

# BUILDING A BETTER AUSTRALIA

UDIA National's Submission to the  
EPBC Act Review



April 2020

# ABOUT UDIA NATIONAL

UDIA is the development industry's most broadly representative industry association with more than 2,500 member companies – spanning top tier global enterprises and consultants to local governments and small-scale developers.

We have a long history of engaging positively with the Federal Government on issues critical to the property industry – spanning tax, population, infrastructure, land use planning and beyond.

UDIA National's advocacy is defined by our National Council – but informed by a diverse membership base, extensive network of state councils and committees and businesses on the frontline of housing development. Our voice is backed by real experience and quality research designed to support good policy making and dialogue with governments, oppositions and the bureaucracy.



# INTRODUCTION

Thank you for the opportunity to provide a submission in response to the discussion paper issued by the Independent Reviewer and Expert Panel leading the review of the Environment Protection & Biodiversity Conservation (EPBC) Act.

The review is timely and important, not only because it is a statutory requirement – but the EPBC Act has been consistently identified by the new housing development industry as the single most important piece of federal legislation.

There is clear value in a well-designed legislative and regulatory framework to give effect to the preservation of nationally significant flora and fauna and honour Australia's international treaty obligations.

The goal is compatible with the Government's red tape reduction agenda and UDIA National's objective of having environmental assessment conducted as early as possible in the development cycle to provide certainty to all stakeholders.

However, the EPBC Act is inconsistent, complex and often acts as a substantial barrier to residential land release and housing development, as well as delivering sub-optimal conservation outcomes.

Our recommendations in this submission – and the associated questions asked by the review – seek to provide a balance between the economic, social and environmental goals that the Act needs to straddle.

We look forward to continuing to engage with the review process over the next 12 months, as the Government moves to craft legislation around recommendations arising from the review.



Simon Basheer  
UDIA National President

# ABOUT THIS SUBMISSION

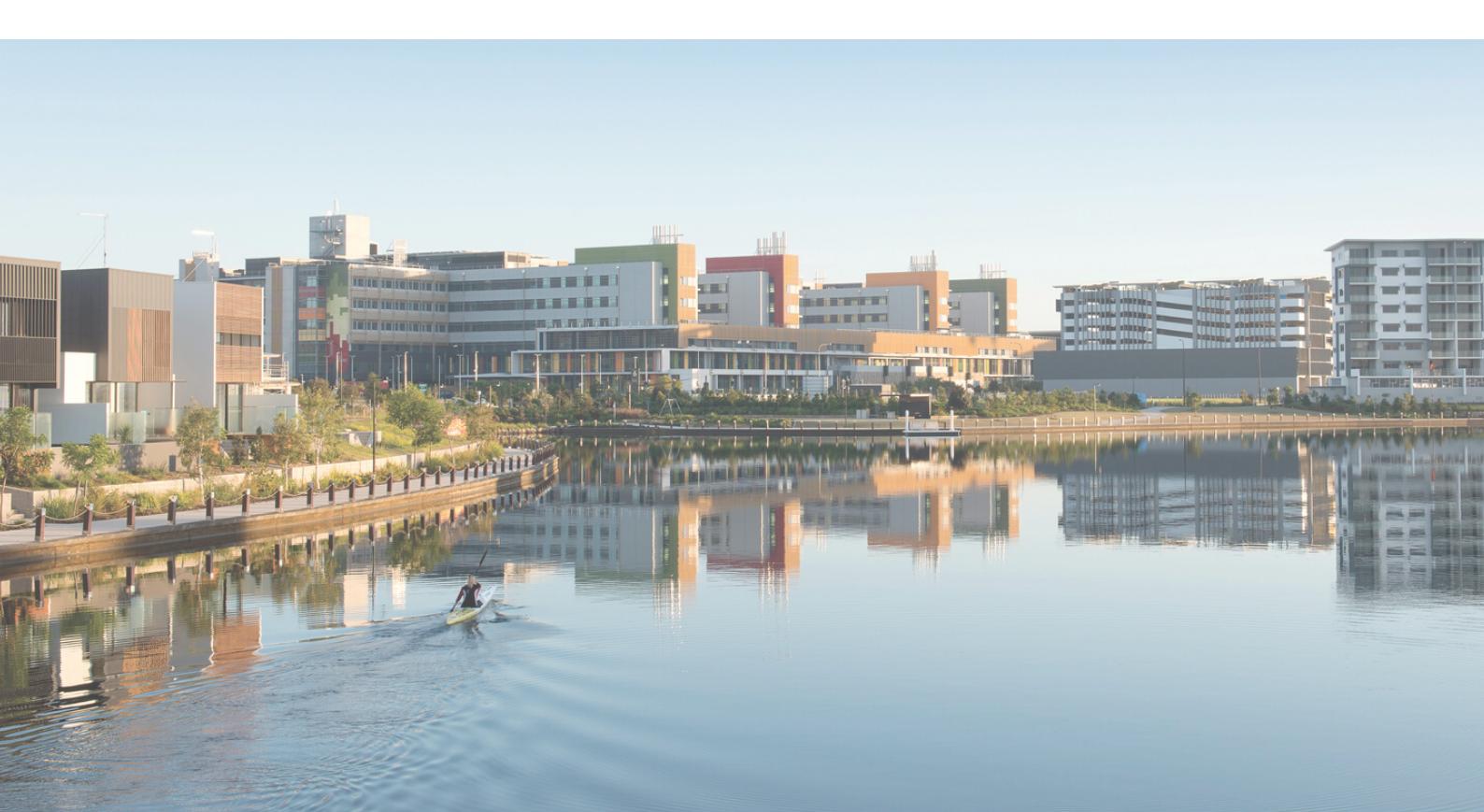
The objective of this submission is to provide a high-level, strategically focussed response from UDIA National to the Discussion Paper released by the Commonwealth Government and the Independent Review in late November.

In particular, the submission seeks to respond to the broader questions being asked by the statutory review that will assist in identifying priority areas of reform to ensure the Act functions in an efficient and effective way.

Likewise, it seeks to place in context the current performance of the Act, how it inhibits housing development, and how the principles identified at the end of the discussion paper in relation to Question 26 should shape work to reform the Act.

As much as possible, we have sought to provide our responses to individual questions identified in the discussion paper and submission portal directly. However, where there is an element of duplication, it is done so to reinforce critical policy, legislative, regulatory and administrative issues.

We have responded directly to individual questions via the submission portal.



# CONTEXT - AN OVERVIEW OF HOUSING MARKETS

A backdrop to the review is the state of housing markets, particularly new home construction and its consequences for housing affordability.

The origins of Australia's housing affordability woes can be traced back to the supply deficiency that accumulated in the lead-up to, and through the GFC. The gap between supply and demand was estimated to have reached almost 160,000 by 2010\*.

As Australia emerged from the financial crisis, credit was easier to access, population and net migration increased, and housing demand kicked back to life. However, the mismatch between supply and demand never closed and this 'supply gap' fuelled rapid price growth.

Even at the peak of the construction cycle that followed, housing approvals and construction barely touched the underlying level of demand. A generation of homebuyers suffered.

Housing markets are once again at a critical juncture. Prior to the coronavirus and anticipated economic effects, housing approvals were slowing, and development and construction pipelines were thinning – representing a medium-term risk to supply.

A matrix of factors contributed to the decline in housing supply – restrictive credit and lending policies, decreased consumer confidence, inefficient state and local planning systems, and excessive taxation on new housing construction among them.

However, the largest single impediment arising from the federal legislative and regulatory system is the complexity and inefficiency of environmental approvals. Overhauling the EPBC is a singular, red tape priority for the industry at a Commonwealth level.

\*National Housing Supply Council – State of Supply Report 2011.



# COSTS & CONSEQUENCES

The experience of members of the housing development industry illustrate that the application and practice of the Act has strayed far from its original goals in establishing a simple, streamlined system for preserving critical flora and fauna.

It is now complex and duplicative, marred by a patchwork of inadequate bilateral assessments and strategic agreements that fail to sufficiently balance environmental outcomes with legitimate and appropriate urban development.

We are including project case examples (de-identified to mask commercial sensitivities) that illustrate the way the Act and its administration work to frustrate the delivery of new housing, investment and jobs.



A developer has been pursuing EPBC approval on a project at Woogaroo Heights as part of Greater Springfield in Queensland for more than three years now. An application for the project was first lodged in December 2016, and it was then confirmed as a controlled action in March 2017.

Since then, it was subject to slow response times as documentation was lodged, commitments to timeframes were elusive, continual changes to the nominated departmental offices and major issues were only raised late in the assessment period. Preliminary documentation for the project was only advertised in September 2019 - with no submissions received.



900+  
DWELLINGS



\$450 MILLION  
APPROXIMATE  
INVESTMENT

A project on the NSW North Coast received concept approval from the NSW Government in mid 2019 after three years of assessment - but the project is now subject to referral under the EPBC Act. Under the concept approval, extensive environmental outcomes were achieved, including the reservation of more than 100 hectares of conservation land in perpetuity, provision of a large volume of ecosystem credits which responded to the surveys completed by the proponent.

They subsequently received additional and contrary advice from the Commonwealth that extended well beyond issues canvassed in the concept approval issued by NSW. This risks adding substantially to the time and costs associated with the project - including additional survey requirements and potentially further credits. Moreover, the referral outcomes under the EPBC Act are contrary to the NSW Government Part 3A Concept Approval which provides for a clearly defined pathway to transfer land for conservation in perpetuity and to generate or sell biodiversity credits as required under the terms of the approved modified concept approval.

The proponent is now being forced to navigate separate processes that will risk delaying the project.



600+  
DWELLINGS



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A project in Perth's northern growth corridor spent approximately 21 months under assessment. Following statutory exhibition period and provision of final documentation in response, it took more than **another 150 working days** for approval to be granted - almost **four times the statutory timeframe**. No project related reasons were given for the delay, and personnel assessing the project changed several times.

# PRINCIPLES OF REFORM

UDIA National recognises the value and simplicity of the principles of reform outlined in the Discussion Paper. These represent a good assessment of policy principles which should inform the review and legislative changes that should follow.

However, we do believe – as stated elsewhere in this submission and in our response to the individual questions raised in the review - that there also needs to be weight given to the need to balance economic, social and environmental objectives.

It could be argued this is implied in the principles related to 'Making Decisions Simpler' and 'Integrated Planning' but the review would be better served through a more explicit statement relating to the economic benefits derived from environmental laws that operate efficiently.

That is why UDIA National recommends the creation of a seventh principle of reform headlined 'Balancing Economic, Social and Environmental Goals', with supportive text that reads:

*"Creating a balanced regulatory framework that aligns world-class environmental protections with robust economic and social outcomes."*

This would in turn manifest itself in the objects of any new Act to emerge from the review process – and by doing so, acknowledge that a balanced consideration of environmental, social and economic factors are core components of Ecologically Sustainable Development. UDIA National expands further on this in response to Question 3 in the Discussion Paper.

Likewise, we believe there is a strong case in ensuring the interagency and inter-governmental collaboration and review processes that surround the EPBC are considerably strengthened.



# POLICY PRIORITIES

UDIA National has established a clear set of policy priorities that should also inform the review. As well as the need to better balance the Act's objectives as outlined above, the review should be seized upon as an opportunity to achieve one of the Act's original stated objectives - a singular point of strategic assessment that accounts for national and state factors in one round.

A disciplined approach would also see costs for complying with existing processes clearly benchmarked and the identification of step-by-step opportunities to reduce or eliminate them.

Priorities for the review should include:

- Ensuring proposed listings of new Matters of National Environmental Significance (MoNES) are underpinned by **clear science and evidence** – and accompanied by a **Regulatory Impact Statement** canvassing potential economic costs or consequences
- Embedding **greater interagency and inter-governmental collaboration** and decision-making in the function of the EPBC to better ensure balanced outcomes
- Progressing towards the **one-stop shop premise** that underpins the EPBC Act and absorbs lessons from existing processes which work well
- Completing **bilateral agreements and strategic assessments** (as well as updating existing bilateral agreements) within a fixed timeline to **strip out duplication** and eliminate opportunities for different tiers of government to revisit earlier assessment outcomes
- **Developing and applying statutory timeframes** for responding to applicants and introduce the concept of 'deemed consent' when they are not met
- Provide a **simpler and more effective regime for offsets** – replacing the current inefficiencies and inconsistencies that neither deliver good environmental outcomes or certainty for proponents.
- Lifting the **quality, consistency and transparency of guidance**, particularly throughout the referral process.

# RECOMMENDED NEXT STEPS

UDIA National will be active participants in the ongoing review process over the next 12 months – and beyond as the outcomes manifest themselves in legislative reform.

There are a series of interim measures we believe that can both assist in accelerating projects, as well as produce an informed review process and robust set of recommendations.

## **Accelerate existing projects**

UDIA National appreciates that the Review has a precise scope and mandate related to the future legislative, regulatory and administrative arrangements governing the application of the EPBC Act.

However, in our 2020-21 Pre-Budget Submission, UDIA National highlighted action which could be taking in the interim to ensure progress on projects stalled under current arrangements.

The Commonwealth Government recently announced \$25 million in funding to reduce needless delays within the existing assessment system, including the establishment of a major projects assessment team to ensure assessments can be completed efficiently and thoroughly in accordance with the Act.

This is a sensible recognition of the need to cut assessment times. However, the funding allocation largely relates to mining, resources and infrastructure projects and is unlikely to assist new housing construction – when in fact, by volume, housing projects arguably outnumber projects from other sectors.

UDIA recommends the creation of a specific package targeted at accelerating housing-related projects that have faced undue delays under the Environment Protection and Biodiversity Conservation (EPBC) Act.

Likewise, our recent submission to the Commonwealth Government – *Helping Australia Bounce Back* – includes measures to support a sustained pipeline of housing and construction activity to ensure Australia's economy swiftly recovers from the COVID-19 pandemic. This includes measures to accelerate projects currently stuck in the EPBC approvals system.

Together, these efforts would include:

- Allocating an additional \$5 million – on top of the funding already geared towards resources and infrastructure projects – to support housing-related projects;

- Giving priority focus to any projects which were initially referred over eighteen months ago, including:
  - All projects that entered the assessment regime prior to July 1, 2019, be guaranteed a decision by July 1, 2020
  - All projects that entered the assessment regime prior to January 1, 2020, be guaranteed a decision by October 1, 2020; and
  - All projects that entered the assessment regime post January 1, 2020, be guaranteed a decision by January 1, 2021.
- Implementing short-term measures to improve the efficiency of the system while the broader independent review of the EPBC Act occurs;
- Identifying and eliminating existing duplication with the states and territories in assessments.

### **Benchmarking costs**

As referenced above, a disciplined approach would also see costs for complying with existing processes clearly benchmarked and the identification of step-by-step opportunities to reduce or eliminate them.

All costs currently imposed by the system and absorbed by proponents are ultimately embedded in the cost of new housing projects – and ultimately, borne by homebuyers. Assessing these costs via independent economic analysis would strengthen the case for reform.

This could include:

- Identifying administrative and compliance costs incurred by proponents - including additional costs incurred when separate jurisdictions either duplicate or revisit assessments made by another tier of government.
- Assessing holding costs incurred by proponents due to statutory timeframes not being met, or where they do not apply, decisions being excessively delayed.
- Identifying cost-savings that could be achieved at each stage of the assessment process and a progressive path to implementing them.
- Calculating the benefits that could accrue from introducing ‘deemed consent’ provisions.





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