



# Fact sheet: Understanding assessment benchmarks

This fact sheet explains the term ‘assessment benchmark’, a term introduced by the *Planning Act 2016*, which commenced on 3 July 2017.

## What are assessment benchmarks?

The assessment benchmarks are simply the matters against which the development proposed by a development application must be assessed.

Chapter 3, section 43 of the Planning Act establishes two types of categorising instrument:

- a regulation
- a local categorising instrument, which covers a planning scheme, a temporary local planning instrument or a variation approval.

These categorising instruments are the primary mechanism for setting out categories of development, categories of assessment, and the assessment benchmarks.

The description of matters that development must be assessed against (under both code and impact assessment) have been simplified and consolidated into a single term called assessment benchmarks. This reflects the intention that, regardless of the category of assessment, or the degree of specificity with which they are expressed, assessment benchmarks are all essentially the same type of things – a ruler or gauge against which proposed development is measured to determine compliance.

## About assessment benchmarks generally

Assessment benchmark is a term covering both code and impact assessment. The Planning Act does not define what a benchmark can be. It is deliberately intended that this be left to individual planning instruments. This matches the current arrangements under SPA, where the concepts of codes and other laws and policies relevant to assessment are similarly not defined.

There is no particular level of specificity with which benchmarks must be expressed – they could consist of very detailed technical standards, or broad statements of desired policy outcomes. While it is not intended to imply detailed units of measurement, the notion of an assessment benchmark as a measuring device does imply that the benchmarks must be expressed objectively. Like any measuring device, they have a point of reference from which compliance can be measured and be graduated in a way that is suitable to the outcome being measured.

For example, an assessment benchmark about achieving a particular standard of amenity could include objectively measurable outcomes such as heights, setbacks, bulk and colour, but could also validly be expressed as:

*A standard of amenity consistent with the amenity of the built form on adjacent premises, as an observable point from which to objectively measure.*

But it would not be appropriate to express it as:

*The development has pleasant amenity.*

This is because the term ‘pleasant’ is a subjective concept that varies for each observer, and there is no consistent point of reference from which to measure.



As the form of an assessment benchmark is not prescribed, it could take many forms, such as but, of course, not limited to:

- a traditional code, with a code purpose, performance outcomes and acceptable solutions
- a simple list of standards to be met for simple works or other development of a technical nature
- several codes together with overarching statements of intent for the development, or areas in which the development is to be located
- identifying relevant parts of an entire planning scheme for assessing particular development in particular contexts, for example, major development proposals that are not otherwise contemplated under the scheme.

## Category of assessment – assessment benchmarks for code assessment

While ‘assessment benchmark’ is a broad term and is not confined to code assessable development, in practice it is expected that the expression of assessment benchmarks for code assessment will continue to be fit-for-purpose in relation to their scope and clarity, and will permit applicants and the community alike to form clear conclusions as to the outcomes intended for each benchmark.

Under SPA, code is defined in an exclusive way. This reflects an intention not to arbitrarily limit the scope and construction of codes, given the broad range of development and circumstances to which they may apply. Exclusively defining the term also risks unproductive challenges to decisions made under codes on the basis that the matter did not constitute a code. Likewise, for these reasons, benchmark has not been exclusively defined under the Planning Act.

## What an assessment benchmark is not

While the Planning Act doesn’t exclusively define what assessment benchmarks are, it does identify some matters which an assessment benchmarks can’t be:

- A personal opinion. This is necessarily subjective and can’t be expressed as an objective benchmark. Differences of opinion will arise about the appropriate way to express or apply a benchmark, but the benchmark itself can’t be expressed as a matter of opinion, for example:

‘Development that is, in the opinion of the assessment manager....’

- A person’s circumstances, personal or otherwise. This is in line with the provisions for impact assessment that describe these matters as outside the ambit of other relevant matter.
- For code assessment, strategic outcomes under a planning scheme. Section 16(1) of the Planning Act provides that a planning scheme must identify strategic outcomes for the local government area. Strategic outcomes are, by their nature, expected to be expressed in broad terms that are inconsistent with the concise nature of assessment benchmarks for code assessment.
- Any other matter prescribed by regulation. The Planning Act also provides under section 43(4)(c) that a planning scheme can’t be inconsistent with the effect of a specified benchmark (or part thereof) identified in a regulation. The regulation, therefore, is available to address conflicts between benchmarks in their application and effect, should it be required.

## Transitional provisions

Transitional arrangements in the Planning Act ensure that the applicable codes under existing planning schemes become assessment benchmarks for the same from 3 July 2017 when the Planning Act commenced. That is, any codes or standards that were used under the previous system to assess applications will continue to be used for that development under the new system. Any subsequent change that substantially changes the effect of the assessment benchmarks for the development will be subject to a publicly accountable amendment process.

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