

# **SUBMISSION IN RESPONSE TO THE DRAFT RESEARCH REPORT - PERFORMANCE BENCHMARKING OF STATES AND TERRITORIES' PLANNING AND ZONING SYSTEMS**

## **PREAMBLE**

Certain Planning Pty Ltd welcomes and supports the Productivity Commission's draft Research Report on the Performance Benchmarking of States and Territories' planning, zoning and development system across Australian jurisdictions.

The draft Research Report has been read with significant interest and the depth and breadth of benchmarking measurements is to be clearly commended. When finalised, it will no doubt be a valuable resource to inform governments and communities about the key issues in this challenging system, and provide practical insights into mechanisms that will enable delivery of good practices and outcomes within the planning and development realm.

## **OVERVIEW COMMENT**

It is noted that the research to date is confined to comparative analyses of existing practices, and is well understood for benchmarking purposes. It would seem that there is scope to also assess not just 'what is being done' within the jurisdictions, but also to gauge 'what could be done' or labeled as 'identified / proposed value added initiatives' that warrant further evaluation.

Such an example could well be the measured intent of jurisdictional Governments to secure optimum utilization of their existing State / Territory owned lazy assets such as the application of existing 'at grade' metropolitan rail corridors for the provision of *Air Space Developments* contiguous to appropriate rail nodes.

Such a measure was reflected in Submission 36 to the Productivity Commission titled: **SELECTIVE UTILISATION OF AIR SPACE ABOVE RAIL CORRIDORS within the GREATER METROPOLITAN REGION for TRANSIT ORIENTED DEVELOPMENT.**

It was initially provided to the NSW Department of Planning in May 2010 as part of its Metropolitan Strategy Review. An overview, of that Submission follows:

The proposed application of further Air Space Development within the Greater Metropolitan Region rail network, apart from improving the integration of land-use and transport infrastructure, has the potential to integrate a range of Government's other policy drivers including:

- a formal realisation of air space as a highly valued Government owned portfolio;
- the consequential opportunity to redress an existing lazy asset and generate unscheduled revenue streams;
- the provision of transit oriented development for such uses as residential (including affordable housing), commuter car parking, long day child care centres, vertical aged care villages and depending on location specific unmet demands – the possible inclusion of commercial or retail or both;
- a partial remedy to the difficulties faced with existing urban area infill, in recognising community opposition often being a significant barrier to urban renewals with medium / high density development; and
- the enhancement of public transport patronage, lessened car dependency and thus reduced GHG emissions.

The Submission also identified challenges, and was submitted to enable awareness of the extent to which transit oriented *Air Space Developments* over Government owned rail corridors (contiguous to appropriate nodes) can meet and address many of the current Policy issues and challenges facing Governments today. A copy of that Submission is provided as [Annex A](#) for ready reference.

## **DETAILED COMMENTS**

When comparing the draft Research Report and Submission 36, the following detailed additional comments are offered as to the extent *Air Space Developments* can address the identified issues, challenges and opportunities within each of the Chapters 2 to 8 of the Productivity Commission's draft Research Report – Volume 1. Volume 2 has also been reviewed and one comment is provided in the Closing Comments at the end of this Submission.

### **The Functioning of Cities**

Within the draft Research Report, Table 1 Overview (p xxiii) lists a range of challenges that have major effects on the planning system of city functioning. It would be an interesting exercise to gauge the responses of the lead planning agencies as to the extent to which these challenges become less of an impact with the initiation of public sector rezoning on public sector land to secure *Air Space Developments* contiguous to rail corridor nodes within their respective metropolitan jurisdictions.

## **Infill Development**

The draft Research Report (p 89) identifies infill developments have become increasingly important to housing outcomes as the jurisdictions have sought to limit the area covered by their cities in order to reduce the costs of supplying supporting infrastructure and to reduce the impact of cities on the environment and heritage areas. Also, if the supply of greenfield land for housing is constrained due to natural or economic limitations or slow release by governments, the only way to accommodate an increasing population in a city is by increasing population density in existing developed areas via infill development.

Unless this increase in density is accompanied by upgraded infrastructure, the city's residents can face costs arising from traffic congestion and overloading of water and power infrastructure.

The appropriate application of metropolitan wide *Air Space Developments* is likely to make a significant reach in lessening development pressures within existing urban areas. Specifically, *Air Space Developments* are likely to minimise barriers to the addition of housing stock through infill development in that:

- there is minimal difficulty in aggregating sites, as all in Government ownership;
- planning assessments / rezonings being undertaken by Government; and
- there would be less likelihood of community opposition as the large node sites are invariably road separated, in public sector control and with intended multi faceted urban outcomes.

## **Efficiency and Effectiveness**

The draft Research Paper (p 92) notes that strategic objectives and strategies inform the planning policies and land use plans of the state/territory and local governments and therefore determine the aggregate amount of new land that will be added to the city, the proportions in which it will be allocated to different uses, as well as the rezoning and other measures that will be applied in order to make better use of existing urban /city land.

Strategic objectives and strategies that incorporate *Air Space Developments* would readily inform the planning policies and land use plans and therefore determine the additional aggregated amount of new total Floor Space Ratio (FSRm<sup>2</sup>) that can be added to the metropolitan area, the proportions allocated to different uses as prescribed by the respective jurisdictional Government led rezonings in order to make better use of existing underutilized transit oriented urban capacity.

## **Transit Oriented Developments**

The Research Paper (p 101) notes that over the life of *City of Cities: A Plan for Sydney's Future*, Sydney is looking for at least 80 per cent of housing to be built within the 'walking catchments' of existing and planned centres of all sizes with good public transport. The appropriate delivery of *Air Space Developments* has the potential to provide a substantial portion of the 80% target prescribed and conceivably within an effective rollout timeframe.

## **Causes of Delays in the Land Supply Planning Process**

The Research Paper (p 123) identifies that the most common causes of delays and extended timeframes in the land supply process of all jurisdictions are the rezoning process, planning scheme amendment process, structure planning process and overcoming community concerns and/or addressing objections. The long time taken to complete the rezoning and structure planning processes (which can take as long as six years) is not surprising given the complexity of each process and the absence of any statutory time limits for these processes. *Air Space Developments* are likely to have an efficient rezoning time frame given that the Government is:

- not just responsible for the delivery of a range of project linked policy objectives (and qualifying with a status of State Significance or equivalent – thus fast tracking provision); but
- also both the shareholder and stakeholder.

Furthermore, the extensive disposal revenue streams from the sale of air space development ‘rights’ will have further downstream public interest benefits with the provision of additional infrastructure, be it for transport, social or community purposes. Efficient time management will further lessen the opportunity cost of delays.

## **Impacts on the supply of land: fragmented land holdings**

The Research Paper (p 131) notes that fragmented land holdings (where a potential development site is comprised of a number of land parcels without common ownership) can have an impact on land supply. It can make the negotiations required to assemble the individual land parcels for a developable site complex and costly — this difficulty is compounded where at least one of the landholders is either very attached to their property or engages in opportunistic or strategic behaviour.

Given that rail metropolitan rail corridors are in the single ownership and control of jurisdictional Governments, *Air Space Developments* would not meet with such site assembly problems and with consequential delays and added business cost to progress with the rezonings of intended transit oriented developments.

## **Causes of low levels of development in Sydney**

The Research Paper (p 147) notes in a report prepared for the New South Wales Treasury, Applied Economics found the low levels of residential development in Sydney had many causes, including:

- fractured land ownership (mentioned above);
- high englobo land prices that deter development — landholders’ price expectations in excess of the prevailing market and attachment to their land were two significant factors identified as driving englobo land prices;
- a lack of public infrastructure (principally for transport but, in some cases, for water); and
- natural geographical constraints evidenced by a shortage of suitable development sites available in the areas where most people most want to live.

The application of *Air Space Developments* is unlikely to meet any of these impediments and therefore accelerate the rate of development deliveries and furthermore enable extensive disposal revenue streams with consequential downstream public interest benefits in the provision of additional infrastructure, be it for transport, social or community purposes. Furthermore, there would be less likelihood of delay experienced by extensive community opposition, as the large node sites are invariably road separated, in public ownership and with intended multi faceted / transit oriented urban outcomes.

### **Leading practices and areas for improvement in land supply**

The Research Paper (p158 - 159) notes the range of approaches that the jurisdictions use on their planning and delivery of land, then considering their land supply outcomes, it is apparent that there are some leading practices and areas for improvement.

Conceivably, *Air Space Developments* would seemingly have sufficient merit to be included as a leading practice for active consideration / application by the relevant jurisdictional Governments.

### **Infrastructure**

The Research Paper (p174) notes that new developments require economic and social infrastructure.

Infill developments (where major infrastructure is already in place), may require enhancements to the capacity of the existing infrastructure network to accommodate the additional demand associated with higher density development such as wider roads, upgraded (or new) main water pipes, sewerage capacity etc.

The provisioning of *Air Space Developments* are likely to require upgrades for selected nodes but can also make provision for the delivery of commuter car parking and transit oriented long day care facilities. Furthermore, the subsequent disposal revenues of the air space development 'rights' become available for other infrastructure projects within the metropolitan area and to the betterment of city functioning thus the public good.

### **Developer Contributions**

The Research Paper (p189) relating to Leading Practice in levying developer contributions notes that the appropriate allocation of capital costs hinges on the extent to which infrastructure provides services to those in a particular location relative to the community more widely. With respect to the application of *Air Space Developments*, the required enabling infrastructure should rightfully be open for consideration on a node by node basis reflecting the following principles:

- where system-wide components need upgrading or augmentation that provide comparable benefits to incumbents can be funded out of borrowings and recovered through rates or taxes (or the fixed element in periodic utility charges);
- for social infrastructure which satisfies an identifiable demand related to the particular rail node

development (such as a roof top garden / pocket park) the costs should be allocated to that development with upfront developer charges and with an appropriate financing mechanism; and

- for social infrastructure where the services are dispersed more broadly, such as commuter car parking / long day transit oriented child care, the cost preferably funded with general revenue as the norm, unless direct user charges (such as for an excludable service like a community child care) would seem appropriate.

### **Compliance Costs**

The Research Paper (p 202) notes that the main types of direct costs involve procedural requirements (preparing, submitting and providing supporting material for planning / scheme amendments or development applications); compliance costs of meeting specified development controls (location, operating hours, business format, housing density, amenity, environmental and heritage requirements); fees and charges — application or other administration fees and developer contributions for local, headwork and community infrastructure provision; and increased holding costs associated with unnecessary delays in obtaining planning approval.

The cost burden for the delivery of *Air Space Developments* above Government owned land should be ideally shared between:

- the Government (as land owner) for outlays involved for the rezoning and development scheme and follow-on rail enclosing structures, and
- subsequent costs generally borne by the successful entities (having acquired the air space development ‘rights’) and responsible for subsequent project delivery, noting the responsibility share principles outlined in Developer Contributions above.

### **Planning approval times**

The Research Paper (p 221) notes the incidents regarding delays in obtaining planning approval (both amendments to planning schemes/rezonings and development consent) have been a recurring theme among developer interests in this study. Planning approval delays can lead to significant costs for business including increases in land holding costs, lost revenue, interest costs, higher input costs (on materials and labour) and contractual penalties for exceeding agreed delivery times.

In the circumstance where Governments elect to proactively translate public sector land inventories into land supply outcomes, as with the application of *Air Space Developments*, an efficient rezoning time frame is more likely, given that the Government is not just responsible for the delivery of a range of project linked policy objectives (and project qualifying status as ‘state significant’ with fast tracking provisions) but also Government is both the shareholder and stakeholder. Furthermore, the disposal revenue streams from the sale of air space development ‘rights’ will enable further downstream public interest benefits for the provision of additional infrastructure, be it for transport, social or community

purposes. Additionally, efficient time management by Government will lessen the opportunity cost of delays to both the Government and the development industry.

### **Alternative assessment pathways**

The Research Paper (p 231) notes that most jurisdictions have introduced or use alternative assessment bodies or pathways to deal with larger scale and/or jurisdictionally significant or sensitive projects. These typically take the form of discretionary powers (based on qualitative criteria) by the relevant planning minister to ‘call-in’ and decide specific development proposals which are deemed to be in the public interest on economic, social and/or environmental grounds.

With respect to the application of *Air Space Developments*, the Government, in taking the lead with the delivery of a range of project linked policy objectives, has full justification to apply its own approvals pathway on the grounds of internal efficiencies, project scale and project reach – given the range of enhanced policy outcomes impacting the broader public interest effectiveness.

### **Competition and Government release of land**

The Research Paper (p 282) notes that Governments, as the owner of substantial tracts of land (both greenfield and previously developed), release land for (re)development by the private sector has potential for significant impacts on competitiveness of some land markets. In particular, government land release can influence how much land is released, when and where it is released, for what purpose and which developers benefit. This has implications for the viability of a development project and the overall value of land use to the community.

In the context of *Air Space Developments*, where Governments (as the owners) have the opportunity to effect rezonings and provisioning of rail enclosing structures, the subsequent divestment of the air space development ‘rights’ would be expected to be treated under public tender arrangements to ensure the appropriate level of competitive tension. With such an open and transparent process, barriers to developer participation are avoided. In principle, competition can be further enhanced if each node site is divided into multiple parcels by area or levels or both. A possible down side, is the risk of a large multi party participation in the development delivery, thus exacerbating complexity with coordination and with further consequential risks of time delays and follow-on ‘opportunity costs’ to both the developers (regarding business outcomes) and the community (regarding transit oriented urban benefits).

### **Governance with integration and coordination**

The Research Paper (p 306 – Box 8.2) notes the importance of combining and rationalising structures, functions, policies and processes under a clear set of rules to produce a coherent, integrated outcome. Integration can be vertical (combining and rationalising higher order and subsidiary systems, e.g. a hierarchy of plans), or horizontal (integrating different aspects of a single system, e.g. a state government).

With consideration of *Air Space Developments*, integration and coordination of the relevant State Agencies would seemingly be paramount. Where one Agency has responsibility for the delivery of a range of policy outcomes (Planning) and another Agency (Transport / Infrastructure) has responsibility limited to the provision of rail transport operations, enabling infrastructure and having control of the rail corridor, it may be the inability / unwillingness to collectively undertake a robust cost benefit analyses of status quo versus value added *Air Space Developments*. The issue of integration or coordination, or both, may be the driver(s) that underpin the prevailing widespread inertia in the delivery of well precedented (but highly limited) above rail corridor air space development outcomes contiguous to rail nodes.

Scope may therefore exist to direct:

- a third high level Agency to coordinate and facilitate the evaluation process underpinned by the principle of ‘the greater good for the greater number’,
- the transfer of the air space development ‘rights’ to the equivalent of a Metropolitan Development Authority to shepherd the rezonings / development schemes and rail enclosing structures, and
- the subsequent divestment of the air space development ‘rights’ to the private sector under competitive tension arrangements.

### **Commonwealth government activities**

The Research Paper (p 329) references the Major Cities Unit within Infrastructure Australia as being charged by the Commonwealth Government with identifying opportunities for a systems approach to thinking, policy decisions and allocation of resources in Australia’s major cities and, based on its findings, developing a national urban policy. The unit’s overriding goal is to facilitate more sustainable, productive and liveable cities across the nation.

In the case of *Air Space Developments*, Infrastructure Australia (Major Cities Unit) has formally responded to the initial Air Space Development Submission made to the NSW State Government in May 2010, and a copy of the response is provided at [Annex B](#) for ready reference and context.

### **COAG**

The Research Paper (p 331) references the COAG agreement in April 2010 to a housing supply and affordability reform agenda which includes an examination of zoning and planning approval processes, infrastructure charges, environmental regulations and the identification of underutilised land. In addition, the National Housing Supply Council will focus on the impacts of the planning system and the difficulties and merits of infill developments.

Within metropolitan areas, scope exists for the National Housing Supply Council to have the opportunity evaluate the application of *Air Space Developments* for inclusion as a leading practice for improvement in the delivery of land supply within the jurisdictional governments’ metropolitan regions.



## CLOSING COMMENTS

Subject to the Productivity Commission's:

- programming / timetabling for the Performance Benchmarking research, and
- its' desire to seek the opportunity to incorporate initiatives beyond existing issues to enable a more comprehensive spectrum of best practice,

there may be scope, when factoring the application of *Air Space Developments*, to seek a rapid response from the relevant jurisdictions (lead planning agencies) as to the nature and extent of changed responses to the relevant survey framework at Table 2B, Parts 1,2 & 3 of the draft Research Report Volume 2.

The extent to which the lead planning agencies would modify their responses, post evaluation of the application of *Air Space Developments* within their respective jurisdictions, may prove a worthwhile exercise in support of the overall endeavours sought by the Productivity Commission.

The opportunity to review and respond to the draft Research Report was indeed appreciated.

Yours sincerely,

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## Annexes:

**A. Submission on Air Space Development to NSW Government - May 2010.**

**B. Infrastructure Australia's Response to Annex A - Jul 2010**