to reform application and assessment processes, including pursuing elements of the best practice model put forward in Chapter 2. Some examples include:

⁵⁴ Productivity Commission, *Major project development assessment processes*, PC, Melbourne, December 2013, p. 345.

- In Queensland, the Coordinator General has published generic guidelines for environmental impact statements (EIS) and EIS standard terms of reference.⁵⁵ The purpose of this guidance is to reduce the time taken for referral agency input, and encourage proponents to prioritise the assessment of critical matters.
- In NSW, the government has introduced sector-based standard conditions of approval for state significant development⁵⁶ to provide transparency and to streamline requirements. Some jurisdictions have put in place integrated assessment processes such as in NSW, South Australia and Tasmania to streamline referral agency requirements.
- In Victoria, there is a single assessment and approval for major transport projects and a similar approach applies to Tasmanian state significant projects.

Annexure A provides further detail on the recent reforms that are being implemented.

National partnership agreement to deliver a seamless national economy: In 2008, COAG agreed to a range of deregulation priorities which included development assessment processes. These reforms included: the rollout of electronic development assessment processing nationally; a system of national performance monitoring for the development assessment system; accelerated use of 'code assessment'; and establishing a set of supporting national planning system principles.

The Productivity Commission estimated that the implementation of the reforms would have economic benefits estimated at around \$350 million per year (2010-11 dollars). However, the Commission indicated that full realisation of the cost-saving benefits was dependent on coordinated and sustained action across jurisdictions.⁵⁷ While some aspects of the reforms have been adopted by some jurisdictions, there is still progress to be made to fully implement them.

Capital city strategic planning systems: In 2009, COAG agreed to nine criteria for capital city strategic planning systems.⁵⁸ An Expert Panel was established to evaluate capital city plans against these criteria. It determined that all jurisdictions were making significant progress to achieve consistency, but that no planning system was wholly consistent with the criteria.⁵⁹ Areas highlighted by the Panel included:

- system performance measures – while jurisdictions such as Western Australia and South Australia have implemented annual performance report cards, planning system performance monitoring is needed to provide a sound framework for evidence-based policy interventions; and
- economic viability of plans – to ensure markets are capable of delivering upon the major development contemplated in the plans.

Bilateral agreements: The Commonwealth is able to accredit state and territory environmental assessment processes for the purposes of meeting assessment

⁵⁵ Government of Queensland, *Draft terms of reference for an environmental impact statement*, Coordinator General, Brisbane, July 2013. Accessed 22 November 2016 <http://www.dsdip.qld.gov.au/resources/guideline/cg/tor-generic-resource-projects.pdf>

⁵⁶ Refer to NSW Department of Planning and Infrastructure website, accessed 22 November 2016 <http://www.planning.nsw.gov.au/en-au/developmentproposals/standardandmodelconditions.aspx>

⁵⁷ Commonwealth Government, *Impacts of COAG reforms: business regulation and VET*, Productivity Commission Research Report, Volume 2, Business Regulation, April 2012.

⁵⁸ Council of Australian Governments, *Communique*, Brisbane, 7 December 2009.

⁵⁹ COAG Reform Council, *Review of capital city strategic planning systems*, report to the Council of Australian Governments, 23 December 2011.

requirements under the *Environment Protection and Biodiversity Conservation Act 1999* through bilateral agreements, and has introduced legislation to allow similar accreditation for approvals. Bilateral assessment agreements have been signed with all jurisdictions and bilateral approval agreements are in train. This is supported by Commonwealth guidance to improve the quality of condition setting.

This has been strongly supported by the Business Council, on the basis that it reduces duplication without compromising environmental outcomes.

State and territory planning systems should be as efficient as possible to maximise the benefits of the One-Stop Shop.

Elements of the best practice model already in place

Significant reform initiatives are underway in Western Australia, Queensland, NSW and South Australia. Progress has been made in Western Australia, the Northern Territory and Queensland to improve the performance of assessing and determining major projects. In NSW, the proposed introduction of Public Priority Infrastructure will lead to upfront planning approval, provided the project is identified in a strategic plan.

Based on the above review of state and territory major project planning systems, best practice features include:

- lead agency coordination or case management (WA, QLD, SA, NT for oil and gas projects, NSW Strategic Energy Projects and critical State Significant Infrastructure projects), with appropriate legislative support to allow coordination agencies to force referral and concurrence agencies to respond to assessment requirements (QLD)
- objective eligibility criteria for major projects (NSW & NT for referral criteria) and ministerial call in powers based on objective criteria (NSW)
- formalised pre-application meetings with advice from planning and environmental agencies (NT and QLD)
- economic impact assessment (NT) and social impact assessment guidance (NT & QLD)
- generic risk-based environmental assessment guidance (QLD & WA)
- risk-based assessment reports for major projects (SA)
- standardised terms of reference and conditions of approval (QLD & NSW)
- standardised design codes for infrastructure to allow for fast-track approvals (proposed for QLD & SA)
- reform measures to introduce a separate planning pathway for major infrastructure projects and resources projects (SA); and
- single approval (VIC major transport projects) or integrated approvals (NSW, TAS & SA).

Remaining differences and gaps with the best practice model

Key differences and gaps include:

- limited integration of major industry sectors that drive employment growth in strategic plans or land supply strategies
- limited use of upfront strategic assessments integrated into strategic plans (undertaken in QLD, NSW and ACT)
- effective processes to assess land use conflicts or strategic merit for resources projects preceding assessment. In Queensland, this is an approval process conducted by a local council or the state government
- declaration of a project of state significance requires approval from both houses of the Tasmanian Parliament
- partial implementation of online development application and tracking systems
- limited upfront criteria to determine eligibility for major project declaration
- the number of times information can be requested can either be limited or indeterminate
- limited guidance for community and Indigenous consultation
- limited guidance for risk-based environmental assessment – guidance can either be sector based (NSW & NT) or generic (WA)
- major Victorian transport project approvals includes approvals under a number of Acts including planning, national park and coastal legislation, Tasmanian state significant project approvals are integrated and may exclude other approvals, and NSW state significant infrastructure project approvals means there are some secondary approvals that cannot be refused by agencies
- state significant projects in Tasmania are to be approved by parliament (and two stages of consultation is needed), and in the ACT and South Australia (crown developments) they are tabled in parliament where there are objections
- some jurisdictions integrate conditions of approval in secondary approvals (QLD & NSW)
- partial rollout of ePlanning systems
- limited planning system performance reporting (available in NSW, VIC, ACT, WA & QLD); and
- there are few jurisdictions that provide assurance mechanisms to ensure major project planning policies and processes are operating effectively or efficiently.

Elements already in place, and key differences and gaps, are summarised on the next page in **Table 5**.

We have assessed the jurisdiction's systems against the best practice model recommendations based on available information. If COAG agrees to reform major projects it should start with a fully informed assessment of state and territory performance as the basis for a reform agenda.

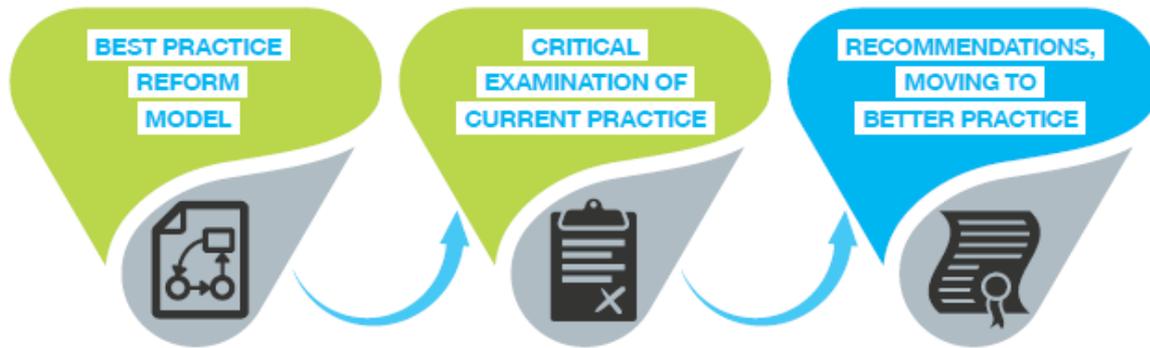
Table 5: Summary of state and territory planning systems against the best practice model

ELEMENT	BEST PRACTICE MODEL RECOMMENDATIONS	QLD	NSW	ACT	VIC	TAS	SA	WA	NT
1	STRATEGIC PLANS								
2	LEAD AGENCY FRAMEWORK								
3	PROJECT APPLICATION								
4	PROJECT ASSESSMENT								
5	PROJECT APPROVAL								
6	COMPLIANCE AND ENFORCEMENT								
7	PLANNING SYSTEM PERFORMANCE MONITORING								

SUBSTANTIALLY ALIGNS WITH BEST PRACTICE
 PARTIALLY ALIGNS WITH BEST PRACTICE
 REQUIRES FURTHER REFORM

Overall, while the major regulatory steps for development assessment are common, there are critical areas of variability and uncertainty among the jurisdictions – and all contribute to costs and delay, and undermine community confidence in the systems for major projects. These areas of variability and uncertainty indicate that there is scope for improvement to ensure that the nation provides the most attractive and competitive place for business investment, while maintaining strong regulatory processes that promote public consultation and protect the community and environment.

4. RECOMMENDED REFORMS



Implementation of the single approval requires a range of common and unique changes to policy and legal settings.

The following recommendations are drawn from the analysis in the preceding chapters of current practice by jurisdictions against the best practice model. The recommendations are designed to bring each jurisdiction's planning system into line with the best practice model set out in Chapter 2.

Recommendations

All jurisdictions are encouraged to implement the best practice model by making these changes to their planning systems.

1. Strategic planning

- 1.1 Jurisdictions should adopt the use of **strategic planning** with the following features:
 - i. strategic identification of what development is allowed to occur, where it can occur and under what conditions, in key areas
 - ii. high-quality upfront participation by the community, including businesses
 - iii. evidence-based strategic assessment to reduce land use conflicts and identify regional environmental targets
 - iv. geoscience information and identification of locations to be avoided or available for potential exploration and production
 - v. identification of existing resources, industrial and infrastructure developments and acknowledgements that they are existing uses and may be subject to future development to meet market demand
 - vi. preservation and prioritisation of existing and reserve future infrastructure corridors essential for future economic and residential developments
 - vii. a clear reduction in the regulatory burden experienced by project applicants who submit applications that are aligned with a strategic plan.

- 1.2 Jurisdictions should ensure **regional plans** reflect strategic plans, and introduce statutory mechanisms to ensure strategic plans are adopted in local land use plans.

2. Lead agency framework

- 2.1 Jurisdictions should introduce a comprehensive program for improving the delivery of planning services based around a **lead agency framework**. This should include:
 - i. The establishment or designation of a lead agency reporting to the first Minister or Cabinet subcommittee.
 - ii. Coordination of application assessment across government (including case management services) and oversight of the dedicated major projects assessment track. The planning agency or department can continue to have primary responsibility for project assessment.
 - iii. Investment attraction initiatives.
 - iv. Major project inventories.
 - v. Structured pre-application consultation.
- 2.2 Jurisdictions should develop a **dedicated assessment track** for major projects, with objective eligibility criteria based on capital value and industry type.
- 2.3 Jurisdictions should legislate a maximum **umbrella timeframe** that covers pre-application, application, assessment and approval phases of the dedicated assessment track. Jurisdictions should abolish stop-the-clock provisions (except by proponents) and referrals and concurrences to improve coordination and accountability within government.

3. Project application

- 3.1 Proponents with eligible projects are required to submit a **single application**.
- 3.2 Jurisdictions should utilise **standardised** terms of reference, EIS guidance and conditions of approval. These should be specific to each industry sector and key issues such as air, noise and water impacts.
- 3.3 Jurisdictions should require **objective and performance-based** assessment of the risks to the environment or community that may arise from the project.
- 3.4 Jurisdictions should **publish** online environmental requirements, baseline environmental and heritage data, online planning application and tracking system (as previously agreed at COAG).
- 3.5 Jurisdictions should improve the flexibility of **environmental impact statements** (EISs) to ensure they are relevant over the life of a major project.

- 3.6 Jurisdictions should develop **codes of conduct** for specialists and consultants who assist with preparing EISs to encourage high levels of performance and ethical behaviours.
- 3.7 Jurisdictions should institute or ensure guidelines for public consultation contain clear **engagement** principles and key performance indicators for consultation.

4. Project assessment

- 4.1 **Industry-based assessment teams** should be implemented so that agencies develop industry sector knowledge and skills (e.g. mining, transport infrastructure) and have a better understanding of how best to assess major projects.
- 4.2 Jurisdictions should **improve governance** by separating institutional roles that are located in single agencies and present conflicts of interest.

5. Project approval

- 5.1 Jurisdictions should ensure there is only **one approval** required, and ministers have final accountability for planning approvals. Secondary approvals should be incorporated into the primary approval.
- 5.2 **Conditions of approval** should be drawn from the standardised set of conditions applying to industry sectors and key issues and targeted to address specific issues identified in the strategic assessment and project assessment.
- 5.3 Jurisdictions should continue **publishing reasons** for planning decisions, along with submissions and supporting assessments.
- 5.4 Jurisdictions should amend provisions on **legal standing** so that judicial review is the primary appeal mechanism. Standing should be available to project proponents and those directly impacted by the decision.

6. Compliance and enforcement

- 6.1 Jurisdictions should complete the implementation of **online** compliance and reporting systems (previously agreed at COAG).

7. Planning system performance monitoring

- 7.1 Jurisdictions should implement reporting frameworks for **monitoring and performance** of agencies involved in the planning process. Key performance indicators should be produced for approval times and adherence to best practice. Every agency involved in any part of assessments and approvals should be part of this reporting framework.

The reform of state and territory planning systems should be complemented by the completion of the one-stop shop reforms under the *Environment Protection and Biodiversity Conservation Act 1999*. The Commonwealth, state and territory governments should sign and implement bilateral approval agreements so that the Commonwealth fully delegates assessment and approval for projects under the Act and EPBC approval can form part of a single project approval.

Annexure A – Recent reform activity

Over the past two years, most jurisdictions have either implemented significant changes to their planning approval legislation or have commenced a comprehensive review of their planning approval framework. The changes that have been proposed and implemented are a positive sign and demonstrate how important planning and approval policy reform is to drive economic activity.

The Business Council supports these attempts to streamline and simplify the process that need to be followed by proponents of major projects. Furthermore, jurisdictions that now provide online maps that list current major projects should be commended for providing such a useful resource.

However, while each jurisdiction has moved closer towards best practice there is still further work to do and, in some instances, significant room for improvement.

For example, while some jurisdictions are using a lead agency framework, there are still insufficient investment attraction initiatives in operation and too few avenues for pre-application consultation. Furthermore, few jurisdictions have made much progress towards developing a streamlined single application, assessment and approval framework for major projects.

A brief summary of recent reform initiatives that have been undertaken across all eight of Australia's jurisdictions is provided below.

New South Wales

Primary legislation: Environmental Planning and Assessment Act 1979 (EP&A Act)

Portfolio agency: Department of Planning and Environment

Planning authority: NSW Planning Assessment Commission (PAC)

Recently, a new Part 3B was introduced into the Environmental Planning and Assessment Act 1979, which establishes a new hierarchy of strategic plans for NSW as follows:

- regional plans
- district plans
- local environmental plans.

In 2016, the government flagged its intention to bring forward an exposure draft Bill with further changes to the EP&A Act, with a focus on the following areas:

- consolidating community consultation provisions
- requiring decision-makers to give reasons for their decisions
- clearly defining the various development pathways and consent authorities under the Act
- clarifying and streamlining the environmental assessment provisions, including by incorporating state significant infrastructure

- reviews and appeals: consolidating provisions into a single new part of the Act.

Queensland

Primary legislation: Sustainable Planning Act 2009 (in the process of being replaced by Planning Act 2016)

Portfolio agency: Department of State Development

Planning authority: Department of Infrastructure, Local Government and Planning

The *Sustainable Planning Act 2009* (SPA) is the principal legislation for Queensland's planning and development system. On 26 May 2016, new planning legislation for Queensland was passed. The new planning legislation will commence in mid-2017, following a (minimum) 12-month transition process. The reforms are designed to:

- provide more certainty in development decision-making to create investment and jobs through clear and unambiguous code provisions
- promote innovation over administration with the Act half the size of the current legislation (around 300 pages vs 700 pages)
- provide a simpler development assessment process, which will translate into more jobs on the ground
- reduce red tape in the development application process, through a significant reduction in required forms
- retain the role of the State Assessment Referral Agency to provide a one-stop shop for state approvals for development decisions.

Victoria

Primary legislation: Major Transport Projects Facilitation Act 2009

Portfolio agency: Department of Environment, Land, Water and Planning

Planning authority: Victorian Planning Authority

The **Major Transport Projects Facilitation Act 2009** came into operation in November 2009. The Department of Environment, Land, Water and Planning administers the integrated assessment and approvals processes under the Act on behalf of the Minister for Planning. The Act aims to create a 'one-stop shop' for assessment, approvals and delivery of major transport projects in Victoria.

The Victorian Government has introduced zoning reforms to simplify requirements for development proposals and to better manage new growth. By clarifying the purpose of the zones, some low-risk commercial, industrial and agricultural developments no longer require planning permits. The reforms also allow for more mixed use developments and allow for identifying what areas can be protected or what will be available for residential or employment growth.⁶⁰

⁶⁰ Refer to the Department of Transport, Planning and Local Infrastructure website. Accessed on 27 January 2015 at <http://www.dtpli.vic.gov.au/planning/about-planning/improving-the-system/reformed-zones-for-victoria#fact>

South Australia

Primary legislation: Development Act 1993

Portfolio agency: Department of Planning, Transport and Infrastructure

Planning authority: State Planning Commission

The *Planning, Development and Infrastructure Act 2016* provides for the establishment of the new South Australian Planning Commission, the Community Engagement Charter, new statutory instruments (including State Planning Policies, Regional Plans and the Planning and Design Code), new assessment pathways and a professional accreditation system.

The reforms will lead to the creation of a new 'State Planning Commission' reporting to the minister with responsibilities including provision of independent policy advice to government, guidance to councils and professionals and coordination of planning with infrastructure delivery. The commission will also serve as an assessment authority for prescribed classes of development applications. Performance monitoring will be a key feature of the new planning system and is vital to ensure that the system is operating efficiently.

A five-year implementation program will be used to bring the *Planning, Development and Infrastructure Act 2016* into operation in stages.

Western Australia

Primary legislation: Planning and Development Act 2005

Portfolio agency: Department of Planning

Planning authority: Western Australia Planning Commission

Western Australia has established practices for developing strategic plans. In 2014, the government released the State Planning Strategy 2050. The strategy is intended to be the lead strategic planning document to drive integrated planning and support future land use planning and development decisions. It covers challenges and key directions to 2050 for economic development, infrastructure, land availability and settlement planning, the environment, tourism, and agriculture and food. This strategy has the longest horizon period of any jurisdiction.

Northern Territory

Primary legislation: Planning Act

Portfolio agency: Department of Lands, Planning and the Environment

Planning authority: Development Consent Authority

In 2014, Dr Allan Hawke AC was asked to review the Northern Territory's environmental assessment and approval processes. Many of the proposed reforms that were recommended by Dr Hawke align closely with the best practice model recommended by

the Business Council. In August 2016, the newly elected Northern Territory Government commenced further consultation on the reforms proposed by Dr Hawke.

In January 2016, the Major Projects Approval Agency was opened in Darwin. This one-stop shop provides a single point of entry for major project proponents seeking information and assistance with regulatory approvals.

Australian Capital Territory

Primary legislation: Planning and Development Act 2007

Portfolio agency: Environment, Planning and Sustainable Development Directorate

Planning authority: Environment, Planning and Sustainable Development Directorate

Under the Planning and Development Act 2007, the Minister for Planning may set out the main principles that are to govern planning and land development in the ACT through the Statement of Planning Intent. The most recent Statement of Planning Intent was released in 2015.

Invest Canberra is the ACT's investment promotion and facilitation service, whose services include:

- providing information on local regulations and business costs
- assisting the investment process and cutting through red tape.

Tasmania

Primary legislation: State Policies or Projects Act 1993 (state significant projects), and Land Use Planning and Approvals Act 1993 (regional significant projects)

Portfolio agency: Department of Premier and Cabinet

Planning authority: Tasmanian Planning Commission

Amendments to the **Land Use Planning and Approvals Act 1993** commenced in December 2015, which provided for the introduction of the Tasmanian Planning Scheme. This scheme consist of two parts:

- State Planning Provisions (SPPs): The SPPs include 22 generic zones which indicate what land use and development is appropriate for each zone such as residential, business, agriculture, utilities, environmental and recreational uses.
- Local Provisions Schedules (LPSs): The LSPs contain the zone and overlay maps and lists that apply the SPPs and identify special and unique areas for each council area.

The Tasmanian Government is currently developing a suite of new state planning policies to be called Tasmanian Planning Policies. These will provide strategic direction for Tasmania's planning system, in consultation with local government, stakeholders and the community.

Statewide planning and development information can now be found on a new innovative website (www.iplan.tas.gov.au).

The Office of the Coordinator-General is Tasmania's investment promotion and facilitation service. Relevant functions include targeting potential investors; identifying particular investment opportunities and communicating these; and general promotion of Tasmania as an attractive investment location.

GLOSSARY

Buffer zone	An area of land set aside to provide distance between different land uses.
Code assessment	A development assessment track for proposed developments that are consistent with strategic plans and development codes. Such developments have a streamlined assessment against the corresponding development code.
Concurrence	An agreement that needs to be obtained from a state or territory agency before a decision maker can determine a major project application.
Conditions of approval	The conditions by which an approved major project can proceed.
Environmental Impact Statement	Environmental impact assessment documentation.
Environmental targets	Specific and measurable targets used to protect the environment.
ePlanning	Electronic processes to deliver planning and development services.
Evidence based planning	The use of the latest available evidence to analyse and develop strategic plans.
Existing use	A land use that is lawfully approved or commenced but subsequently becomes a prohibited land use under a new or amended local land use plan.
Floor space ratio	A formula that sets the maximum amount of building floor space for an individual site.
Greenfield development	An area of undeveloped land that is set aside for urban or industrial development.
Infrastructure corridor	A linear area of land set aside for a major infrastructure project. This can include freight or passenger transport infrastructure or energy transmission infrastructure.
Land use	A description of the primary use of land. This can include residential, industrial or commercial land uses.
Local Land Use Plan	A legal planning document that sets aside permitted land uses, otherwise known as zones.
Merit assessment	A qualitative and quantitative assessment of the positive and negative impacts of major project developments.
Performance based planning	The planning system regulatory framework that is based on the achievement of objectives/outcomes.
Permissible	A permissible or permitted land use.
Referral	A requirement for a decision-maker to seek and consider advice provided by a state or territory agency.

Secondary approval	An approval or licence subsequent to a major project approval. This may include a Mining Lease or a Pollution Licence.
Strategic assessment	A wider evidence-based assessment of the impacts of proposed land uses and development options proposed within a strategic plan.
Terms of Reference	The form and content requirements that underpin the preparation of EIS documentation.
Zone	An area of land having a particular land use that is subject to particular restrictions.

BUSINESS COUNCIL OF AUSTRALIA

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