UDIA RESPONSE TO THE PRODUCTIVITY COMMISSION ISSUES PAPER:

Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments

Business Regulation Benchmarking –
Planning, Zoning and Development Assessments
Productivity Commission
PO Box 1428
CANBERRA CITY ACT 2601

Via e-mail: planning@pc.gov.au

Dear Productivity Commission

Thank you for the opportunity to provide a submission to the Issues Paper of Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments.

The Urban Development Institute of Australia (UDIA) is the peak body representing the property development industry throughout Australia, representing over 4,000 companies that directly employ more than 400,000 Australians including developers and a range of specialist and industry fields involved in the development sector including lawyers, engineers, town planners and contractors.

UDIA represents its members through a network of State Organisations based in the five mainland capital cities, a Northern Territory Branch, Local Branches, and a National Office based in Canberra.

URBAN DEVELOPMENT INSTITUTE OF AUSTRALIA (NATIONAL)
GPO BOX 2507 CANBERRA ACT 2601
T: 02 6230 0255 and 02 6230 0055
F: 02 6230 0311
E: udia@udia.com.au

UDIA, through its National and State offices, has already had several meetings with officials from the Productivity Commission in relation to this Benchmarking exercise, and would welcome the opportunity to continue to assist the Productivity Commission where possible in relation to this exercise.

UDIA welcomes this performance benchmarking exercise and notes that planning, zoning and development assessment are critical components of the development process, which provides a major contribution to Australia's economic activity.

A recent study by respected economic consultancy Property Insights[1] found that the Australian Development Industry directly accounts for 7.3% of GDP and, taking into account indirect impacts on the rest of the economy, delivers an additional 6.2% of national output. In terms of GDP contribution, the Development Industry is only overshadowed by mining, manufacturing and business services, the last group including an array of diverse activities.

Over half (56.6%) of all Australian private investment – equating to $146 billion - is undertaken by the Development Industry.

The industry directly accounts for 975,700 full time equivalents (FTEs) directly (9.1% of the workforce) and a further 749,600 FTEs (7% of the workforce) in the broader economy.

The total (direct and indirect) impact of $1 million invested in the Development Industry generates in Australia:

- 11.8 full-time equivalent jobs.
- State and federal taxes of $146,474.
- An addition of $885,880 to wages and salaries.

The study also found that, at a conservative estimate, the property development industry, both directly and through associated industries, generated in excess of $29.7 billion of state and federal taxes in 2007/08.

Planning, Zoning and Development Assessments are principally state-based issues, consequently this submission provides a summary of the major regulatory issues impacting on the Development Industry in each of the mainland states.

Whilst the regulatory impacts differ in the various jurisdictions, there are some commonalities. These include:

- A lack of formal linkages between strategic planning and performance benchmarks;
- Interaction between Commonwealth and State legislation (eg the EPBC Act and state conservation Acts), and between State and Local government planning acts ;

[1] Property Insights – The Property Development Industry Economic Impact Study, March 2010

- A lack of benchmarked assessment timeframes across the three tiers of government;
- Inadequate land supply;
- Inadequate levels of accountability for process costs and housing affordability;
- Transactional costs impacting on the development process;
- Uncertainty in relation to planning outcomes; and
- An absence of a clear process for infrastructure planning and funding for growth areas.

UDIA has included with this submission the 2009 UDIA State of the Land Report, which provides a comprehensive analysis of the regulatory issues impacting on land supply in Sydney, Melbourne, Brisbane, Perth and Adelaide. The 2010 Version of this Report is currently being prepared. UDIA will provide a copy of the 2010 to the Productivity Commission upon completion.

Yours sincerely

RICHARD LINDSAY

Chief Executive Officer

6 September 2010

URBAN DEVELOPMENT INSTITUTE OF AUSTRALIA (NATIONAL)
GPO BOX 2507 CANBERRA ACT 2601
T: 02 6230 0255 and 02 6230 0055
F: 02 6230 0311
E: udia@udia.com.au

UDIA STATE SPECIFIC CONTRIBUTIONS

New South Wales

Planning, Zoning and Development Assessments

§ ***A lack of clear legislative primacy for the Environmental Planning and Assessment Act, 1979***

Many issues arise not from the *Environmental Planning and Assessment Act*, 1979 (*EP&A Act*) itself but from associated single purpose legislation with interacts with the EP&A Act such as the *Threatened Species Conservation Act*, 1995 (*TSC Act*). This is particularly the case in new release areas in greenfield situations and in coastal areas or areas with significant native vegetation.

Issues arise where planning is being driven by the objectives of one government agency as opposed to the Department of Planning (which is responsible for planning), and the relevant local council which may be attempting to implement State Government policies such as increasing density and reaching housing targets as required by the NSW Government. The end result is that in many instances government agencies are acting contrary to one-another's objects and this sends conflicting messages to residents, the business community and local councils.

UDIA NSW contends that benchmarking the interaction of other State and Federal Government agencies in the planning process would be valuable for the Commission's Review.

§ ***Lack of accountability for housing delivery outcomes***

UDIA NSW believes that one of the key constraints on the Government's urban growth agenda is that no one agency is explicitly responsible for delivering housing outcomes. This is reflected in the disparity between the dwelling production statistics, and the notionally healthy land supply figures.

The Government has achieved its State Plan objectives for land supply for a number of years, yet actually housing production continues to track at generational lows. Performance benchmarks should apply to actual housing production and timeframes for various stages in the development process, including pre-rezoning (i.e. having sites considered for inclusion on a land release program, rezoning, and development assessment.

§ ***No formal link between strategic planning and performance benchmarks***

There is also no formal, recognised link between the Government's Strategic Planning documents and the Metropolitan Development Program – the Government's program for coordinating land release and infrastructure provision. This is a key weakness in the Government's urban growth agenda.

The MDP should be the Government's principal evidence basis for timely infrastructure investment to support urban growth in infill and on the fringe. If the Metro Strategy genuinely aligns infrastructure with land use, then the two documents must be used together and reference each other to provide investment certainty for both the industry and government.

§ ***Cultural complacency for growth***

The legislative and policy framework in NSW is interpreted by many state and local government officers as having principally a development control focus, rather used to promote and facilitate investment activity. In many cases, this engenders a cultural approach that is unsympathetic to development.

There are benchmarked assessment timeframe targets that apply at a local government level, yet are not yet enforced on state government agencies. This is where a significant degree of process friction is generated in the development process and is amplified by the fact that a number of the agencies interact with the planning process on a single issue basis, rather holistically. In this regard, applications are often stalled in the system as issues that are ancillary to the overall consideration of a proposal are addressed in great detail, pursuant to the request of a Government agency of department that is not responsible for the ultimate assessment determination of a project.

UDIA NSW contends that benchmarked assessment timeframes should apply to all assessment aspects of a development application, including the interaction with state and federal government agencies.

Planning Delays and Investment Returns

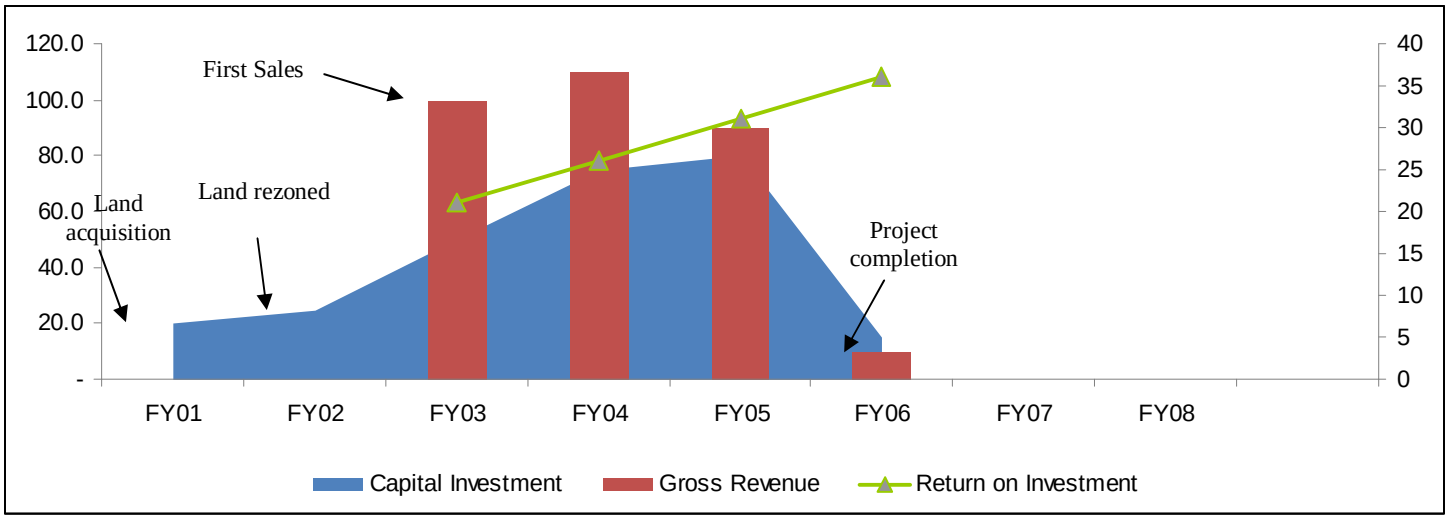
UDIA NSW has modeled the impact of planning approval delays on the return on investment of capital by a developer. The project modeled is a greenfield residential subdivision. The models make two key assumptions:

§ initial land acquisition is the same cost in each example (i.e. same start up investment capital cost); and
§ gross revenue is the same in each example (i.e. product is sold for the same prices regardless of delay)

The model shows three different scenarios, as detailed below:

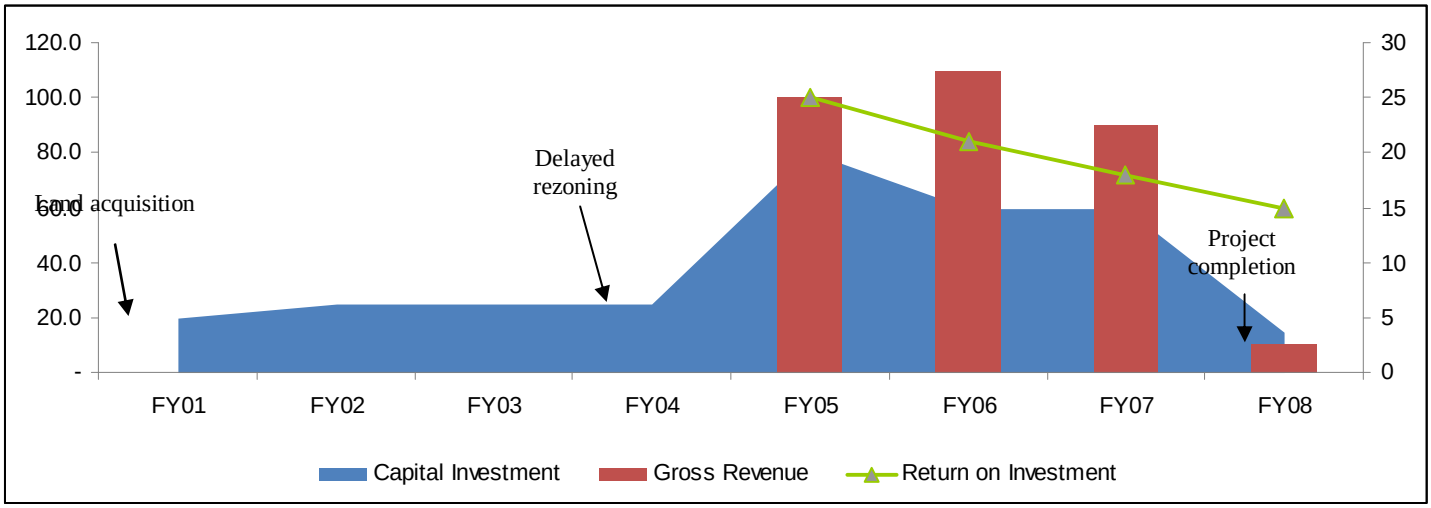
Scenario 1

§ Ideal project – assumes reasonable timeframes for planning, approval, construction, sales.
§ Assumes return on investment of 20%, which given associated risk, is market benchmark.



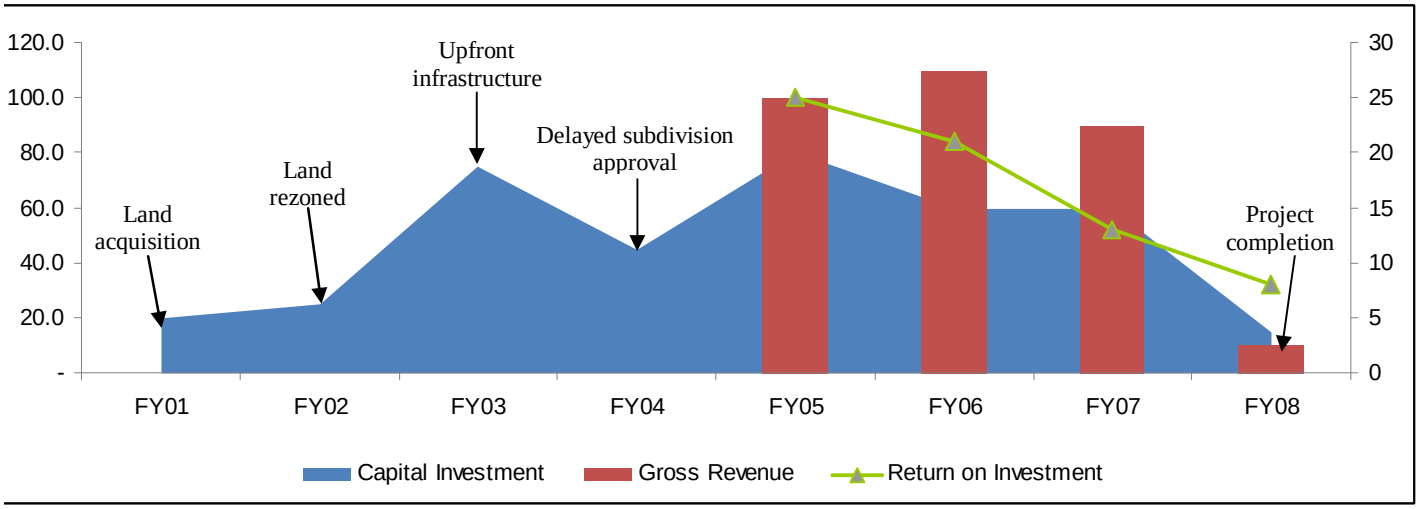
Scenario 2

- § Delayed rezoning process, results in increased levels of debt financing.
- § Return on investment increases.
- § Investors demand higher benchmark returns to offset associated risk.
- § Investment will not occur in uncertain legislative environment.



Scenario 3

- § Rezoning process as normal and investment in upfront infrastructure is committed.
- § Relayed subdivision approval process, results in increased levels of debt financing.
- § Return on investment decreases dramatically.
- § Investors demand higher benchmark returns to offset associated risk.
- § Investment will not occur in uncertain process environment.



Findings

§ A strategic planning system that has endemic delay in the rezoning process encourages long term speculative land banking and discourages investment in urban growth.

§ An operational planning system (development control) that has endemic and unpredictable delay in the approval process creates volatile market conditions which affects that affordability of the end product.

§ The combined delay in both strategic and operational planning processes contributes significantly to a deterioration in housing affordability.

Maintaining Adequate Supplies of Land for Different Uses

§ ***Residential Land***

Through the NSW State Plan, the Government has set a target of achieving 55,000 zoned and serviced lots ready for development by 2009. The Sydney Metropolitan Development Program 2008/09 (MDP), released in April 2010, revealed that the Government believed there to be the following dwelling potential from greenfield land supply in the Sydney metropolitan region:

§ Total MDP - 131,057 potential dwellings (79 release areas).

§ Zoned - 68,636 potential dwellings (of the 79 release areas 58 have been rezoned).

§ Zoned with trunk infrastructure - 56,342 potential dwellings (45 release areas) - there is capacity in the trunk infrastructure to service these areas.

§ Zoned with Lead-in Infrastructure - 30,167 potential dwellings (45 release areas) - lead in infrastructure is constructed to the edge of the release area.

While stocks of zoned and serviced land are reasonably high, actual housing production is tracking at historical lows, year on year. Therefore the benchmarking and maintenance of

land stocks per se, is not necessarily beneficial if production roadblocks prevent housing being bought to the market.

The NSW Government's own forecasts for lot production in Sydney over the next three years are for:

- 5360 in 2010/11;
- 5712 in 2011/12; and
- 5891 in 2012/13.

UDIA NSW's lot production forecasts for the same period are on average around 10-15% below the Government's figures. These numbers highlight the inherent constraints with benchmarking and maintaining englobo land stocks as leading indicator of a well functioning planning system.

- ***Employment Land***

In the Sydney Metropolitan Strategy, the NSW Government committed to establishing an Employment Lands Development Program (ELDP). It is understood that the purpose of the ELDP was to provide a comprehensive spatial database of employment lands, identifying where additional stocks are required, and providing the evidence basis for infrastructure programming and delivery to support private sector investment.

This program has yet to be established, but could be a valuable program for facilitating employment generating development in desired locations.

Competition and Regulation of Land Markets

It should be noted that in NSW there is a move by the State Government to prevent anti-competitive action through the planning system with the introduction of a competition State Environmental Planning Policy (***SEPP***) and complementary Ministerial Directions. It is expected that these will send messages to councils regarding what should and should not be considered in the development assessment of commercial enterprises and competition. Accordingly:

- protection for existing businesses and commercial viability is not a planning consideration;

- but overall economic impact on community facilities and services can be a consideration; and

- any restriction on a number or a particular type of retail store, any proximity restriction contained in a planning instrument or policy would be invalid.

There is confusion by regulators, particularly at the local government level, as to what is a restriction and what is a relevant consideration, however this may be addressed by the above policy directions. Competitors do use the planning system to either try and prevent competitors establishing in certain areas or delay their establishment and therefore cause a financial burden on future new development.

Whilst the Government has considered providing guidance and is considering providing guidance on how to consider third party objections, when assessing development proposals including how to deal with vexatious objections, it is important that all participants in the planning system are allowed the opportunity to comment on proposals and that the consultation process is not unnecessarily curbed in an attempt to deal with competitors and vexatious objections. In essence assessors need to be given clear guidance about what is a relevant consideration such as overall economic impact as opposed to protecting existing businesses and commercial viability.

URBAN DEVELOPMENT INSTITUTE OF AUSTRALIA (NATIONAL)
GPO BOX 2507 CANBERRA ACT 2601
T: 02 6230 0255 and 02 6230 0055
F: 02 6230 0311
E: udia@udia.com.au

Queensland

It is the view of UDIA(Qld) that the current corporate governance structure of the residential housing sector does not deliver or promote the required levels of efficiency in the delivery of housing product in Australia today. As a consequence, there is a real challenge to affordability that is unlikely to be significantly improved in the next decade unless major corrective action is taken in the immediate future to reduce process costs and address the crippling taxation burden imposed on the sector, particularly through holding charges, transactional costs and infrastructure charges.

The key problems that we see are:

- The current levels of accountability for process costs and affordability are misaligned with local authorities responsible for the former and state governments the latter. With neither level of government responsible for both and extremely limited reporting on or benchmarks applicable to either aspect effectively means that there is minimal real accountability for the impact of government activity on housing affordability, to the extent that it is influenced in this context.

- Apart from taxes and charges, transactional costs are one of the most significant outlays for the development sector. Such costs are impacted by a number of factors that are rarely benchmarked by any level of government. They include the time taken to process an application through the system, the direct cost of fees, the costs associated with unnecessary or duplicated steps or activities in the process, the cost of consultants, the opportunity costs of prolix negotiations, to mention a few.

- Uncertainty of outcomes is another key issue that adds to the cost of housing. Planning schemes that permit maximum discretion to government decision makers may deliver better case by case outcomes from a planning perspective (or at least such is the assertion by government planners) but they do add extensively to the cost of housing product. Moreover the presence of relatively unfettered discretion for decision-makers in respect of development outcomes permits local political influences to distort rational, open and accountable consideration of development applications.

- Decisions regarding the above are consistently taken outside the context of efficiency performance indicators that are relevant to industry efficiency and housing policy.

- Such decisions are also not taken in the context of forecast and potential macro and micro-economic impacts on local state and federal costs. In short there is generally not a disciplined approach that ensures that cost-benefit analyses are undertaken in respect of all government initiatives relating to the housing sector. The absence of such a professional and disciplined approach is contrary to the principles of good governance adopted and used at Federal level and also in many states.

- The absence of professional evaluation of likely industry consequences is clearly demonstrated by the implementation of changes to infrastructure charges particularly in New South Wales and Queensland where major changes to the cost base of residential dwelling product occurred without economic evaluation of potential

impacts. Nor were there forecasts even of the potential impact on product price, economic activity, job losses etc.
This is in sharp contrast to the extensive economic impacts undertaken in respect of the carbon tax initiative developed by the Federal Government in recent years.

In essence, root and branch change is essential in this sector. Changes based on sound corporate governance are necessary to ensure that reporting and monitoring systems are put in place in respect of all of the process elements related to development. Targets should be set for improved processing outcomes and in respect of certainty of outcomes. Efficiency and effectiveness measures should be developed at National level and these should constitute the sharp end of housing policy so that policy drives outcomes rather than having the chaotic and unaccountable systems that the industry operates under today.

Population policy drives the need for housing today. However affordability and accessibility should drive the process of delivering residential accommodation and in the absence of National reporting structures and standards that flow through the entirety of the housing sector at all levels of government any changes that result from national initiatives (such as, for example, the Development Assessment Forum exercise) will be nothing more than a mere rearrangement of the deck-chairs!

Fundamental, bottom-line root and branch accountability for performance, based on realistic yet comprehensive performance measures developed and endorsed by the Productivity Commission would be the most helpful outcome of this review in the absence of structural change to the responsibilities of housing sector management and is the minimum outcome desired by the industry.

URBAN DEVELOPMENT INSTITUTE OF AUSTRALIA (NATIONAL)
GPO BOX 2507 CANBERRA ACT 2601
T: 02 6230 0255 and 02 6230 0055
F: 02 6230 0311
E: udia@udia.com.au

Victoria

While the Victorian planning system is seen by many practitioners who have worked in multiple jurisdictions as the best in Australia, there are still some issues that, if they were addressed, would make the system better.

One major issue is that much of the planning system is delegated to local government. The Victorian Competition and Efficiency Commission is conducting an inquiry into local government regulation. A large part of their draft report concentrated on local government planning. The UDIA submission to this inquiry is attached. The local government sector faces significant resourcing issues, particularly in strategic planning, which creates a bottleneck in the planning system. While the Planning Minister can "call in" developments, this is done on a fairly ad hoc basis. Local government therefore needs to be better resourced. In addition, the UDIA in Victoria has suggested that there should be a system of private certification (as outlined in the submission to VCEC). In addition to inconsistencies within and between state planning objectives, there are also inconsistencies within and between councils that should be addressed.

The UDIA considers that there is a disconnect between state government planning policy and objectives, and how they are implemented at the local government level. We consider that this would be resolved by the state government clearly articulating a hierarchy between state government policies and objectives, and what is expected of local government. These issues are also outlined in the attached submission to VCEC.

The UDIA (Vic) is also concerned about the role that environmental concerns take in planning. We are most concerned that, although the objective is for a triple bottom line outcome, invariably due to the native vegetation framework and the net gain policy, the Department of Sustainability and Environment acts with a veto power, rather than as an input into land use planning decision. The UDIA's response to the recent review of the Victorian biodiversity policy as well as last year's VCEC inquiry into environmental regulation, are attached.

We would be supportive of amendments to the Planning and Environment Act that brought in a "code assess" style stream for smaller planning scheme amendments. This would free up planning authorities (particularly local government) to concentrate on more strategic planning.

Western Australia

Maintaining adequate supplies of land suitable for a range of activities

Recent work carried out by UDIA in Western Australia in response to the draft *Directions 2031*: *Draft Spatial Framework for Perth and Peel* (June 2009) establishes that a 50 year planning horizon with 30 years of land zoned for a range of activities is required to reduce the risk of land shortages. History suggests that a 20 year zoned land supply is insufficient. In March 1996 there was a combined stock of nearly 32,000ha of existing undeveloped urban and urban deferred zoned land in the Perth metropolitan region which was estimated to equate to a land supply of 28 years. Ten years later in 2006, the Perth metropolitan region experienced a major land supply crisis that resulted in significant increases in housing costs which had a severe negative impact on housing affordability.

UDIA contends that the current zoned land requirements articulated in the draft *Directions 2031* are insufficient and will trigger another land supply crisis. The framework estimates that by 2031 the Perth and Peel region will need an additional 328,000 dwellings to accommodate a further 556,000 residents. The Metropolitan and Peel Region Schemes identify 18,600 ha of land that is zoned urban or urban deferred and are yet to be developed. *Directions 2031* assumes a greenfield urban zoned land requirement of 11,500 ha, based on dwelling unit densities of 15 du/ha in greenfield locations, leaving a surplus of 7,100ha of zoned land available for development after 2031.

It is UDIA's view that 18,600 ha is insufficient to meet needs because of the increasing demands on urban land for non-residential uses such as commercial and employment areas, wetlands and buffers, conservation areas, on-site drainage, easements of various kinds and buffers to major roads and other incompatible uses. A 25% margin of the greenfield land requirement must be allowed to accommodate non-residential uses.

Inputs to Estimating Future Zoned Land Requirements

Forecast land requirements are based on gross density yields and the potential for infill development. It is UDIA's considered view that realistic assumptions for development in Perth are:

- 35% infill development
- 12 du/ha gross density

These are in contrast to the targets in *Directions 2031* of:

- 47% infill development
- 15 du/ha gross density

The targets in *Directions 2031* are overstated and are unlikely to be achieved which impacts the amount of land required for future development. Reasons include the increasing demand for non-residential uses referred to above in greenfield areas and in infill areas the difficulty of land assembly and co-ordinating development, expectations of landowners and objections

from existing residents. The redevelopment authorities have made real gains from infill developments in inner and middle suburbs over the last ten years or so but these have achieved their potential and there are no more large tracts of government land that could be handed over to a redevelopment authority. While local governments might apply higher density codings to areas the impact on gross densities is minimal.

The underlying philosophy of the draft *Directions 2031* appears to be to restrict the outward expansion of urban areas to promote infill development and force up densities. Whilst these arguments are well understood, in reality there are limitations arising from consumer preference and housing cost/affordability factors including higher construction and raw land cost. The cost to retrofit infrastructure to cope with increased density is prohibitive. In Perth metropolitan area, the existing waste water treatment plants are at capacity and have no physical space for additional buffers. The Water Corporation has expressed concern that there are pinchpoints in the pipes for water and waste water reticulation that can not cope with increased demand from higher density living. The existing power provision of 2 -3 Kva per household was designed in the 1960's and does not meet demand for higher household power consumption of 5 Kva, or higher for high rise dwellings.

The National Housing Supply Council's 2nd State of Supply Report (April 2010) acknowledges the barriers to delivering infill, particularly that it is more expensive, and risky, to build in infill developments than in greenfield areas. UDIA endorses this view.

Until the barriers to infill development are reduced or ameliorated, it can be assumed that the majority of future urban development in Perth will occur on the city's urban fringe. It is therefore incumbent on the government to extend the planning horizon to 50 years to allow a longer lead time for planning and infrastructure programming with sufficient zoned land for 30 years. UDIA promotes a performance based approach to land release to deliver affordable housing in attractive communities consistent with broader, metropolitan objectives.

Removing any unnecessary protections for existing businesses from new and innovative competitors

The cost of innovation is high and is rarely supported by government regulation. Where innovation is introduced into a land development project with a view to achieving significantly better outcomes than regulation mandates, the approvals process is complex and lengthy and results in cost blowouts which negatively impact the opportunity for innovation as the increased costs effect the viability of the project.

Areas of innovation that are hampered by an unwillingness of existing authorities to facilitate change and alternative provision of services include:

- Water Corporation as the only approval authority in Perth for water and waste water services. As the sole service provider, the incentive to pursue innovative responses to service provision is limited.
- The use of non-potable water for areas that do not require drinking quality water. There is little support for the use of recycled water in dwellings even where demonstration projects have confirmed real savings in the demand for potable water for uses such as reticulation of outdoor areas, laundry use and toilet flushing. The

approvals process for projects wanting to introduce alternative water sources is tortuous and protracted which ultimately means smaller projects cannot survive the holding costs.

- Waste recycling operators competing with landfill operators such that recycled material is not price competitive when compared to the cost of virgin raw materials. There is a question of a landfill levy being sufficiently high to discourage the use of landfill with the argument from waste recycling operators that it is not.
- Western Power's incapacity to buy surplus off grid power from alternative sources has stymied the developers' capacity to offer solar power solutions to new households. The cost of power to households in increasing dramatically in Western Australia with the peak provider unable to facilitate households wanting to use more sustainable options.

We bring to the Commission's attention a related issue that feasibly impacts on who is able to develop and where, which was discussed at the meeting between UDIA and the Commission. Industry experts estimate that developers give $174m of infrastructure to Western Power each year and developers also vest infrastructure to the Water Corporation, local government and Main Roads amongst other agencies.

The roll out of infrastructure that precedes the development front can only be provided by the largest development companies. Their capacity to develop new areas is based on their ability to provide expensive water, sewer and power connections which effectively remove smaller companies from the market. Over time, this reduces competition with the market managed by a smaller number of players. While not specifically linked to innovation, it is only the largest development companies that can provide essential infrastructure of the scale required and smaller players either wait till it goes past their development or fall out of the market altogether.

URBAN DEVELOPMENT INSTITUTE OF AUSTRALIA (NATIONAL)
GPO BOX 2507 CANBERRA ACT 2601
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SOUTH AUSTRALIA

Planning Reforms

Substantial changes are currently being implemented in South Australia to address policies and processes that inhibit economic growth. These include:

- The development of a 30 Year Plan for Greater Adelaide and five new Regional Plans for Country areas to guide long-term growth;
- The introduction of the Residential Development Code (expected to speed up the approval process for 60% of development planning applications);
- Streamlining zoning and state significant development processes;
- Improving governing arrangements to assist the delivery of reforms;
- Creating better government and governing arrangements to ensure delivery of all the initiatives in a coordinated way.

The UDIA (SA) is optimistic that these reforms will improve reduce planning barriers to economic growth and competitiveness in South Australia.

Two issues of key concern to UDIA (SA) that have not been adequately addressed in the planning reforms implemented or proposed to date are:

- The impact of land supply constraints in the short-medium term; and
- The absence of a clear process for infrastructure planning and funding for growth areas.

These issues are outlined below and two reports have been included in this submission for the Productivity Commission's reference.

Residential Land Supply

The National Housing Supply Council has found that it can take up to 15 years for residential land to work its way through the land supply 'pipeline' and allotments be delivered to the market. The UDIA (SA) has undertaken research into land supply in Greater Adelaide which has confirmed long lead times.

While the identification of growth areas in the 30 Year Plan for Greater Adelaide has substantially increased the quantity of potential residential land supply (that is, more land has entered the first stage of the 'pipeline'), past and current experiences suggest that it will be many years before this land is converted into residential allotments. The UDIA's research suggests that there may be insufficient land available in the short-medium term.

The UDIA (SA) is concerned that the implementation of the 30 Year Plan for Greater Adelaide involves additional strategic planning processes (e.g. structure planning) before rezoning can occur and may increase the lead times involved in delivering land to market. The UDIA (SA) is also concerned that it has now been some months since the State

Government released the 30 Year Plan but 'The Housing and Employment Land Supply Program' is yet to be released.

Planning processes relating to land supply are simply taking too long to complete. It is the UDIA's opinion that the reasons for these delays are often political rather than practical. The risk is that land supply will remain constrained for some years to the detriment of housing affordability. Recommendations of the Productivity Commission that would reduce the time taken to complete the various planning processes involved in delivering residential land to purchasers would be welcomed by the UDIA.

Infrastructure Funding

Infrastructure funding for new developments in South Australia is currently negotiated between developers and local government authorities. The Development Act (1993) sets mandatory developer contributions for a limited range of infrastructure items including open space, car parking, affordable housing, roads and hydraulic connections (where the development qualifies).

Local planning authorities typically negotiate additional developer contributions during the development assessment process. This means a high level of uncertainty is experienced by both parties to these negotiations.

The Local Government Association of South Australia (LGA) is pushing for an expanded range of mandated developer contributions to infrastructure. It should be made clear that the LGA's primary objective is to increase developer funding of infrastructure, which is evident in the literature they have produced on this subject, which specifically refers to the additional funding base Council's would receive as a result of a mandatory developer contribution scheme. It is apparent the LGA (SA) is not simply seeking a more transparent system.

The UDIA (SA) is strongly opposed to additional infrastructure charges and is concerned that the high infrastructure requirements associated with the implementation of the 30 Year Plan for Greater Adelaide will create pressure for developer contributions to infrastructure beyond the direct requirements of the development.

It should be understood that developers pass on infrastructure costs to the purchaser of residential land or a house and land package, in the same way developers pass on all other costs associated with developing land. Additional developer infrastructure costs do not disadvantage developers, they increase house and land prices. In the context of current concerns, at all government levels, on housing affordability issues, this is clearly not desirable.

<u>Attachment A</u> – UDIA (Vic) Submission to the VCEC on the Inquiry into Local Government Regulation (June 2010)

Background
On 24 August 2009, the Victorian Competition and Efficiency Commission (VCEC) was directed to carry out an inquiry into streamlining local government regulation.

Local government plays an important role in the planning system in Victorian. Most developments are affected by local government and need to comply with local regulation. The UDIA's primary concerns with local government regulation in the planning system include: ensuring consistency with state government objectives, which affect outcomes at local government level

- encouraging the speedy resolution of planning processes
- maintaining residents' input in the planning system
- ensuring consistency within and between councils.

The UDIA is encouraged by VCEC's draft inquiry report and broadly supports all recommendations.

The UDIA (Vic)

The Urban Development Institute of Australia (Victoria) is an independent association of over 350 organisations directly involved in the production, financing and marketing of all facets of property development. UDIA (Vic) operates as a private company limited by guarantee and was incorporated in 1975. It operates a full time secretariat and the affairs of the Institute are administered by a Board of Directors elected annually by Members of the Institute. Many local governments are members of UDIA.

In addition the Institute is:
- A forum for discussion of industry problems and objectives
- An active political lobbyist for industry causes and goals
- An active collator and disseminator of information and data relating to urban development
- A monitor of Government and Public Authority activities which affect urban development and the viability of the industry.

VCEC Draft Recommendations

In its draft report, VCEC made nine recommendations on planning processes. The UDIA broadly supports all of these recommendations. We support the concepts of performance reporting, benchmarks, the development of best practice models (although we would prefer a mandate), a system of private certification, streamlining of referral processes and properly resourcing local government to undertake their planning functions.

Ensuring Consistency Within The VPP

The UDIA's over-arching comment is that we consider that there is a disconnect between state government planning policy and objectives, and how they are implemented at the local government level. We consider that this would be resolved by the state government clearly articulating a hierarchy between state government policies and objectives, and what is expected of local government.

The Victorian Planning Provisions (VPP) are a state-wide reference document or template from which planning schemes are sourced and constructed. They are a statutory device to ensure that consistent provisions for various matters are maintained across Victoria and that the construction and layout of planning schemes is always the same.

However, there are inconsistencies within the VPP which, when translated to the local level may lead to poor planning outcomes. The inconsistencies in the state provisions make interpretation of what the desired outcome is at the local level confusing for local government.

An example of this is in "neighbourhood activity centres". These areas include strip shopping centres. These areas are considered by state policy to be areas where substantial change would be expected over time. However, the state policy also says that any change needs to reflect the established neighbourhood character of the area. This contradiction leads to confusion for local government planning authorities, the community and developers, which can lead to costly disputes over interpretation.

There needs to be greater clarity from the state on what the Victorian Planning Provisions require local government to do, including removing inconsistencies that cause confusion and reduce the efficiency of the planning system. In addition, the state government should conclude its work on the new residential zones to ensure that there is no confusion about the substantial change that is expected to occur in defined areas.

There are other areas where state government stalling has resulted in uncertainty at the local level. These areas include sea level rise policy, where the state has announced a policy without ensuring that there is an understanding at the local level or indeed at the state level as to how to implement the policy.

As well as ensuring that the state government provide local government with a clear hierarchy, the UDIA also considers that it is important that, when assessing a planning application, local government not stray into areas that are clearly and fully within the purview of the state government. An example of this is when local government rejects a planning application based on considerations about public transport. The capacity for local government to make decisions about issues such as public transport capacity is small, particularly in comparison with the Department of Transport. We consider that local government is stepping well outside of its areas of responsibility when it takes into account issues such as these when assessing a planning application.

Encouraging The Speedy Resolution Of Planning Processes

Local Government Resourcing

One of the major systemic issues in the planning system is the chronic under-resourcing of local government planning departments. This is particularly the case in regional areas, where (through no fault of their own) capabilities and experience are lacking. The issue for government then is

how to increase resources, how to make councils accountable for the advice they receive and how to make the system more time efficient.

One system that may be useful to replicate in other areas is Greater Dandenong's "priority paid" system. Under this system, for a fee, a development that complies with the planning scheme is guaranteed a decision within a minimum timeframe.

Another method would be to embrace a form of private certification.

Private Certification

The UDIA supports VCEC's draft recommendation on private certification. In suggesting a move to private certification, we consider that the ultimate decision-maker should still be the council, the Minister or VCAT (on appeal) and that the community remain involved as part of the permit application process.

There are many options for private certification, but we have concentrated on the broad concepts for a private certification scheme that could be built upon. We see private certification essentially easing the burden on council for the front-end of the planning permit system. The permit applicant would have the option of using the existing planning permit application process or engaging an accredited planner to certify that the planning permit application contains all of the information reasonably required by council to progress it.

If a council receives an application so certified, it would not be able to request further information. If council was of the opinion that insufficient information had been provided, it could use that as a ground for refusal. Council would then have seven days within which to provide a list to the permit applicant of the properties to be notified of the application or to be advised that no notice is required. If council does not respond within seven days, the applicant can discharge any obligation to give notice by erecting a sign on the land and placing notice in a local newspaper. The existing process would then apply to the application.

Once this model is shown to be worthy, other elements could also be built on top of this, including allowing the consultant planner to undertake external referrals, and present a report to the council with a recommendation and a draft permit (if recommended that it be issued). Council could then be required to make a decision within thirty days, with failure to do so resulting in either a deemed consent to issue the permit (on the conditions submitted) – with a right of review allowed for objectors or objecting referral authorities – or allowing applicants to lodge an appeal against council for failure to make a decision.

To ensure rigour and integrity in this system, planning consultants should be accredited by DPCD or using a model similar to that in the Building Act.

Private certification would speed up the planning system, ensure that the community remains involved in the planning process, and free up councils to deal with important strategic matters.

Notice of an application

The notice requirements need to be streamlined. First of all, a council should have a limited time, for example, not more than 14 days from the date of lodging of the application to decide whether or not notice ought to be given and the form that that notice should be given. If it fails to make a

decision within that time then there should be an opportunity for the applicant to discharge the obligation to give notice by simply publishing a notice on the site and one in the local newspaper.

The difficulty with an applicant having a right to give direct notice, as is the case under the present legislation, is that the council rate records provide the necessary information and councils are not obliged to provide that information.

Amending a Planning Permit

A responsible authority should have the power to amend a condition issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT).

The secondary consent permit condition is extremely important but it is misunderstood by many councils. There should be some clear guidelines set out in the Planning anf Environment Act as to where it is appropriate for that process to be used. VCAT has in a number of decisions set out those principles and there is no reason why they could not be given legislative effect.

There should be a process for recording secondary consent approvals. Where appropriate, this should be done by altering the condition. For example, a condition which places a restriction on patron numbers, except with the consent of the responsible authority.

The use of the word "minor" to describe an amendment should be avoided. In effect, the "minor" amendment is where the secondary consent process should be used as an expedient and efficient process of effecting an amendment to a permission.

If the secondary consent process was better understood and included as part of the legislative requirements then its use might be better implemented.

Planning Scheme Amendments

We consider that councils have too much control over the amendment process without accountability. A process along the following lines should be considered:

1. A request for planning scheme amendment is made to the council.

2. The council has 28 days within which to request further information.

3. A time should be prescribed within which the council must seek authorisation (assuming that the authorisation process is retained).

4. If it does not do so within that time then the proponent can refer the matter to the Minister who would be empowered to grant authorisation.

5. Having been granted pre-authorisation the council would then be required to place the amendment on exhibition. There should be a time limit within which that is to occur after receipt of authorization, say 14 days.

6. If it fails to do so, then the Minister would become the planning authority for the amendment at the request of the proponent.

7. If it does place it on exhibition, the Planning and Environment Act should prescribe a time within which it is to consider submissions and adopt a position on the amendment.

8. If it fails to do so within that time then the proponent can refer the matter to the Minister.

9. The council should be required to refer submissions to a panel. Again, if it does not, the Minister would become the planning authority.

Submissions to an Amendment

Councils should have the right to reject a submission if it considers it to be irrelevant, although in practise, it is unlikely that many submissions would be rejected.

Submissions that support an amendment ought to have the same status as opposing submissions and ought to be given a similar opportunity to be heard before a panel.

The role of a panel should be limited to considering submissions. The role of a panel should not be to undertake a general review of Council's Planning Policy Framework as part of any amendment.

However, consideration should be given to requiring mediation of an amendment before it reaches a panel. The mediator could be a panel member who would then be disqualified from being a member of the panel appointed to hear submissions.

Abandonment

A council should not have the power to be able to abandon a planning scheme amendment after a panel recommendation.

Speeding Up PSPs

Precinct Structure Plans (PSPs) need to be sped up. The current situation where PSPs can take years places major burdens on land holders who want to develop the land for housing. These burdens include legal costs, interest costs, the cost of the opportunity forgone of investment in the land, and other holding costs, and add to the end price of new houses. The UDIA supports the Growth Areas Authority (GAA) in attempting to speed up the process, such as the process undertaken with the Cranbourne East PSP.

With this PSP, the subdivision permits were also assessed and approved alongside the PSP. This parallel process possibly saved up to six months.

However, the UDIA considers that the role of the GAA needs to be better defined to ensure that it does not become another layer of planning regulation.

Ensuring Consistency Within and Between Councils

The UDIA is concerned that the ambiguities in the Planning and Environment Act and the VPP mean that decisions are made with a large amount of individual discretion, both at the council officer level and at the full council level. This wide scope for interpretation makes it likely that there will be a dispute between council and a proponent, adding costs into the system. In order to reduce the costs, ambiguity and inconsistencies should be removed from the Planning and Environment Act and the VPP.

An example of an inconsistency between councils is in the area of decorative light poles. Developers are required by councils to install light poles in their new estates, which become council assets. However, some councils see “decorative” light poles (light poles that are not standard) as a liability, as they claim that they are more expensive to replace. Decorative light poles play a major role in establishing a new area, especially when there are few trees. Some councils charge a levy (Wyndham charges a levy of around $2,500 per pole for its replacement, Casey currently charges $150 per pole), and others have effectively banned them (Casey is moving towards this approach).

UDIA modeling suggests that if councils levy a modest amount of around $150, they should have a growth fund with enough money in it to replace light poles well into the future. We are concerned about what is being done with the levies that have been collected to date, as there is little evidence that poles have needed to be replaced. We consider that this is an area where the GAA should be active, and would be able to coordinate a solution across the growth area councils.

URBAN DEVELOPMENT INSTITUTE OF AUSTRALIA (NATIONAL)
GPO BOX 2507 CANBERRA ACT 2601
T: 02 6230 0255 and 02 6230 0055
F: 02 6230 0311
E: udia@udia.com.au