

Competition Reform Guidelines

FOR NATIONAL COMPETITION POLICY FEDERATION FUNDING AGREEMENT – AFFORDABLE HOUSING, COMMUNITY SERVICES AND OTHER– SCHEDULE

Liberalise and standardise commercial zoning rules and review planning requirements to ensure they do not distort competition

Objective

These Guidelines can support Parties to the National Competition Policy Federation Funding Agreement (FFA) Schedule 2024 to deliver the performance requirements as described in clauses 17-21 of the Schedule. Implementing these Guidelines will:

- Support a level playing field for businesses and better outcomes for consumers by:
 - Removing unnecessary barriers to business entry, expansion and exit.
 - Minimising unnecessary compliance costs and complexity – including for businesses and people working across borders and systems.

Context

Developed by: Members of the National Competition Policy Oversight Committee from all Parties to the FFA Schedule under a work program to revitalise National Competition Policy.

Endorsed by: The National Competition Policy Oversight Committee.

Approved by: The Assistant Minister for Competition, Charities and Treasury on 27 February 2025.

Evidence base

State and territory planning and zoning requirements can restrict business entry and expansion, limit land supply, and enable existing businesses to constrain the activities of their competitors and concentrate market power. Research indicates that eliminating these barriers can lead to more innovative land use, increased productivity and lower startup costs for businesses. Research has also found that the Australian economy would benefit from reform to planning and zoning schemes that expands the supply of retail space, such as simplification of zones and removing restrictions on allowable land uses.

These Guidelines propose actions to remove unnecessary regulatory hurdles and limit opportunities for planning and zoning requirements to distort competition. Collectively, implementing the Guidelines is likely to create a commercial planning and zoning system that is pro-competitive, flexible and standardised across local government, based on the available evidence at the time the Guidelines were agreed. Reform actions would reduce administrative and compliance costs, make it easier for new firms to enter local markets and for existing firms to expand, and enable planning systems to respond more flexibly to changing land use activities. This will generate downstream competition effects in markets constrained by current planning arrangements.

The development of these Guidelines was informed by:

- Performance benchmarking of Australian Business regulation: Planning and zoning development assessments, Productivity Commission, 2011a
- Economic Structure and Performance of the Australian Retail Industry report, Productivity Commission, 2011b
- Competition Policy Review Final Report, Harper, 2015
- Land-use Planning Reform report prepared for Australian Treasury, Centre for International Economics, 2016
- Realising the Productive Potential of Land, Productivity Commission, 2017
- Victoria's Commercial Land Use Zoning, Productivity Commission, 2020
- Plan to Identify Planning and Zoning Reforms, Productivity Commission, 2021
- Advancing Prosperity Report, Productivity Commission, 2023
- Supermarkets inquiry interim report, ACCC, 2024
- National Competition Policy: Modelling Proposed Reforms, 2024

Output	To improve competition, state and territory Parties could:	Case studies
<p>Project 1: Implement measures to limit anti-competitive objections to development</p>	<ol style="list-style-type: none"> 1. Stop nuisance objections to developments that are not in the public interest. For example, Parties: <ol style="list-style-type: none"> a) Limit third party appeals to issues that were subject to development assessment consideration. <ol style="list-style-type: none"> I. Appeals on matters resolved during planning processes should not be considered. II. Compliant development assessments cannot be appealed. III. Prohibit appeals if the appealing party did not lodge an objection to the development application. b) Require third party appeals processes to clearly identify appellants and their grounds for appeal. The grounds for appeal should be framed with respect to the public interest. 	<p>There are generally no third party appeal rights to planning decisions in Western Australia. The ACT's Planning Act 2023 exempts development from third party ACAT appeals in major commercial centres (City and Town centres and Kingston Foreshore), industrial zones and some other development types and locations. Projects that are determined to be Territory Priority Projects, as defined by the Planning Act 2023, are also exempt from third party appeals. Queensland restricts third party appeals to those who properly made a submission during the public consultation period of an impact assessable development application. Code assessable (compliant) applications in Queensland do not have third party appeal rights and the Planning and Environment Court Act 2016 allows for costs to be ordered in some instances, such as when the Court considers an appeal to be frivolous or vexatious. This reduces the scope for gaming the appeal system to delay or prevent a competitor's development application. Similar appeal practices are more likely to facilitate efficient outcomes in commercial land use markets.</p>

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<p>Project 2: Remove anti-competitive considerations from planning, rezoning and development processes</p>	<p>1. Remove the following considerations* from planning, rezoning or development assessment processes, control instruments and decisions:</p> <ul style="list-style-type: none"> a) impact on viability of existing businesses (including loss of trade) b) commercial viability of proposed development c) competition between individual businesses d) restriction on numbers of types of retail stores e) proximity restrictions on particular types of retail stores. <p>* These considerations, including the viability of a city's existing activity centre/s and the maintenance of a broader centre hierarchy, may be maintained in broader urban/strategic plans. However, any consideration of these impacts should be undertaken when these plans are formulated, rather than when considering individual proposed developments. Any restrictions on competition contained in an activity centre or hierarchy policy should be subject to the public interest test.</p>	<p>Case law in both NSW and SA has generally ruled out competition as a basis of development assessment refusal or a planning consideration. In line with the Competition and Consumer Act, governments should not prevent competitors from entering the market as it can have benefits on the public interest. Indeed, the impact of businesses on each other are one way that prices are kept low, service standards desired by consumers are maintained and efficiency in the distribution of the economy's land, labor, financial and other resources is supported.</p>

Output	To improve competition, state and territory Parties could:	Case studies
<p>Project 3: In development control instruments, increase the number of purposes for which land can be used</p>	<ol style="list-style-type: none"> 1. Expand allowable uses for land by reorienting the focus of assessments of land use to be on the impacts of use, rather than blanket prohibitions. 2. Where prohibited uses are identified, they should be subject to the public interest test. For example, Parties: <ol style="list-style-type: none"> a. Develop and publish exhaustive lists of prohibited activities with explanations of the public interest justification for prohibitions. b. Develop and publish non-exhaustive lists of permissible activities within zones, including specification of uses that are 'as of right'. 3. Expand 'as of right'/permitted land uses in commercial and industrial zones. For example, in commercial zones, Parties could expand 'as of right'/permitted land uses to: <ol style="list-style-type: none"> a. Offices. b. Restricted retail (including cafes, supermarkets and large format retail). c. Small-scale supermarkets. 4. Broaden the definition of commercial and industrial zones to be consistent with the externalities being managed (so that types of development with similar externalities are captured under the same zone). For example, Parties: <ol style="list-style-type: none"> a. encourage greater use of mixed-use zones allowing commercial, retail and residential uses. b. minimise the number of commercial and industrial zones and rationalise the number of zones in accordance with the public interest test. 	<p>Victoria reformed business zone definitions by simplifying requirements and allowing a broader range of activities to be considered. The previous five business zones were condensed into two broader commercial zones, increasing permissible uses within the zones. This helped to increase the availability of land and encourage business entry and allow businesses to establish new stores on sites which were restricted under previous zones.</p>

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<p>Project 4: Streamline criteria and processes for development assessment and rezoning</p>	<ol style="list-style-type: none"> 1. Link development assessment requirements and criteria (i.e., the conditions that need to be satisfied for a development application to be approved) to a clear and specific regulatory objective/s. Remove requirements and criteria that cannot be linked to a clear and specific objective/s. 2. Remove duplicative assessment processes and requirements in legislation and development instruments. 3. Make 'as of right' development processes standard practice. For example, Parties automate the right to development subject to a limited number of prescribed requirements. 4. Ensure fast, streamlined assessment tracks (e.g., 'code assessable') for development applications that are classified as 'low risk'. Proposals classified as 'low risk' should include: <ol style="list-style-type: none"> a) Proposals that are clearly envisaged by local policies and the planning schemes. b) Proposals that comply with planning and building controls. 	<p>NSW introduced a 'complying development pathway' that offers streamlined approvals for proposed land uses that are permissible in the intended zone of use and are listed as a complying development land use. This forms part of an approach to facilitate employment-generating land use that will bring economic benefit by minimizing unnecessary regulatory burden.</p>