

BENCHMARKING PROGRAM

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1. Introduction

The launch of the Leading Practice Model by the Development Assessment Forum (DAF) in March 2005 was a key step in guiding jurisdictions to develop efficient, effective and nationally harmonised development assessment systems.

However, it was also recognised at that time that further work was required to strengthen elements of the leading practice model and achieve the desired reforms.

Since then a considerable amount of work has gone into the DAF Benchmarking Program to benchmark key components of the planning and development system within participating jurisdictions to identify leading practice principles and options for improvement.

The benefits of this work are already being experienced, with the information gathered helping to drive aspects of recent planning reforms in a range of jurisdictions.

It is anticipated that this information – with further review and consideration in the future – will continue to influence ongoing reform to shape development assessment systems that meet the needs of the Australian community and economy.

2. History of the Leading Practice Model

In 1996, the Small Business Deregulation Task Force, chaired by Charlie Bell, released a report entitled *Time for Business*. This report recommended (Recommendation 29):

That the three spheres of government develop a reform strategy for referral and concurrence procedures in the building and development industry by 1 July 1997. The strategy should include a system for resolving problems between government agencies and ensuring the delegation of decision making to the lowest level practicable taking into account the scale of development.

Prime Minister John Howard endorsed these findings in his response to the report, *More Time for Business*.

The Development Assessment Forum (DAF) was established in 1998 to respond to Recommendation 29. It brought the three spheres of government together with industry and professional associations to examine ways to speed up assessment and cut red tape, without sacrificing the quality of the decision-making or development outcomes.

DAF membership includes:

- Housing Industry Association
- Property Council of Australia
- Master Builders Australia
- Building Designers Association of Australia Ltd
- Australian Council of Building Design Professions Ltd
- Royal Australian Institute of Architects
- Engineers Institute of Australia
- Planning Institute of Australia
- State and Territory Planning Departments
- State and Territory Local Government Associations
- Australian Local Government Association Commonwealth.

In September 1999, DAF released its *Principles of Leading Practice in Development Assessment*. This work identified the features DAF considered to be essential for a world class development assessment system.

Development of the model

DAF then commissioned the report *Draft Leading Practice Model for Development Assessment* from the Centre for Developing Cities (CDC) at the University of Canberra.

This report examined existing systems in Australia, New Zealand and Singapore and proposed a leading practice model that aimed to deliver greater consistency, simplicity and economic benefit to stakeholders. Each element of the development assessment process was considered, ranging from pre-lodgement processes to appeals and system improvements.

At a Local Government and Planning Ministers' Council (LGPMC) meeting in February 2004, Ministers and the Australian Local Government Association agreed to facilitate a nation-wide consultation program with key stakeholders to test the CDC model.

Consultation

Socom Pty Ltd commenced consultation in April 2004.

Stakeholders from state, territory and local government, industry, and the community were brought together to discuss relevant issues in a series of information sessions and facilitated workshops held in all the capital cities. Interested parties were also encouraged to make written submissions and complete an online survey.

Over 12 weeks of consultation, more than 580 individuals from over 400 organisations contributed to the debate on the draft model, including 58 written submissions. All participants agreed that improvement to our development assessment systems was both possible and necessary.

DAF considered the submissions, findings and recommendations from the consultation process in developing its proposed leading practice model for development assessment, which can be applied to all jurisdictions in Australia.

The Leading Practice Model was released in March 2005.

3. The DAF Leading Practice Model

The leading practice model is simple and logical. It proposes:

- Ten leading practices that a development assessment system should exhibit. These practices articulate ways in which a system can demonstrate that it is efficient and fit for purpose.
- Six 'tracks' that apply the ten leading practices to a range of assessment processes. The tracks are designed to ensure that, at the time it is made, an application is streamed into the most appropriate assessment pathway.

Under the Leading Practice Model, the ten leading practices proposed by DAF are:

1. Effective policy development

Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.

2. Objective rules and tests

Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.

3. Built-in improvement mechanisms

Each jurisdiction should systematically and actively review its policies and objective rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.

4. Track-based assessment

Development applications should be streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track is standard.

Adoption of any track is optional in any jurisdiction, but it should remain consistent with the model if used.

5. A single point of assessment

Only one body should assess an application, using consistent policy and objective rules and tests.

Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give directions where this avoids the need for a separate approval process.

Referral agencies should specify their requirements in advance and comply with clear response times.

6. Notification

Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.

7. Private sector involvement

Private sector experts should have a role in development assessment, particularly in:

- Undertaking pre-lodgement certification of applications to improve the quality of applications.
- Providing expert advice to applicants and decision makers.
- Certifying compliance where the objective rules and tests are clear and essentially technical.
- Making decisions under delegation.

8. Professional determination for most applications

Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either:

Option A – Local government may delegate DA determination power while retaining the ability to call-in any application for determination by council.

Option B – An expert panel determines the application.

Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.

9. Application appeals

An applicant should be able to seek a review of a discretionary decision.

A review of a decision should only be against the same policies and objective rules and tests as the first assessment.

10. Third-party appeals

Opportunities for third-party appeals should not be provided where applications are wholly assessed against objective rules and tests.

Opportunities for third-party appeals may be provided in limited other cases.

Where provided, a review of a decision should only be against the same policies and objective rules and tests as the first assessment.

The six development assessment tracks proposed by DAF are:

- Exempt
- Prohibited
- Self assess
- Code assess
- Merit assess
- Impact assess.

Each track will be consistent with the ten leading practices and provide a process of assessment that is relevant to the project's complexity and impact on the built and natural environments. The track in which an application is to be assessed must be clear before an application is submitted.

Development applications should be streamed into an assessment track that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content of each track is standard. Adoption of any track is optional in any jurisdiction, but it should remain consistent with the model if used.

Track 1 – Exempt

Development that has a low impact beyond the site and does not affect the achievement of any policy objective should not require development assessment.

Track 2 – Prohibited

Development that is not appropriate in specific locations should be clearly identified as prohibited in the ordinance or regulatory instrument so that both applicants and consent authorities do not waste time or effort on proposals that will not be approved.

Track 3 – Self assess

Where a proposed development can be assessed against clearly articulated quantitative criteria and it is always true that consent will be given if the criteria are met, self assessment by the applicant can provide an efficient assessment method.

Track 4 – Code assess

Development assessed in this track would be considered against objective criteria and performance standards. Such applications would be of a more complex nature than for the self assess track, but still essentially quantitative.

Track 5 – Merit assess

This track provides for the assessment of applications against complex criteria relating to the quality, performance, on-site and off-site effects of a proposed development, or where an application varies from stated policy. Expert assessment would be carried out by professional assessors.

Track 6 – Impact assess

This track provides for the assessment of proposals against complex technical criteria that may have a significant impact on neighbouring residents or the local environment.

4. DAF Benchmarking Program

As part of the program to promote the Leading Practice Model, DAF initiated a Benchmarking Program to provide each state and territory with indications of the best practice options available and the degree to which existing practices and procedures complement the Leading Practice Model.

Six jurisdictions participated in the program – South Australia, New South Wales, Victoria, Western Australia, Queensland and the Australian Capital Territory – with the support of the Australian Local Government Association and a Research Officer.

The DAF Benchmarking Program also provided the opportunity to:

- Gain a better understanding of the options available to each jurisdiction and other stakeholders to improve the development assessment process
- Provide support for implementation of initiatives, based on the knowledge that similar provisions are operating in other jurisdictions
- Achieve greater consistency in policies, procedures and requirements between jurisdictions.

While each jurisdiction had its own priority areas, common issues related to:

- Reductions in the development assessment times, particularly for less complex applications
- Increased consistency of policy expression to provide greater certainty for the community and applicants
- Introduction of improved office procedures and administration culture to assist the community and applicants
- Reduction in the costs and delays associated with appeals by clearer policies and resolution of issues at the assessment stage
- Increased use of performance codes for simple forms of development to expand exemptions or permitted/complying uses
- Rationalisation of planning policies and building code matters to avoid duplication and possible conflict
- Consideration of the policy and assessment matters associated with climate change requirements.

The benchmarking components of the program were structured to reflect the ten principles of the Leading Practice Model plus an eleventh relating to continuous improvement.

Methodology

Each of the key components of the planning and development systems was benchmarked separately so that the program could be undertaken in manageable steps.

The components were benchmarked separately over a two-and-a-year period between January 2006 and August 2008 by the DAF Benchmarking Program Working Group.

South Australia devised a series of questions which were reviewed by the working group and once finalised distributed to the working group members in all participating jurisdictions via email for answering.

The Research Officer then collected and collated responses into a benchmarking table format and drafted a progress report summarising the findings each quarter.

Benchmarking progress reports were provided to DAF in May, August and November 2007 and February and August 2008.

The condensed benchmarking tables are included as appendices to this report.

Timeliness of information

The results of the Benchmarking Program represent a 'snapshot' of development assessment processes and systems during the benchmarking period – January 2006 to August 2008.

The complexity of the systems being considered and the time required to gather the information does create some issues around timeliness of information.

Many jurisdictions have already embarked on numerous and significant changes to their development assessment systems and processes – often as a result of involvement in the Benchmarking Program

Therefore, readers of this report and data should be aware that some of the contained information may already have changed.

5. Benchmarking Results

Best practice principles were determined for each component by comparing results from jurisdictions against the principles in the Leading Practice Model. The results most closely reflecting the Leading Practice Model principles have been recognised as best practice.

This report also sets out matters arising from the Benchmarking Project that jurisdictions may wish to further consider.

A summary of the results are presented in condensed tables in the Appendices to this report.

Leading Practice One: Effective Policy Development

Elected representatives should be responsible for the development of planning policies. This should be achieved through effective consultation with the community, professional officers and relevant experts.

This ensures planning operates in the public interest and delivers desired policy outcomes.

Clear policy statements enable the formulation of objective rules and tests, which are essential for efficient and consistent decision-making.

This leading practice was not benchmarked due to the overlapping of information provided by jurisdictions in Leading Practice Two.

Leading Practice Two: Objective Rules and Tests

Development assessment requirements and criteria should be written as objective rules and tests that are clearly linked to stated policy intentions. Where such rules and tests are not possible, specific policy objectives and decision guidelines should be provided.

Converting policies into clear assessment criteria ensures that decisions consistently achieve policy objectives and that development applications are assessed against relevant criteria. They also ensure that matters are dealt with by applying the appropriate level of assessment necessary to achieve a reasonable outcome.

Well written assessment criteria provide certainty to both the community and the applicant.

Policies for Exempt and Code/Complying Development

Best Practice Principles

Best practice principles suggest that development should be defined into categories or tracks which are directly related to the complexity of a development proposal and its impacts.

The relevant legislation (either Act, Regulation or the local Plan or Scheme) should provide details of activities that are exempt from requiring planning approval and activities that are code/complying development.

There should be a code/complying development assessment track which guarantees planning approval if a development proposal meets the given requirements, with at least one form of code/complying development applicable to each zone (e.g. the primary kind of development envisaged for the zone).

In those jurisdictions that have a stand-alone 'residential code', the zones in which this applies should be specified (i.e. only residential, mixed use zones etc). This code should be mandatory and applied uniformly throughout the jurisdiction.

Areas for Consideration by Jurisdictions

- Developing some or all of the six track-based categories defined in the Leading Practice Model to promote a nationally consistent approach.
- Providing a stand-alone 'residential code' which provides a standard set of planning requirements for residential development.
- Providing for land division in the code/complying development track.
- Collecting information on the percentage of code/complying developments for the jurisdiction per annum.

Leading Practice Three: Built-in Improvement Mechanisms

Each jurisdiction should systematically and actively review its policies and objectives rules and tests to ensure that they remain relevant, effective, efficiently administered, and consistent across the jurisdiction.

Continuous improvement of the development assessment process requires constant monitoring of performance in achieving policy objectives and the identification of redundant or ineffective requirements.

Best practice in many fields is continually evolving and objective rules and tests for development assessment need to be regularly reviewed to remain current.

Planning Scheme Reviews

Best Practice Principles

While each jurisdiction has a means by which development assessment policies are set out and reviewed, best practice principles suggest incorporating development assessment principles in a single integrated document for ease of access and understanding by applicants, the community, development assessment bodies and the appeal body.

The use of an agreed template to outline the layout, terminology and expressions of policy would provide a consistent approach and uniform expression of policy between council areas.

It is important that the public has easy access to planning schemes, preferably in an electronic format via a website.

A review of policies should be undertaken on a regular basis to ensure that the development assessment policies are pertinent and reflect current land use requirements and trends. Similarly, such a review should take into account and implement the authorised state or regional strategic planning policies.

If a development assessment policy review has not been initiated or completed within the agreed or specified time periods for a particular area, the Minister should have the authority to initiate or complete such a review.

When commencing a review process, an investigation, state agency referral and amendment time period agreement should be incorporated to ensure the review is conducted in a timely manner.

On completion of the review process, a full report should summarise the findings of the review, the submissions received and the reasons for any proposed policy changes which will assist in the authorisation of the proposed amendments.

It is suggested that Commonwealth land could be incorporated into planning schemes after agreement between the Commonwealth and relevant state government to provide consistency throughout the state and to inform the community of the policies applying in their area.

Areas for Consideration by Jurisdictions

- Incorporating all relevant policies into a single integrated document with a consistent format to increase the ease of finding the relevant policies and avoiding unnecessary variations between plans.
- Reviewing policies at least every three to five years to ensure they reflect the policies of the state government and council of the day.
- Requiring that development assessment policy reviews take into account the policies in the adjoining council areas, to avoid conflicting policies on council boundaries, such as arterial roads.
- Amending the relevant legislation to enable councils to initiate joint development assessment policy reviews, particularly in regional areas where small councils do not have the resources to update policies on a regular basis.
- Introducing provisions for a policy review initiation agreement in order to focus on key issues and to record formal commencement and completion dates.
- Formally recording statistics on development policy review initiation and completion times to ensure that statutory review and timeliness requirements are met.

Planning Scheme Amendments/Non-complying

Best Practice Principles

In promoting greater uniformity between jurisdictions, the best practice principles associated with the Leading Practice Model include a mechanism for assessing any prohibited forms of development, provided that there are adequate safeguards through a higher form of assessment.

The inclusion of timeframes for the assessment of such applications provides certainty for both the applicant and the wider community.

Areas for Consideration by Jurisdictions

- Assessing individual applications as non-complying/inconsistent development, rather than undertaking spot rezoning so that the approval matches the use.
- Collecting data on the extent to which non-complying/spot rezoning is undertaken to determine areas where existing policies may be out-of-date and require upgrading.

Leading Practice Four: Track-based Assessment

Development applications should be streamed into an assessment 'track' that corresponds with the level of assessment required to make an appropriately informed decision. The criteria and content for each track is standard.

Adoption of any track is optional in any jurisdiction, but it should remain consistent with the model if used.

The relevant track for assessing an application is directly related to the complexity of the project and its impacts. The issues that require consideration in the decision are clearly stated. Unnecessary application or information requirements are avoided.

Six tracks are proposed:

- Exempt
- Prohibited
- Self assess
- Code assess
- Merit assess
- Impact assess.

Each track will be consistent with the ten leading practices and provide a process of assessment that is relevant to the project's complexity and impact on the built and natural environments.

The track in which an application is to be assessed must be clear before an application is submitted. The track is set by the statutory instrument.

Exempted Development

Best Practice Principles

Exemptions from planning approval should be set out in one document and be consistent across the state, with the exception of a limited number of justified local variations (e.g. state heritage area) to provide certainty for applicants, the community and development assessment staff.

Any exemption criteria should be clearly defined – for example, in terms of area, height and setback – to avoid confusion as to whether a development is or is not exempted.

Development which cannot be viewed from outside of the site (e.g. back verandas of a set area and height) should be exempted.

Demolition of a dwelling is exempt or complying in all jurisdictions. Although demolition of buildings is exempt except with regard to state and local heritage matters, each jurisdiction needs to ensure that the exemptions relating to demolition of buildings are not eroded over time so that housing choice and infill opportunities in each jurisdiction are not limited.

The largest variation between the jurisdictions in the exemption field related to the exemption of some forms of dwellings in circumstances where they satisfy the provisions in the residential planning codes. Other states have made such dwellings subject to code or complying development assessment as the alternative to an exemption.

Areas for Consideration by Jurisdictions

- Standardising the number of employees and floor area criteria associated with Home Activity exemptions to promote consistency in this important growth area of the economy.
- Reviewing the height and floor area criteria between jurisdictions relating to outbuildings/ pergolas to provide consistency in this small value but high volume sector of the development industry.
- Reviewing the exemption criteria for rainwater tanks which vary from 4000 litre to 40,000 litre, particularly now that all states are looking at sustainability requirements in regard to water supply.
- Reviewing satellite dish diameter exemption criteria as this varies from 90cm in residential areas in some states to 1.2m in others. In addition, Victoria has an exemption of up to 2.4m if it cannot be seen from an adjoining property.
- Discussing exemption criteria relating to fences given that there are variations in the height criteria between jurisdictions and one state does not exempt front fences even when state or local heritage matters are not involved.
- Discussing exemption criteria for aerials/antennae as the range of height criteria varies from 5m to 7.5m, creating uncertainty in the telecommunications industry nationally.

Major Development/ Environmental Impact Statement (EIS) assessment

Best Practice Principles

Proposals subject to major development/EIS assessment should be based on clear criteria set out in some statutory form. Any prescribed forms of development should be exempted if the assessment can be properly undertaken through the standard assessment process.

There should be a limited number of different assessment paths to recognise the level of complexity of different proposals subject to major development/EIS assessment to ensure the appropriate level of investigation is required.

Clear guidelines should be provided to applicants in any major development/EIS assessment to ensure that time and resources are focused on the essential elements to be addressed.

In order to provide certainty for both the applicant and the community, the major development/EIS procedures should specify agency and public consultation time periods as well as decision times.

The major development/ EIS assessment process should be integrated with other Acts to avoid the need for separate consents/approvals. Rezoning processes should form part of the assessment process to address subsequent associated developments which do not warrant an EIS assessment in their own right.

Mining proposals involving development on and off of the mine site should be assessed through a single process so that mining, infrastructure, processing and port facilities are considered as one.

Areas for Consideration by Jurisdictions

- Removing specific lists of activities, as the number of major development/EIS assessment declarations varies significantly between jurisdictions.
- Incorporating agreed timetables with applicants to provide the applicant, agencies and the community with an indicative timetable to provide certainty for all parties.
- Considering the reasons why there have been third party appeals against proposals which have been subject to major development/EIS assessment.

Development Assessment Fees

Best Practice Principles

Development assessment fees should be uniformly set throughout the jurisdiction, with the Minister undertaking any review of fees to guarantee uniformity of fee structures and amounts.

Conducting such a review annually will account for inflation and avoid significant increases as a result of periodic reviews.

Once established, development assessment fees should be set out in one location (i.e. in the Regulations) for ease and clarity for applicants and administrators.

The level of the development assessment application fee should reflect the complexity of the issues to be assessed, rather than just the capital value of the proposal, with the decision making bodies retaining the fees.

Areas for Consideration by Jurisdictions

- Structuring fees to take into account both the level of assessment complexity and capital value of development.
- Introducing a different fee structure for the impact assess track (major development/EIS) to reflect the added complexity of assessment and often greater capital value.
- In circumstances where application fee refunds are considered due to withdrawal of applications, doing so in a consistent manner in line with written policy positions.
- Considering the rationale for the variations in application fees between jurisdictions for similar forms of applications.
- Introducing a small fee at the time of lodgement to enable assessment procedures to continue while the full assessment fee is being calculated.

Development Application Forms

Best Practice Principles

One standard development application and one standard development decision form should be provided for the whole jurisdiction, with these standard forms determined by the relevant Minister.

To ensure maximum accessibility, development application forms should be provided online, as should applicant guides which assist with filling out a development application form.

Applicants should be required to submit only one application per development proposal and a decision on a development application should be deemed to be made on the date of decision, rather than on notification.

Areas for Consideration by Jurisdictions

- Further developing an electronic development assessment function for land division, land use and built form proposals.
- Providing applicants with access to a checklist of information required to accompany a development application.
- Introducing the ability to submit development application forms online.
- Providing applicants with electronic decision forms for efficiency in decision notification.

Additional Information Procedures

Best Practice Principles

As a starting point, minimum and/or mandatory requirements regarding the information required should be set out in the planning legislation, with the relevant assessment body having the ability to formally request additional information at least once.

Introducing a 'stop the clock' function would allow for applicants to supply formally requested information without affecting the statutory assessment times, while requests for additional information need to be made within a reasonable time after lodgement to reduce delays for applicants.

Formal requests for additional information should be made in writing – either by letter or email – and informal (or verbal) requests for information should not 'stop the clock'. All additional information requested should be pertinent to the specific development proposal.

Applicants should have the opportunity to vary the original development application at any time without affecting approval, providing it is not a significant variance.

If the additional requested information is not provided, refusal of the development application should be allowed.

Areas for Consideration by Jurisdictions

- Restricting the number of formal information requests able to 'stop the clock' to promote assessment efficiency and ensure minimal delays for applicants.
- Specifying a time frame in which applicants must provide requested information and allowing for differing timeframes depending on the complexity or detail of the information sought.
- Minimising the number of formal requests for additional information.
- Coordinating requests for additional information between the relevant assessment body and any referral agencies to streamline the process.
- Providing easy access to guidelines or checklists for applicants to assist with providing information required for development applications.
- Collecting data on the percentage of additional information requests per assessment authority to aid monitoring and measurement of development assessment efficiency.

Development Assessment Procedures (Miscellaneous)

Best Practice Principles

When adopting the track-based approach to development assessment, exempt and code assess development tracks should be a minimum requirement.

Statutory timeframes should be employed for all development application determinations although these timeframes should only vary depending on the development track, and not as a result of different determination bodies.

Retrospective development approval should be allowed, while development approvals should be allowed to lapse if not substantially commenced within two years. Development approval validity extensions should be allowed at the request of the applicant.

If an applicant is not the owner of the land, the land owner's signature is required to accompany the development application.

Areas for Consideration by Jurisdictions

- Specifying a standard for existing use rights and/or providing the owner of the property with a certificate of compliance to state that the use or development was legal at date of commencement.
- Ensuring an application is determined by the policies which applied on the date of application rather than the date of decision.
- Having a statutory time limit of four to five weeks for statutory referral agencies to respond to referred development applications.

- Deeming a development application refused if a decision is not made within the statutory timeframe, allowing the applicant the opportunity to appeal to a court or tribunal for a decision.

Leading Practice Five: A Single Point of Assessment

Only one body should assess an application, using consistent policy and objective rules and tests.

Referrals should be limited only to those agencies with a statutory role relevant to the application. Referral should be for advice only. A referral authority should only be able to give directions where this avoids the need for a separate approval process.

Referral agencies should specify their requirements in advance and comply with clear response times.

A single point of assessment ensures the consistent application of policy, through objective rules and tests.

Where referrals are required, the assessment criteria or policy are clearly expressed in advance. Applicants therefore know what is required before submitting an application.

Statutory Referrals

Best Practice Principles

Statutory referral requirements should be set out in one document and be consistent across the state – with the exception of a limited number of justified local variations (e.g. bushfire areas, coastal areas) – to provide certainty for applicants, the community and development assessment staff.

Such referrals should be limited to those essential for decision making and in particular focus on those circumstances which avoid the need for a separate approval under another Act.

It should be specified whether a referral body has an advice or direction role and there should be an applicant appeal right as part of an appeal against any planning decision.

Time limits should be set within which requests for additional information can be sought from an applicant to facilitate early consideration of applications and ensure consistency of assessment procedures.

To ensure certainty for both the applicant and development assessment staff, it should be made clear that a lack of response by a referral body is deemed to mean that it has no comment on the proposal.

The quality of applications can be improved and development assessment times reduced by exempting statutory referral requirements in those situations where a formal pre-lodgement agreement has been signed by the applicant and the referral body/bodies concerned.

All statutory bodies should establish electronic office management procedures and facilities for the electronic transfer of information in line with the national communication protocol.

Areas for Consideration by Jurisdictions

- Reviewing the statutory response time limits for referral bodies by those jurisdictions with time limits longer than those of other states (between fifteen and forty-two days).
- Introducing time limits on additional information requests from applicants by those states which do not already have them.
- Reviewing the number of referrals by some jurisdictions. This ranges from eight to forty-four bodies between the states, resulting in states with similar numbers of applications having between 1700 and 3000 referrals.
- Considering the introduction of pre-lodgement agreement options by those jurisdictions that do not already have them.
- Considering recording data on the timeliness of referral bodies as part of the development assessment indicators that are being introduced in most jurisdictions.

Leading Practice Six: Notification

Where assessment involves evaluating a proposal against competing policy objectives, opportunities for third-party involvement may be provided.

Applications that meet objective rules and tests would not be subject to notification, resulting in greater certainty and fewer delays.

Community notice and consent processes are targeted to those applications where decisions that require balancing of policy objectives will be informed by community views.

By including relevant notice provisions in the six proposed tracks, opportunities for effective community involvement are generated and process efficiency is maintained.

Public Notification

Best Practice Principles

While all participating jurisdictions have public notification requirements for specific forms of development, there is greater variation in the public notification procedures between jurisdictions than any other component benchmarked.

The extent of public notification should reflect the zoning policies, encouraging development in the appropriate zones by having less notification.

The lists of public notification requirements for different forms of development should be uniform between council areas while enabling minor local variations on justified planning grounds. Such lists should be located in the same document for ease of reference by applicants and the community.

The public notification requirements and procedures should be consistent within each jurisdiction and clearly understood by applicants, neighbours and the community.

Applicants should have the right to provide a response within a short specified period to the public submissions so that the decision making body is informed and to enable a variation to an application to be made to address any submissions.

Areas for Consideration by Jurisdictions

- Increasing uniformity in public notification requirements between council areas.
- Introducing exemptions for minor developments to streamline the development assessment process.
- Introducing different levels of public notification, depending on the extent to which the proposed development complements the zoning policies.
- Providing the applicant with the opportunity to respond to the submissions in order to streamline the process and ensure natural justice.

- Reviewing appeal fee costs by some jurisdictions as some are higher than the national average, thus putting a higher dispute resolution burden on applicants.

Leading Practice Seven: Private Sector Involvement

Private sector experts should have a role in development assessment, particularly in:

- *Undertaking pre-lodgement certification of applications to improve the quality of applications*
- *Providing expert advice to applicants and decision makers*
- *Certifying compliance where the objective rules and tests are clear and essentially technical*
- *Making decisions under delegation.*

The use of private sector experts has the potential to improve the speed and efficiency of a range of decisions and enable local government staff to concentrate on more complex policy-related applications.

Private Certifiers

Best Practice Principles

The current system has the potential to be expanded to include private building certifiers into the development assessment process, although it is imperative to ensure the application of private certification is uniform throughout the state.

Equally, mechanisms need to be in place that prevent inconsistencies between planning and building consents, and issuing of the final development approval.

Private building certifiers should be able to issue building consent and confirm all aspects associated with providing a building consent without requiring council endorsement. Similarly, to ensure certainty, councils should not be able to override decisions made by a private certifier.

To ensure workability of the system, all private certifiers would need to have appropriate qualifications, experience and professional indemnity insurance.

Areas for Consideration by Jurisdictions

- Extending private certification to planning as well as building consent to improve the speed and efficiency of a range of development decisions (this may include imposing restrictions on what type of development may be assessed by private certifiers).
- Providing easily accessible public listings of private certifiers via a web site.
- Specifying uniform auditing requirements for private certifiers throughout the state.
- Developing a code of practice that private certifiers must abide by.
- Providing accreditation training for private certifiers and information on minimum duties and obligations.
- Adopting measures to increase the percentage of building rules decisions made by private certifiers.

Leading Practice Eight: Professional Determination for Most Applications

Most development applications should be assessed and determined by professional staff or private sector experts. For those that are not, either:

Option A – Local government may delegate DA determination power while retaining the ability to call-in any application for determination by council.

Option B – An expert panel determines the application.

Ministers may have call-in powers for applications of state or territory significance provided criteria are documented and known in advance.

Objective and expert evaluation of applications against known policies and objective rules and tests provides efficient and transparent assessment of most applications.

Providing a call-in power allows the policy maker to take control of applications that will either have a significant impact on the achievement of policy or which, by their nature, are likely to establish policy.

Decision Making Body – Land Use

Best Practice Principles

The majority of land use applications are determined by local government, in particular delegated staff of councils.

Information about where land use applications are to be lodged and the decision making body considering such applications should be set out in a single document (Regulation or Planning Scheme) so that applicants and the community are fully aware of the process.

All development applications should be delegated to staff so that the formal body deals only with complex applications and the nature of these delegations should be made public on the website so that applicants are aware of the means by which an application will be assessed.

All members of development assessment bodies and staff should be subject to a statutory code of conduct and financial register to avoid conflicts of interest.

With full public confidence in the assessment process important, all members of development assessment bodies should undertake training in regard to roles, responsibilities and obligations.

The time limits within which all forms of development assessment decisions should be made should be stipulated, with applicant appeals right if the statutory requirements are not met.

Decision making and referral bodies need to provide data on decisions made on a regular basis to identify administrative or policy improvements that need to be made to ensure timely and transparent decision making.

Areas for Consideration by Jurisdictions

- Establishing an independent state development assessment body, rather than the Minister having a 'call-in' power.
- Establishing regional bodies to assess applications to enable councils to share resources and increase the extent to which decisions are made based on statutory policies in the planning scheme.
- Introducing requirements that members of development assessment bodies undertake training in regard to roles, responsibilities and obligations to ensure confidence in the assessment process.
- Enabling private planning certifiers to confirm that a proposal is a complying/code assessed form of development, allowing council staff to focus on complex issues.
- Considering the statutory development assessment time periods (e.g. forty to sixty days), as they vary in each jurisdiction.

Decision Making Body – Land Division

Best Practice Principles

While land division/subdivision is subject to planning approval in all jurisdictions, this is one area where there is considerable variation in processes and requirements.

Information about where land division applications are to be lodged and the decision making body considering such applications should be set out in a single document (Regulation or Planning Scheme) so that applicants and the community are fully aware of the process.

Land division decisions should be made by delegated staff (unless the application is complex or contentious), with information about the delegations made publicly available to the public to provide applicants and the community with an understanding of development assessment procedures.

A statutory time period within which development assessment decisions need to be made should be set to promote timely decision making and provide applicant and community certainty.

All members of development assessment bodies and staff should be subject to a statutory code of conduct and financial register to avoid conflicts of interest.

A decision regarding a single land division and infrastructure requirement should be made as a result of referral or concurrence with relevant state agencies (i.e. transport division, water authority etc).

Areas for Consideration by Jurisdictions

- Publishing staff delegations to provide applicants and the community with an understanding of development assessment procedures.
- Introducing development assessment awareness programs for council or panel members, particularly as there is a growing tendency for such members to be paid a sitting fee on such bodies.

- Setting criteria for any 'call-in' powers with such decisions being made by an independent and experienced body based on clearly stated policies in the Planning Scheme.
- Reviewing statutory time limits for land division applications, as there are considerable variations between the jurisdictions.
- Considering whether the Regulations should specify a time limit within which a development decision must be conveyed to applicants to reduce times and provide greater certainty in regard to appeal and approval options.

Leading Practice Nine: Application Appeals

An applicant should be able to seek a review of a discretionary decision.

A review of a decision should only be against the same policies and objective rules and tests as the first assessment.

Where a decision is discretionary, fairness and transparency of process requires that an applicant should be able to seek a second evaluation of the application, but only against the same policies and objective rules and tests as the first assessment.

Applicant Appeals

Best Practice Principles

Applicant appeal rights should be available against procedural matters, merit decisions and failure to undertake a development assessment decision within the statutory time period, although there should be clearly defined time periods within which appeals may be lodged.

The focus of appeal procedures should be on keeping applicant appeal costs low so that disputes can be resolved in an efficient and timely manner, and appeal processes should be conducted in an informal manner to focus on dispute resolution and reducing costs and time delays.

All applicant appeals should be heard by a single appeal body – consisting of legal and appropriate specialists in relevant fields – with planning, building and environmental issues able to be presented in a single appeal to the same specialist appeal body.

A mediation/conference stage should be the first part of the appeal procedure and require the convener of the mediation meeting to facilitate an agreement to resolve matters before formal hearings are required.

Applicant appeals should be focused on issues in dispute rather than hearing the applications afresh (de Novo) to further ensure timely dispute resolution.

Further appeals to a higher court on planning merit grounds should be avoided and appeals to the Supreme Court should be limited to administrative error by the appeals body.

Areas for Consideration by Jurisdictions

- Introducing applicant appeal rights for overdue decisions.
- Considering the option of procedural matters being subject to applicant appeals to the planning appeal body rather than the Supreme Court, the latter of which has higher costs and longer timeframes.
- Introducing a 'reconsideration' of decisions by the planning authority prior to the appeal process to reduce the matters proceeding to a formal appeal process. Such reconsideration options are available in a number of jurisdictions.

- Reviewing applicant appeal periods as they currently range from twenty to forty days (and in one case twelve months), creating a high level of uncertainty.
- Reviewing appeal fees as some are higher than the national average, putting a higher dispute resolution burden on applicants.
- Considering the reasons why the number of applicant appeals varies considerably between jurisdictions, ranging from 0.056% to 3.9% of total development applications per annum.
- Introducing a compulsory mediation/conference stage option, as in such circumstances the level of issues prior to hearing are less than those in other jurisdictions.
- Enabling hearings to deal with the issues in dispute, rather than held de Novo, to save time and money for all parties.
- Considering the reasons why appeal findings in some jurisdictions have a higher proportion of decisions being varied or reversed.
- Considering the reasons why appeal data is not incorporated into the general planning data collection process to provide a clear single view of the full operations of the planning and development system.

Leading Practice Ten: Third-party Appeals

Opportunities for third party appeals should not be provided where applications are wholly assessed against objective rules and tests.

Opportunities for third party appeals may be provided in limited other cases.

Where provided, a review of a decision should only be against the same policies and objective rules and tests as the first assessment.

This avoids unnecessary review where objective rules and tests have already been established by a consultative process. Where Option B in Lending Practice Eight applies, an opportunity can be provided for a review of a decision by an expert panel that a council considers contrary to policy objectives.

Third-party Appeals

Best Practice Principles

Third party appeal rights should be aligned to those circumstances where the proposed development is not envisaged by the zoning policies.

Only those people who have provided an objection to the planning authority as part of the assessment process should have an appeal right, as objectors should not be able to circumvent the planning authority assessment process.

Strict constraints on other parties being joined in appeals need to be considered, as the appeal process should focus on resolving disputes between applicants and neighbours rather than being a forum for interest groups to pursue policy matters.

Third-party appeal costs should be kept low to resolve disputes in an efficient manner.

Appeal procedures should include a mediation/conference stage and require the convener of the mediation meeting to facilitate an agreement to resolve matters before formal hearings are required, saving all parties time and money.

Similarly, costs should be awarded against third-party appeals in those circumstances where the court or tribunal concludes that the appeal has been frivolous or vexatious, to avoid the appeal process being used as a delaying tactic.

Areas for Consideration by Jurisdictions

- Limiting third party appeals to those parties who have submitted objections, to provide greater certainty for planning authorities and applicants as well as minimise avoidance of the council assessment process.
- Allowing for immediate neighbour judicial review appeal rights to the specialist court if development assessment procedures are being delayed by Supreme Court challenges on administrative procedures.

- Considering the time within which third party appeals can be lodged, as it currently varies from fifteen to twenty-eight days resulting in additional uncertainty for the applicant and the planning authority.
- Reviewing criteria for third-party appeals, as the number of such appeals in some jurisdictions is significantly above others with similar numbers of development applications.
- Reviewing applicant appeal mediation procedures as there are significant variations in the success rate of such conferences in some states.

Leading Practice Eleven: Continuous Improvement

While not listed as a leading practice in the original Leading Practice Model, the Benchmarking Working Party believed there was significant merit in benchmarking planning and development data collection and opportunities for cutting red tape.

Mandatory collection of performance indicators are useful in providing valuable data to indicate the 'health' of the planning system by highlighting resourcing issues, blockage or underperformance.

Mechanisms for cutting red tape may include continual Act and Regulation integration and systems improvement programs, as well as investigating options for electronic lodgement.

Continuous Improvement

Best Practice Principles

A number of jurisdictions have or are currently establishing formal processes for the systematic collection and consideration of data on the operation of the planning and development system.

While such systems are still being established in many cases, the information collected should be comprehensive and include the strategic planning, development assessment policy review, development assessment, referrals and appeal components of a planning and development system.

Key indicators that should be addressed include:

- Application volumes by prescribed development categories
- Time taken to undertake policy reviews and assess applications
- Timeliness of decisions and referral advice in relation to statutory time limits
- Appeal volumes
- Time taken to resolve matters.

The collation and transfer of information electronically as part of the electronic office management program of councils and agencies would negate the need for a separate tabulation exercise.

This electronic format would allow the information to be easily published and circulated to enable public debate on future policy and administrative requirements.

Regular (e.g. at least quarterly) data collation and analysis allows for trends and issues to be identified at an early stage.

Areas for Consideration by Jurisdictions

- Ensuring that indicators relate to all components of the planning and development system rather than primarily focusing on development assessment.
- Providing data on specified land use application categories to assist in identifying trends as well as facilitate interstate comparison.
- Including appeal data, as this forms an important part of the development assessment process.
- Limiting the extent to which building rules data is incorporated, thus focusing on efficiencies in obtaining planning consents rather than on the time taken before construction can commence.
- Considering the extent to which appeal legal costs are recorded to provide a better indication of costs to applicants and the community and highlight the urgency of improving policies or procedures to reduce costs.
- Considering the means by which the data is to be published in electronic format on a regular basis.

6. Next Steps

The Benchmarking Program has been a very useful and successful program run by DAF over a two-and-a-half year period.

The participation of the Benchmarking Program Working Group and output of information has been highly valuable and used for various purposes including the provision of information to the Planning Officials Group (POG), the Local Government and Planning Ministers' Council (LGPMC) and Council of Australian Governments (COAG), and assisting with aspects of recent jurisdictional planning reforms.

It is suggested that there should be a continued interest and perseverance in the Benchmarking Program in some form, to secure sustained and relevant use from the work produced.

To retain the value of this information it will need to be reviewed and updated on a periodic basis. This will require a commitment from participating jurisdictions as well as an additional staff resource to again coordinate the process with a workgroup.

In addition to updating the answers, it is also suggested that the questions will need to be reviewed on an infrequent basis to reflect ongoing legislative changes and planning reforms for all jurisdictions.

To maximise the time and work dedicated to this project and effectively use the information in the future, a balance must be struck between maintaining the accuracy and relevance of the benchmarking information with the capacity of jurisdictions to commit their time to work on this project.

In light of this, it is suggested that the data be reviewed every two to three years.

7. Appendices