

2 December 2019

Mr Peter Achterstraat AM  
Productivity Commissioner  
NSW Productivity Commission  
E: [ProductivityFeedback@treasury.nsw.gov.au](mailto:ProductivityFeedback@treasury.nsw.gov.au)

Dear Mr Achterstraat

## **Re: Kickstarting the Productivity Conversation - Discussion Paper**

I write regarding the NSW Productivity Commission's Discussion Paper – *Kickstarting the Productivity Conversation* (October 2019). On behalf of the members of the Urban Taskforce, I thank you for the opportunity to provide feedback on this important paper.

Please see immediately below a full set of recommendations arising from this submission.

Please find our submission on each of the issues relevant to Urban Taskforce members further below.

### **Full list of Recommendations**

#### **How can we improve strategic land use planning and coordination with major infrastructure delivery?**

1. The NSW Government should legislate to make the Department of Planning the rezoning and development approval authority for all land within a 1km radius of train stations and well serviced transport hubs, with the remit of efficiently facilitating appropriate high-density mixed-use development in these areas.
2. The Greater Sydney Commission should play a stronger role in ensuring state level strategies are translated coherently to local level plans (LEPs), rewriting LSPs or LEPs if necessary. The GSC should develop a series of housing, employment and growth-related targets which councils must demonstrate are met. Should councils fail to do this, DPIE should be given the legislative authority to take on the role as the 'relevant planning authority' to complete councils' local plans.
3. The Greater Sydney Commission should take on a stronger coordination role in facilitating the efficient provision of infrastructure in time with development.
4. Local councils should be required to keep an easily accessible online record of how much they collect from developers in local infrastructure charges and how

this money is spent, including the details of that expenditure.

5. The Greater Sydney Commission should develop housing targets for each council as soon as possible and regularly monitor councils' approvals and completions to ensure that councils are on track to achieve these targets. This information should be made readily available online.

### **What steps could the NSW Government take to reduce its reliance on transfer duty?**

6. NSW Treasury should commission a study to identify ways to address impacts such as financial hardship imposed on households as part of a transition from a stamp duty reliant tax system to one funded by broad-based land tax.
7. Urban Taskforce recommends the progressive abolition of Stamp Duty and the introduction of a broad-based land tax to cover owner-occupiers, implementing the recommendations to lessen the impacts of the transition.

### **Should performance monitoring and benchmarking be adopted for local governments in NSW?**

8. The Department of Planning (DPIE) or NSW Treasury should introduce regular performance benchmarking and surveys for each council and planning authority, to provide a sufficient basis for residents, business owners and other government agencies to provide feedback to councils on service delivery quality.
9. The Department of Planning (DPIE) should recommence producing the 'Local Development Performance Monitor' (which has not been updated since 2016) and maintain this monitor in real-time if possible
10. Local Councils must produce information relating to infrastructure contributions, development assessment and planning proposal processing times in a transparent and easy to search online format (see suggested indicators provided above). These should be submitted to DPIE or NSW Treasury and published in a consolidated form.

### **How could councils improve their funding arrangements to provide greater flexibility in meeting their residents service needs?**

11. Rate pegging should be abolished. This will incentivise councils to accept additional growth and density and allow local government the ability to respond to increasing expectations for its role as a community service provider.
12. Local Infrastructure contributions should be capped at a fixed rate of \$20K per dwelling in an in-fill development location and \$30K per dwelling in greenfield development locations by the NSW Government.

13. The LIGS should be restored to cover additional costs above the pegged rate to prevent further dramatic increases to house prices

**How could the NSW zoning system be simplified and improved to support greater business innovation and competition?**

14. The New South Wales planning system should be overhauled to consolidate the existing zones to create fewer, more broadly stated land use zones to allow greater diversity of land uses with ample flexibility built in to allow for changes in the market and for appropriate opportunistic development.
15. Planning regulation that implicitly or explicitly favours certain operators (such as government agencies or incumbent businesses) is unjustifiable and should be removed.
16. The Greater Sydney Commission should reverse its 'review and manage' or 'protect and manage' approach to industrial and urban services land and instead adopt a site-by-site approach to the proposed rezoning of industrial land to higher order uses such as residential and mixed-use development (particularly where job numbers can be enhanced).

**What other planning policy options should the NSW government consider ensuring the planning system supports job creation and respond to consumer preferences?**

17. NSW government should be taking every possible measure to boost economic activity and to ensure that inefficient regulatory constraints and planning system failures are removed so this economic opportunity can be realised (refer to all recommendations in this submission).

**What steps could the NSW Government take to improve residential development regulations to support an adequate supply of affordable housing?**

18. Incentive-based approaches to affordable housing should be mandated through amendments to the *State Environmental Planning Policy (Affordable Rental Housing) 2007*. This includes
- a. increasing the bonus Floor Space Ratio permitted under the SEPP,
  - b. allowing developments which include a component of affordable housing to exceed the permitted building height to ensure that the bonus floor space can be fully utilised and
  - c. ensuring that the affordable housing product produced is only held for a period of 10 years (or a defined period) before being returned to the developer.
19. Development within walking distance of any major transport node, particularly new transport nodes, such as metros should be high-density and high-rise.

**How could the NSW government ensure regulations around zoning, building codes and design guidelines are flexible and aligned with demand and preferences?**

20. The ADG should be fundamentally redrafted with a view to minimising obligations and prescriptions to ensure maximum flexibility for housing consumer choice and enable housing to be delivered at multiple price points while maintaining, at a minimum, basic quality.
21. Minimum parking requirements in the ADG should be adjusted to allow for a lower number of parking spaces per residential apartment and therefore reflect changes in vehicle usage patterns, the increase in higher-density developments located close to train stations and the use of car sharing options such as GoGet and impacts of new transport alternative such as Uber.
22. Further direction should be provided by the Department of Planning to ensure that the requirements of the ADG, such as minimum floor space, cannot be used as grounds to refuse a development, reinstating its intended status as a "guideline".
23. New models of dwellings such as micro-apartments, should be acknowledged by the planning system and appropriate controls introduced to facilitate these new types of homes, which are likely to be produced at a lower and more affordable price point.
24. Councils must not mandate standards and development controls in their local environmental plans and development control plans, which are intended to be used as guidelines, instead relying on the Apartment Design Guide and Housing Code under the SEPP (Exempt and Complying Development).

**Should the NSW Government level the playing field in the housing sector by supporting a more stable source of housing supply? If so, how**

25. The Greater Sydney Commission should develop short, medium and long-term housing targets for each council as soon as possible. This information should be provided by each LGA to DPIE and / or NSW Treasury and should be monitored and published regularly or updated in real-time if possible.

**What is the most efficient mix of planning, regulatory and tax settings to deliver outcomes that get the balance right between tenure security and housing mobility?**

26. For tax purposes, 'build-to-rent' should be classified as 'commercial residential' in order to access the concessional tax rate of 15%;
27. The NSW government should consider providing land tax concessions for built-to-rent projects and remove foreign land tax surcharges to make built-to-rent more attractive to foreign investors; and
28. Build-to-rent development should be recognised in the planning system and laws and regulation developed to support this product.

**Are there other innovative ways of providing new public space, particularly on underutilised land?**

29. NSW state government should establish a fund to support councils in their delivery of community open space in areas nominated for high-rise or high-density residential development.

### **What opportunities are there to improve the use of transport corridors in high density areas?**

See the text supporting Recommendations 1,5 and 19.

### **What principles could be applied to the development contributions system to ensure transparent, consistent and efficient outcomes?**

30. A register which monitors the cumulative cost of the many local and state government fees and charges on development should be introduced and maintained by NSW Treasury, to ensure that the impacts of these charges upon the cost of housing production is monitored closely.
31. Restore the cap on developer contributions and the local infrastructure growth scheme as a fair and equitable way of managing the cost of contributions.
32. Consider a broad-based standard levy applicable across greater Sydney to fund large infrastructure projects.
33. Introduce an indicative developer contributions calculator to the DPIE's e-planning system, which outlines the total local and state development contributions applicable on any development site.
34. Require councils to provide an online, easily accessible register of development contributions, including how much has been collected, from whom, and where and when this money is spent.

### **How might developer contributions be improved to support in new areas and service growing community needs?**

35. DPIE collect and publish all data associated with Section 7.11, 7.4 and VPA contributions plans and these be reconciled against the delivery of infrastructure. (Also see recommendation 10).

### **What could the NSW Government do to improve efficiency in planning system administration and ensure economic and community benefits?**

36. The proposal to introduce a separate tribunal to deal with certain minor matters instead of the Land and Environment Court is not supported. However, the Urban Taskforce does support funding supplementation to be provided to the Land and Environment Court to improve timeframes for hearings before the Court.
37. Reduce restrictions on zoning and adopt a new zoning system that seeks to maximise flexibility in the fields of land uses, building heights, particularly in areas where the government has made significant investment in new transport infrastructure.

38. Establish a 'one stop shop' to efficiently process planning concurrences and referrals from councils based on the successful Queensland State Assessment and Referral Agency.
39. Increase government funding for planning resources in government agencies.
40. Establish regional planning 'Centres of Excellence' for groups of councils as well as Regional Planning Panels and the Independent Planning Commission.
41. Remove councils from determination of State Significant Development.

## Urban Taskforce Submission – in full

The relevant Discussion Questions are listed in order with the detailed Urban Taskforce response to each matter.

### **How can we improve strategic land use planning and coordination with major infrastructure delivery?**

Strategic planning is a key role of both state and local governments. It determines the broad planning parameters for new and growing communities in New South Wales. However, state and local governments in NSW have consistently failed to provide infrastructure in time to service new development, creating a 'lag' where existing infrastructure services cannot keep pace with the new demand created by development.

This has resulted in widespread concern about further population growth, flowing on to a drop off in housing development application approvals.

The state government can realise the benefits of transport infrastructure by ensuring building height and density are maximised in areas around transport nodes. Permitting only 'missing middle' development in these areas is a waste of this highly amenable, well-located land.

An example can be found in the case of Canada Bay Council's recently published draft LSPS. Despite being serviced by an existing heavy rail line as well as plans for a new metro rail line which will include 2 new metro stops, the draft LSPS proposes 'terrace and dual occupancy'<sup>1</sup> development in the areas within 400m of the new metro line stops. This is a complete waste of the state government's investment of many billions of dollars in this transformative infrastructure. Planners must be required to demonstrate that they have achieved the full economic benefit of these significant public sector investments.

Low density, low rise infill development at distances beyond 1km from key public transport nodes generate greater traffic. Having significantly taller residential

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<sup>1</sup> Canada Bay Council, *Canada Bay Draft Local Strategic Planning Statement*, September 2019

buildings above and near new transport infrastructure removes the need for commuters to drive to the station car parks and results in a greater utilisation of that infrastructure.

The Greater Sydney Commission has not fulfilled its role as a leader in strategic planning. It has failed to push local councils to ensure that their Local Strategic Planning Statements (LSPS) meet population growth targets and maximise the benefits of state infrastructure investments. Their role seems to have been more about ensuring that Council LSPSs fit neatly into the "template". The draft LSPSs are overwhelmingly disappointing and, in the context of the forthcoming Council elections, the resultant LEPs are unlikely to adequately address future demand for new housing development.

The current 'assurance' role of the Greater Sydney Commission set out in Section 3.9 of the Environmental Planning and Assessment Act 1979<sup>2</sup> (copy below in footnote 2), is inadequate for the purpose of ensuring councils are taking full advantage of new and planned infrastructure, delivering sufficient housing and facilitating employment opportunities.

Rate pegging should be abolished. This will incentivise councils to accept additional growth and density and allow local government the ability to respond to increasing expectations for its role as a community service provider.

Local Infrastructure contributions should be capped at a fixed rate of \$20K per dwelling in an in-fill development location and \$30K per dwelling in greenfield development locations by the NSW Government.

The LIGS should be restored to cover additional costs above the pegged rate to prevent further dramatic increases to house prices.

## **Recommendation**

1. The NSW Government should legislate to make the Department of Planning the rezoning and development approval authority for all land within a 1 km radius of train stations and well serviced transport hubs, with the remit of efficiently facilitating appropriate high-density mixed-use development in these areas.
2. The Greater Sydney Commission should play a stronger role in ensuring state level strategies are translated coherently to local level plans (LEPs), rewriting LSPSs or LEPs if necessary. The GSC should develop a series of housing, employment and growth-related targets which councils must demonstrate are met. Should councils fail to do this, DPIE should be given the legislative authority

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<sup>2</sup> Section 3.9 of the *Environmental Planning and Assessment Act 1979* states that with regard to the Local Strategic Planning Statements of councils, (2) The statement must include or identify the following: (a) the basis for strategic planning in the area, having regard to the economic, social and environmental matters, (b) The planning priorities for the area that are consistent with any strategic plan applying to the area and (subject to any such strategic plan) any applicable community strategic plan under section 402 of the *Local Government Act 1993*, (c) The actions required for achieving those planning priorities, (d) the basis on which council is to monitor and report on the implementation of those actions (3A) The council for an area that is in the Greater Sydney Region must not make a local strategic planning statement unless the Greater Sydney Commission has advised the Council in writing that the Commission supports the statement as being consistent with the applicable regional and district strategic plans.

to take on the role as the 'relevant planning authority' to complete councils' local plans.

3. The Greater Sydney Commission should take on a stronger coordination role in facilitating the efficient provision of infrastructure in time with development.
4. Local councils should be required to keep an easily accessible online record of how much they collect from developers in local infrastructure charges and how this money is spent, including the details of that expenditure.
5. The Greater Sydney Commission should develop housing targets for each council as soon as possible and regularly monitor councils' approvals and completions to ensure that councils are on track to achieve these targets.

### **What steps could the NSW Government take to reduce its reliance on transfer duty?**

NSW could improve the efficiency of its tax base by changing the current mix of taxation. The NSW Government is heavily reliant on property tax revenue to fund services. A report by the Centre of Policy Studies found that transfer duty on residential property purchases is an incredibly inefficient tax, carrying an economic cost of \$2.35 for every dollar of tax collected<sup>3</sup>.

Not only are transfer duties inefficient, they can make government budgeting difficult. Because housing prices and the volume of transactions change over time as conditions in the property market change, stamp duty revenue can also be volatile year on year.

A study by the Commonwealth Productivity Commission found that when people were considering selling their house and relocating, "stamp duty imposed on housing purchases stands out as the main transitional impediment<sup>4</sup>." This deterrent has the consequence of hindering mobility and creates inefficient use of housing and commercial buildings.

Examples of this include:

- 'Empty nesters' remaining in large family homes rather than downsizing, resulting in an inefficient use of existing housing resources and land;
- Workers avoid moving when the location of their workplace changes, leading to congestion, long commutes, as well as the associated social and related economic costs; and
- Businesses deciding against efficient relocations, restructures or mergers, resulting in lower economic productivity overall.

Studies have shown that there are substantial economic gains from moving away from reliance on transfer duty towards a broad-based land tax<sup>5</sup>.

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<sup>3</sup> Centre of Policy Studies, Victoria (June 2018) *The Economic Impact of the New South Wales and Australian Federal Tax Systems*

<sup>4</sup> Australian Government, Productivity Commission, [Geographic Labour Mobility, Productivity Commission Research Report](#), April 2014

<sup>5</sup> Commonwealth of Australia (2010), *Australia's Future Tax System: Final Report*



The value of untaxed residential land in NSW is approximately \$1 trillion according to a report released by the Sydney Policy Lab at the University of Sydney.

According to Emeritus Professor Frank Stilwell, the co-author of the Sydney Policy Lab Report, "the NSW Government can no longer ignore the wealth store in owner-occupied land as a stable, fair and efficient source of revenue." The report goes on to state: "A broad based land tax with appropriate safeguards would fund reductions in stamp duty for homeowners and provide additional funding for schools and hospitals. With so many people locked out of home ownership altogether, removing owner-occupied exemptions would also promote fairness in the tax system."<sup>6</sup>

Politically, the concept of a broad-based land tax is a 'hard sell' and any transition from the existing system would need to address social and financial impacts such as financial hardship. This area needs to be considered carefully and be supported by solid groundwork or it will be blown apart before the concept is seriously considered. Care also needs to be taken to ensure that existing landowners (particularly owner occupiers) are exempted (or grandfathered) from new provisions.

### **Recommendation:**

6. NSW Treasury should commission a study to identify ways to address impacts such as financial hardship imposed on households as part of a transition from a stamp duty reliant tax system to one funded by broad-based land tax.
7. Urban Taskforce recommends the progressive abolition of Stamp Duty and the introduction of a broad-based land tax to cover owner-occupiers, implementing the recommendations to lessen the impacts of the transition.

### **Should performance monitoring and benchmarking be adopted for local governments in NSW?**

The performance of local councils in NSW is currently monitored by the NSW Office of Local Government and results reported through the 'Your Council' interactive website. Although the website includes interesting and pertinent information on many local government services, data critical to the property industry is missing. For example, the following data was listed as 'N/A' or simply blank for all council areas:

- Value of DAs Determined (\$'000)
- Development Applications Determined by Planning Panels (No.)
- Development Applications (Mean Gross Days)
- Development Applications Determined (No.)<sup>7</sup>

This information was previously reported through the Department of Planning's Local Development Performance Monitor, which reported on a variety of statistics considered vital for development and lending decision making. This data enabled a comparison of councils' assessment of development applications and rezoning

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<sup>6</sup> *Squeezing Services? How the NSW Government can overcome its new fiscal constraints*, A report prepared for the Sydney Policy Lab by Dr Gareth Bryant and Emeritus Professor Frank Stilwell in the Department of Political Economy at the University of Sydney (March 2019).

<sup>7</sup> Your Council, [www.yourcouncil.nsw.gov.au](http://www.yourcouncil.nsw.gov.au), Office of Local Government

proposals. This report was last completed in 2016<sup>8</sup>. Ideally, the DPIE would re-commence producing these reports and keep them updated as close to 'real time' as possible. An alternative is to have NSW Treasury monitor the performance of councils and the planning system (Local Panels, Regional Panels, the IPC and DPIE).

Other useful indicators could include:

- Housing targets (5-year breakdown) and progress towards achieving this target
- Real-time reporting on housing approvals and completions
- Expenditure of funds collected through local infrastructure contribution schemes
- Value of Voluntary Planning Agreements entered into by council
- Value of affordable housing contributions paid to council
- Value of affordable housing provided to councils
- Value of Local Infrastructure Contributions funds accepted by council
- Time taken to assess planning proposals
- Number of planning proposals assessed and outcomes of each assessment

This information can be obtained through a *Government Information (Public Access) Act 2009* request, however, in the interests of transparency and accountability, the Urban Taskforce believes councils should produce this information in an easy to read and understand online format. This requirement recently came into force in Queensland, where legislation was introduced to require councils to maintain a register of their collection and expenditure of local infrastructure contributions<sup>9</sup>

### **Recommendations:**

8. The Department of Planning (DPIE) or NSW Treasury should introduce regular performance benchmarking and surveys for each council and planning authority, to provide a sufficient basis for residents, business owners and other government agencies to provide feedback to councils on service delivery quality.
9. The Department of Planning (DPIE) should commence producing the 'Local Development Performance Monitor' (which has not been updated since 2016) and maintain this monitor in real-time if possible
10. Local Councils must produce information relating to infrastructure contributions, development assessment and planning proposal processing times in a transparent and easy to search online format (see suggested indicators provided above). These should be submitted to DPIE or NSW Treasury and published in a consolidated form.

### **How could councils improve their funding arrangements to provide greater flexibility in meeting their residents service needs?**

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<sup>8</sup> Department of Planning, Industry and Environment, [ePlanning Dashboard for Councils](#), accessed 28 November 2019

<sup>9</sup> Planning (Infrastructure Charges Register and Other Matters) Amendment Regulation 2019 (QLD), 21 October 2019

- **Rate Pegging**

Population growth can have negative impacts on communities such as road congestion, public transport crowding and rationing of community services. It can also bring benefits such as new businesses and expanded social networks.

Broadly, where growth is accompanied by more costs than benefits, communities have an incentive to resist it. Further, councils' accountability to residents mean it is essential that they have the resources to accommodate demands of growth and allay resident concerns where possible.

The current system of local government funding does not support these outcomes. This is particularly the case in areas that are already suffering from a hard infrastructure (local roads, stormwater drainage and capacity, provision for school land etc) deficit. This is even more often the case with soft infrastructure (community infrastructure like playgrounds, libraries, parks, childcare centres, community open space and facilities) deficits; all due to rate pegging.

The current system of making submissions to IPART is inefficient and rarely produces results which resolve infrastructure deficits. The Urban Taskforce believes that allowing voters to make decisions on the level of rates is more efficient than leaving these decisions to invisible, unelected, unaccountable economists at the Independent Pricing and Regulatory Tribunal (IPART).

When development controls are relaxed through increasing floor space and building heights (for example, through introducing flexible zoning provisions), land values tend to rise, providing windfalls to existing landholders.

Due to rate pegging, when councils agree to relax controls under their Local Environmental Plan resulting land values rise, the ad-valorem rate (the rate paid based on the value of the property) must fall so as to remain within the peg of the council's general rate income. Raising additional revenue is not possible without seeking a special variation from IPART.

This means councils do not necessarily benefit from progressive planning decisions to amend their LEPs. There is effectively a penalty on Councils that improve their land use provision which promote growth or density. This penalty effectively prevents Councils from meeting the needs of their growing population and sharing the benefits of growth with residents. This perverse circumstance results in a strong financial disincentive for Councils and communities to accept population growth within their boundaries.

Rate pegging was a State Government imposed "political fix" that hung around despite the consistent objections from Councils across the State.

The NSW Independent Local Government Review Panel analysed unpegged rates revenue in other states and found no evidence that councils would subject ratepayers

to unreasonable increases were pegging relaxed<sup>10</sup>. The 2009 Commonwealth review of Australia's tax system found it tends to reduce overall responsiveness to ratepayers:

*"If local governments are to be accountable to rate payers for their expenditures, it follows that they should have full (or at least greater) autonomy over the setting of the tax rate applied to properties in their jurisdiction."<sup>11</sup>*

Democratic accountability imposed by local council elections every four years provide a check against unjustified council rate increases in other states where rate pegging does not exist.

- **Local Infrastructure Growth Scheme**

The NSW Government's Local Infrastructure Growth Scheme, which has been withdrawn in a staged process, will be abolished in June 2020. The LIGS provided invaluable financial support to local councils by funding the shortfall between local development contributions collected from developers and the actual cost of providing local infrastructure. This scheme ensure that local development contributions could be capped (\$20,000 for infill and \$30,000 for greenfield) which helped to keep the cost of housing production low and ensured certainty, consistency and transparency.

The state government's discontinuation of the LIGS means that councils must now raise their local development contributions rates significantly, sometimes to as high as \$100,000 per dwelling<sup>12</sup>, in order to cost local infrastructure costs. These contributions add even more to the cost of housing production and are passed onto the home buyer, increasing the cost of housing significantly and even making development of certain sites financially unfeasible.

The Urban Taskforce believes that it is critical that the LIGS is restored in order to prevent further dramatic increases to house prices.

## **Recommendations.**

11. Rate pegging should be abolished. This will incentivise councils to accept additional growth and density and allow local government the ability to respond to increasing expectations for its role as a community service provider.
12. Local Infrastructure contributions should be capped at a fixed rate of \$20K per dwelling in an in-fill development location and \$30K per dwelling in greenfield development locations by the NSW Government.
13. The LIGS should be restored to cover additional costs above the pegged rate to prevent further dramatic increases to house prices.

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<sup>10</sup> [Revitalising Local Government - Final Report of the NSW Independent Local Government Review Panel](#) (October 2013) Independent Local Government Review Panel

<sup>11</sup> Commonwealth of Australia (2010), *Australia's Future Tax System: Final Report*

<sup>12</sup> Independent Pricing and Regulatory Tribunal, [Review of Blacktown City Council's Contributions Plan No.24 – Schofields Precinct](#), August 2019

## How could the NSW zoning system be simplified and improved to support greater business innovation and competition?

Zoning practices that unnecessarily restrict where businesses can locate and how they can use land risk stifling market competition and innovation, effectively acting as a barrier to productivity growth.

Sound regulatory design could ensure that zoning frameworks provide as much flexibility as possible in how land is used. Fewer land use zones with broadly stated allowable uses would:

- Allow new and innovative firms to enter local markets and existing firms to expand, as well as providing greater flexibility to adjust to changing business activities and community preferences
- Better sharing of facilities, suppliers and customers
- Matching of labour to firms
- Opportunities for the diffusion of knowledge
- Reduced administrative and compliance costs
- Allows the planning system to respond to changes in technology, market conditions, global trends and other factors
- Enable genuinely incompatible land uses to remain separated but provide scope for complementary uses to develop and compete (such a move would likely increase options available on where to live and work)
- Reduce the scope for arbitrary distinctions between activity types at the local council level
- Minimise the need for spot rezoning, which in turn reduces costs, delays and investment uncertainty<sup>13</sup>.

### Case study – Zoning Changes in Victoria

Victoria has made changes to its zoning system to allow a genuine mix of land uses to co-locate.

In 2013 the Victorian government consolidated its commercial and business zoning system. They collapsed 5 zones into 2.

Business 1, Business 2 and Business 5 zones were consolidated into one new zone called the "Commercial 1 Zone". This new zone focused on mixed use retail, commercial and higher density residential development.

Their Business 3 and 4 zones were consolidated into a second new zone called the Commercial 2 zone. This new zone focused on commercial and light industrial uses.

These new zones allowed a wider variety of mixed uses in a wider range of areas, increasing productivity and making commercial and employment areas more competitive.

<sup>13</sup> Australian Government – Productivity Commission, *Shifting the Dial – 5 Year Productivity Review. Supporting Paper No.10. Realising the Productive Potential of Land*, 3 August 2017

In contrast, NSW planning appears to have moved away from the common use of mixed-use zoning. This bellies the clear trend away from large footprint last century manufacturing. The apparent ideological fixation with protecting all areas of industrial zoning is the single biggest impediment to high density residential and mixed-use developments and this the single biggest impediment to meeting the demand for new housing in NSW.

The NSW zoning system can support improved productivity by better balancing strategic planning and compatible land use aims with flexibility to support business innovation and competition. However, there are limits to determining the location of economic activity through zoning and strategic planning, with many international examples such as Silicon Valley or the East London Tech City precinct arising spontaneously. The key is flexibility in land uses within zones.

Zoning practices that unnecessarily restrict where businesses can locate, or how they can use, land risk stifling market competition and innovation, effectively acting as a barrier to productivity growth. The Commonwealth Productivity Commission (2017) notes that excessively restrictive zoning “results in higher prices and/ or poorer quality and ranges of goods and services for the community.<sup>14</sup>”

Councils set zoning in New South Wales through their Local Environmental Plans which must be made in the form of the Standard Instrument LEP set by state-wide regulation. LEPs rarely deal with population growth in the long term. They are often constrained in their vision, particularly in the context of Council or State elections. That is why a mechanism to consider spot re-zonings through a merit-based assessment should be implemented without any presumption that the LEP (whenever finalised) should necessarily prevail.

Excessive prescription in zoning and other land use regulation and can stop potentially productive businesses or activities from going ahead, even where they are unlikely to negatively impact neighbours. Even where the business pushes ahead, for example, by requesting a spot rezoning, this can cut against the broader benefits of coherent and consultative strategic planning processes.

- **Unnecessary protection of industrial and urban services land**

The Greater Sydney Commission has recommended in the District Plans that councils ‘protect and manage’ or ‘review and manage’ industrial and urban services land within their local government areas. Once the review of industrial lands is complete, a blanket ban will apply to the transition of industrial land to higher order uses. This ban is an inappropriate mechanism to manage industrial land in the Sydney metropolitan area. Key strategic industrial precincts should of course be supported and protected with appropriate planning controls however there is still scope for the redevelopment of certain industrial areas.

The development of under-utilised and redundant industrial and commercial land for residential and mixed-use purposes can revitalise and renew existing areas and provide badly needed additional dwellings. ‘Protecting’ industrial land from conversion is an

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<sup>14</sup> Australian Government – Productivity Commission, *Shifting the Dial – 5 Year Productivity Review. Supporting Paper No.10. Realising the Productive Potential of Land*, 3 August 2017

inflexible approach and should be adjusted to consider the specific circumstances of each site.

For example:

- Is the site near or within direct access to key economic infrastructure?
- Does the site contribute to a significant industry cluster?
- What are the impacts of any proposed rezoning upon industrial land supply and employment objectives in each district?

This approach allows for evidence-based decision-making and aims to prevent encroachment on important industrial sites.

The Urban Taskforce understands the need to provide jobs and employment opportunities in strategic locations across Sydney. If a proponent could demonstrate that their proposed redevelopment of a site could result in the same amount of jobs or more (the 'no worse off' test), the rezoning proposal should proceed and be assessed on its merits.

The nature of employment and business is changing. Employment land are already transitioning to industries which provide a higher 'employment dividend.' this is happening through shared workspaces, remote working, telecommuting and the transition away from manufacturing towards less space intensive industries such as knowledge and service-based jobs.

The apparent ideological fixation of the GSC with protecting all areas of industrial zoning is the single biggest impediment to high density residential and mixed-use developments opportunity in Sydney. This represents the single biggest impediment to meeting the demand for new housing in NSW.

## **Recommendations**

14. The New South Wales planning system should be overhauled to consolidate the existing zones to create fewer, more broadly stated land use zones to allow greater diversity of land uses with ample flexibility built in to allow for changes in the market, industry and society.
15. Planning regulation that implicitly or explicitly favours certain operators (such as government agencies or incumbent businesses) is unjustifiable and should be removed.
16. The Greater Sydney Commission should reverse its 'review and manage' or 'protect and manage' approach to industrial and urban services land and instead adopt a site-by-site approach to the proposed rezoning of industrial land to higher order uses such as residential and mixed-use development (particularly where job numbers can be enhanced).

**What other planning policy options should the NSW government consider ensuring the planning system supports job creation and respond to consumer preferences?**

The planning system must be flexible enough to respond to produce housing products which responds to consumer choice and preference. It is simply not good enough for the planning system to release land that simply meets demand (in terms of numbers) for new housing supply. Unless this land is located in places where people want to live and the type of dwelling which they prefer to live in, market demand will not be met and housing prices in the sectors where demand is high will continue to rise.

The best way to reduce pressure on housing prices is to zone and grant development approvals for development significantly in excess of immediate demand and let the market determine where it is and what it is that young families, empty nesters, upwardly mobile singles, couples and families, wish to invest their money in. The plethora of constraints identified in this paper is collectively putting enormous upward pressure on housing prices, not least because development approvals and new land supply opportunities have fallen off a cliff in NSW, with numbers for October 2019 now the lowest they have been since 2013<sup>15</sup>.

- **Multiple pressure points all increasing housing prices**

The current combination of economic circumstances represents a recipe for the blowing out of housing prices in NSW.

- Development approvals have reached the lowest level since 2013.
- Access to property finance is the highest that it has ever been, with the current Reserve Bank cash rate at 0.75% per annum.
- The removal of caps on infrastructure contributions and the discontinuation of state government subsidies for local infrastructure will further exacerbate upward pressure on housing prices.
- The complexity, confusion and delay manifest through the current state of the NSW planning system further adds additional costs to development and hence to new home buyers.
- Sydney's population continues to grow at 1.8%<sup>16</sup> per annum – this is necessary to ensure that the taxpayer to non-taxpayer ratio does not collapse and we can afford to pay for the aged care and health services required for the ageing baby-boomer demographic.

The current economic conditions represent an ideal circumstance for a significant boost in housing supply. The constraints associated with the NSW planning system are effectively a constraint on NSW economic development. Worse, the current circumstance will massively add to the costs of housing, thus further reducing housing affordability.

### **Recommendation:**

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<sup>15</sup> Australian Bureau of Statistics, Building Approvals, October 2019

<sup>16</sup> A plan to better manage our population growth, Tudge, Hon. A. (23 September 2019), Minister for Population, Urban Infrastructure and Cities, Speech at the SMH Population Summit



17. NSW government should be taking every possible measure to boost economic activity and to ensure that inefficient regulatory constraints and planning system failures are removed so this economic opportunity can be realised (refer to all recommendations in this submission).

### **What steps could the NSW Government take to improve residential development regulations to support an adequate supply of affordable housing?**

A practical, viability tested, incentive-based approach to facilitate a sustainable long-term supply of affordable housing is required. Currently, policies governing affordable housing vary from council to council, and most require a mandatory financial contribution or giving away of housing stock to council to be used as affordable housing.

These approaches increase the cost of housing production and drive up home prices because the cost to a developer of producing these additional 'affordable' homes (or providing a financial contribution), must be absorbed in the price of the regular market dwellings in the development. The costs of providing affordable housing is effectively borne by the other buyers within the relevant development. Owners of existing properties are unfairly spared a contribution to affordable housing for the community.

Simple changes to the incentive provisions contained in the *State Environmental Planning Policy (Affordable Rental Housing) 2007* would deliver a greater uptake of the incentive, producing more affordable and market supply housing.

The changes to the *SEPP (Affordable Rental Housing) 2007* should include:

- increasing the bonus Floor Space Ratio incentive in the SEPP;
- allowing developments which include a component of affordable housing to exceed the permitted building height to ensure that the bonus floor space can be fully utilised (this option must be made abundantly clear in both the SEPP and the relevant LEP to ensure the community is not surprised if this outcome eventuates and understands the benefits of providing key worker and affordable housing); and
- ensuring that the affordable housing product produced is only held for a period of 10 years (or a defined period) before being returned to the developer.

As stated throughout this submission, increasing housing supply is critical to addressing the current housing affordability crisis. As noted in the Grattan Institute study, which showed that building an extra 50,000 homes a year for a decade could leave Australian house prices 5-20% lower than what they would have been otherwise, stem rising public anxiety about housing affordability, and increase economic growth<sup>17</sup>.

Low density, low rise infill development at distances beyond 1km from key public transport nodes generate greater traffic. Having significantly taller residential buildings above and near new transport infrastructure removes the need for commuters to drive to the station car parks and results in a greater utilisation of that infrastructure.

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<sup>17</sup> Supply sceptics beware -without more housing, it won't be affordable, Brendan Coates, presentation to the Australian Conference of Economists, Canberra, Wednesday 11 July 2018, Grattan institute of Australia.

## Recommendations:

18. Incentive-based approaches to affordable housing should be mandated through amendments to the *State Environmental Planning Policy (Affordable Rental Housing) 2007*. This includes
  - a. increasing the bonus Floor Space Ratio permitted under the SEPP,
  - b. allowing developments which include a component of affordable housing to exceed the permitted building height to ensure that the bonus floor space can be fully utilised and
  - c. ensuring that the affordable housing product produced is only held for a period of 10 years (or a defined period) before being returned to the developer.
  
19. Development within walking distance of any major transport node, particularly new transport nodes, such as metros should be high-density and high-rise.

## How could the NSW government ensure regulations around zoning, building codes and design guidelines are flexible and aligned with demand and preferences?

Sydney's population growth means delivering a supply of affordable housing will remain an ongoing challenge. Regulations, building codes and design guidelines must be used carefully to ensure that they deliver quality built form outcomes without adding additional and unnecessary costs.

- **Regulations and the impact on housing supply**

Housing supply is impacted by regulations governing the type of dwellings that can be built (zoning), how they must be constructed (the building code) and other design guidance including *SEPP 65- Apartment Design Guide*. These regulations and guidelines are essential for the market to function because they address key market failures.

As noted in the NSW Productivity Commission Discussion Paper, these regulations and guidelines are essential for the market to function because they address issues which are not able to be resolved through a 'laissez faire' regulatory environment. These include managing the potential impact of new development on the surrounding neighbourhood such as overshadowing and privacy, ensuring buildings are not at risk of collapse or fire risk, and managing the use of public resources such as on-street car parking.

The Discussion Paper goes on to note:

***“Aspects of the ADG that are not clearly targeted at any market failure can impose significant economic costs through unnecessarily restricting the sorts of development that may be built.”<sup>18</sup>(emphasis added)***

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<sup>18</sup> *Kickstarting the Productivity Conversation: Discussion Paper*, NSW Productivity Commission, October 2019.

The ADG is not intended to be an inflexible regulation, however, many councils adopt a overly-strict approach to compliance with the ADG, which defeats the purpose of having an apartment design 'guideline'. The Department of Planning has prepared a Planning Circular effectively directing councils to use the ADG as a flexible 'guideline'<sup>19</sup> however discussions with our members indicate that this unfortunately has not had the desired effect of changing councils approaches to the application of the ADG.

Minimum apartment sizes outlined in the ADG effectively impose a limit on the number of new dwellings that can be built on a site, taking into account other controls such as Floor Space Ratio and building height. This limits housing supply and increases the price of dwellings overall. Further restriction results from the arbitrary imposition of accessibility requirements which results in larger apartments.

Urban Taskforce research indicates that the minimum apartment size adds an additional \$100,000 to the cost of an average apartment in New South Wales compared with minimum apartment sizes in Victoria<sup>20</sup> where this minimum size is not in effect. Purchasers who may be prepared to trade off floor space with location may not be able to afford an apartment of the mandated minimum-size. This is a case of over-regulation limiting the choice of consumers and creating market inefficiency. In any case, apartment amenity and utility are equally dependent on good design as upon minimum area requirements.

- **Parking requirements**

Development and vehicle usage patterns have evolved since the guidelines were last updated 17 years ago. Ride sharing, car sharing, increased public transport use, and new technologies such as Uber, Ola and Lime, have since been introduced, completely revitalising the ways people use transport to move around. These must be acknowledged in SEPP 65 and council development control plans which mandate certain parking requirements. These requirements are often not taking into consideration these new trends in transportation and are based upon out of date data and assumptions.

- **Micro Apartments**

New models of housing such as micro apartments have been widely used in various cities around the world, and are an appropriate and amenable dwelling type for students, single person households and those who simply do not require a large amount of space or do not mind forfeiting space in order to live in a desired location. However, until these forms of housing are acknowledged in the planning system and appropriate development controls devised, it is incredibly difficult to obtain approval to build.

- **Adoption of unnecessary standards**

Councils have become overzealous in adopting 'best practice' or guidelines into their mandated planning controls. For example, some Sydney councils have adopted the

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<sup>19</sup> [Planning Circular PS 17-001, Using the Apartment Design Guide](#), Department of Planning and Environment, issued 29 June 2017

<sup>20</sup> [Sydney Apartments Are Costing \\$150,000 more than Melbourne Apartments](#), Urban Taskforce, 19 June 2017

requirements of the 'Liveable Housing Standards' into council planning documents such as local environmental plans. Originally devised for detached dwellings, these standards have been applied to apartment buildings without revision.

The ADG as it currently stands represents a fundamental over-regulation and creates perverse outcomes that both restrict consumer choice and perversely result in increased housing costs for no material benefit. The ADG was introduced at a time when apartment design standards and aesthetics were not developed to the high standard they are today. It should be fundamentally reviewed and cut back to a bare skeleton of its current morbidly obese stature and must also recognise that different controls are appropriate for buildings above 6-8 storeys.

### **Recommendations:**

20. The ADG should be fundamentally redrafted with a view to minimising obligations and prescriptions to ensure maximum flexibility for housing consumer choice and to enable housing to be delivered at multiple price points while maintaining, at a minimum, basic quality, amenity and utility.
21. Minimum parking requirements in the ADG should be adjusted to allow for a lower number of parking spaces per residential apartment and therefore reflect changes in vehicle usage patterns, the increase in higher-density developments located close to train stations and the use of car sharing options such as GoGet and impacts of new transport alternative such as Uber.
22. Further direction should be provided by the Department of Planning to ensure that the requirements of the ADG, such as minimum floor space, cannot be used as grounds to refuse a development, reinstating its intended status as a "guideline".
23. New models of dwellings such as micro-apartments, should be acknowledged by the planning system and appropriate controls introduced to facilitate these new types of homes, which are likely to be produced at a lower and more affordable price point.
24. Councils must not mandate contradictory standards and development controls in their local environmental plans and development control plans, which are intended to supplement or replace the Apartment Design Guide.

### **Should the NSW Government level the playing field in the housing sector by supporting a more stable source of housing supply? If so, how.**

Yes.

The first step in achieving this outcome is to have published housing targets for each council area, and for DPIE to regularly publish development approvals and housing completions in each LGA. Housing supply targets in each council area should be greater than the aggregate of housing growth expectation. This will have the impact of reducing house prices and providing choice to consumers as to the location and type of housing they wish to live in.

The current practice of producing 'land supply' which exactly meets population growth demand for new housing is a recipe for rising household prices in the areas where there is strong demand and no houses being built in the areas where there is no demand.

### **Recommendation:**

25. The Greater Sydney Commission should develop short, medium and long-term housing targets for each council as soon as possible. This information should be provided by each LGA to DPIE and / or NSW Treasury and should be monitored and published regularly or updated in real-time if possible.

### **What is the most efficient mix of planning, regulatory and tax settings to deliver outcomes that get the balance right between tenure security and housing mobility?**

- **Build-to-Rent**

Build-To-Rent is an emerging housing type which has the potential to provide a substantial supply of housing in the future.

Research from Allens and Urbis has found that provided build-to-rent is appropriately supported through planning and taxation reform, it may be the quickest solution to increase choice and capacity of accommodation at scale. Current policy settings are not conducive to build-to-rent emerging as a viable asset class in any Australian city.

The report identifies three key areas where changes to government policies are needed to support the growth of the sector in Australia. These are managed investment trusts, land tax and planning.

Currently build-to-rent is denied the concessional tax rate of 15% that applies to income from most other property asset classes for foreign investors in managed investment trusts. For built-to-rent to qualify for the managed investment trust concessional rate and be given a level playing field, it should be classified as 'commercial residential.'

State governments could consider providing land tax concessions for build-to-rent projects and remove foreign land tax surcharges, to make built-to-rent more attractive to foreign investors. By virtue of build-to-rent residential towers being owned by a single landlord, states stand to gain more land tax revenue for build-to-rent projects than build-to-sell, under the current law, and on an asset by asset basis.

Defining what a build-to-rent asset is could provide an opportunity for states to adopt tailored planning policies to ensure build-to-rent reaches its full potential. Build-to-rent currently falls under the general concept of 'residential accommodation' in all Australian jurisdictions.

### **Recommendations:**

26. For tax purposes, 'build-to-rent' should be classified as 'commercial residential' in order to access the concessional tax rate of 15%;

27. The NSW government should consider providing land tax concessions for built-to-rent projects and remove foreign land tax surcharges to make build-to-rent more attractive to foreign investors; and
28. Build-to-rent development should be recognised in the planning system and laws and regulation developed to support this product.

### **Are there other innovative ways of providing new public space, particularly on underutilised land?**

Community open space (parks, river fronts etc) readily lends itself to be best provided by state or local governments. They should use a dedicated fund to take opportunities as they arise to purchase properties currently in fractured ownership with a long-term plan to deliver community open space. This alone would be a significant contribution to community amenity thus establishing one of the foundation stones for increased density and high-rise development where such development is considered appropriate.

### **Recommendation:**

29. NSW state government should establish a fund to support councils in their delivery of community open space in areas nominated for high-rise or high-density residential development.

### **What opportunities are there to improve the use of transport corridors in high density areas?**

See the text supporting Recommendations 1,5 and 19.

### **What principles could be applied to the development contributions system to ensure transparent, consistent and efficient outcomes?**

Councils are pursuing funding mechanisms outside of council rates and development contributions. These include value capture policies and planning agreements requiring developers to fund certain infrastructure or make substantial financial contributions to council. There are also additional costs to development added by other levels of government. These include:

- The removal of the cap on local development contributions levied under section 7.11 (formerly known as Section 94 contributions) of the *Environmental Planning and Assessment Act 1979*, and the discontinuation of the state government's Local Infrastructure Growth Scheme
- Introduction of the 'strata building bond', a mandatory bond of 2% of the construction investment value of any strata-titled residential or mixed-use building over four storeys in height
- Introduction of 'Special Infrastructure Contributions' for various areas
- Introduction of affordable housing schemes by local council which introduce contributions and levies on development

- Other, unconfirmed levies such as a \$20,000 per dwelling contribution for the Parramatta Light Rail suggested by Transport Minister Andrew Constance
- Adoption of various 'value capture' tax policies imposed by local councils
- Payments associated with voluntary planning agreements.

The random nature of government-imposed levies has created considerable uncertainty. The 2009 Federal report on tax, *Australia's future tax system: Final Report* notes that:

*"Where developer charges are set in an ad hoc fashion or are subject to unexpected changes, they can create uncertainty around new developments. If charges are increased after a developer has bought land from its original owner, they cannot be factored into the prices previously paid for the raw land. In that case, the charge would lower the expected return from the development. In return, general uncertainty about charging is likely to discourage investment activity, which would reduce the overall supply of housing<sup>21</sup>."*

The Report concluded that development levies were only justifiable when they reflected the avoidable costs of development. The report explained that:

*"...where infrastructure charges are poorly administered, particularly where they are complex or set too high, they can discourage investment in housing, which can lower the overall supply of housing and raise its prices<sup>22</sup>."*

The removal of rate pegging would create less reliance on planning agreements and local development contributions for funding. These contributions result in higher house prices and unfairly burden first home buyers at a time when housing is particularly unaffordable.

Some suggested principles to facilitate a fair and successful developer contributions scheme include:

- **"Don't kill the goose..."** – Fees and charges need to be considered cumulatively. The current regime of multiple taxes and charges threatens to undermine the feasibility of residential development further. It threatens the affordability of residential development by pushing house prices ever increasingly upward.
- **Nexus** - councils should demonstrate a link between the development being levied and the need for the infrastructure being funded.
- **Intergenerational equity** - councils should seek to ensure that the costs of infrastructure are not disproportionately placed on one particular generation or group of people, bearing in mind that many older generations benefited from low or non-existing infrastructure contributions, and that generally infrastructure is accessible and provides benefits to everyone in the community, not just those who funded it.

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<sup>21</sup> Commonwealth of Australia (2010), *Australia's Future Tax System: Final Report*

<sup>22</sup> Commonwealth of Australia (2010), *Australia's Future Tax System: Final Report*.

- **Equity** - the cost should be proportional to the projected use of the development, reasonably estimated and restricted to essential works only.
- **Certainty** - developers should have certainty regarding the levies payable, infrastructure items to be funded, indexation method and works in kind credits.
- **Financial Accountability** - contributions should be allocated to the infrastructure to which they were collected.
- **Timeliness** - infrastructure should be planned for delivery as it is indeed, either based on specific dates or thresholds of developments (i.e. completed dwellings).
- **Transparency** - the methods for calculated levies should not be excessively complex to follow or for developers and the general public to understand. Local councils must report regularly on the amount of contributions collected and how and when these contributions are spent<sup>23</sup>.

## Recommendations

30. A register which monitors the cumulative cost of the many local and state government fees and charges on development should be introduced and maintained by NSW Treasury, to ensure that the impacts of these charges upon the cost of housing production is monitored closely.
31. Restore the cap on developer contributions and the local infrastructure growth scheme as a fair and equitable way of managing the cost of contributions.
32. Consider a broad-based standard levy applicable across greater Sydney to fund large infrastructure projects.
33. Introduce an indicative developer contributions calculator to the DPIE's e-planning system, which outlines the total local and state development contributions applicable on any development site.
34. Require councils to provide an online, easily accessible register of development contributions, including how much has been collected, from whom, and where and when this money is spent.

## How might developer contributions be improved to support in new areas and service growing community needs?

Infrastructure contributions paid by developers are not used in an efficient and timely manner. There is a lag between collection of contributions and provision of the facilities. Significant contributions associated with the Macquarie Park Precinct had been collected by developers in advance and not spent on the infrastructure for which it was collected. Further, in Parramatta LGA, Council have reported in their

<sup>23</sup> Robinson J and DeGruyter. C (2018) [Financing infrastructure through user-pays development contributions: an assessment of Australian practice](#), *Australian Planner*, volume 54, no.3, pp165-176



Annual Report an aggregate of unspent contributions from developers of \$118 million in 2018 and this had grown to \$134 million in 2019<sup>24</sup>. Over the last year, Parramatta Council has collected \$28.3 million and spent only \$16.4 million, thus increasing its accumulated unspent developer funding to a total of \$134 million. This does not include payments associated with Voluntary Planning Agreements (VPAs). This is underspend of developer funded infrastructure is indicative of councils across the state and needs to be rigorously policed and penalties enforced.

There is no easily reconcilable ready-reckoner for collections of section 7.4, 7.11 and VPA payments with the delivery of the relevant infrastructure or community facility. As a result there is a tendency for councils to use these funds, provided by developers, as a general slush fund often unrelated to the development.

It is the case that councils are required to publish, in aggregate, the amount they have collected and how much is unspent. However, greater transparency of relating to each and every commitment from council to infrastructure delivery associated with s7.4, 7.11 and VPAs should be made available.

The cumulative level of developer contributions is not clear, particularly given the removal of the cap on local contributions in June 2020. With the removal of the cap, the Urban Taskforce has significant concerns that these contributions will increase substantially, thus increasing the cost of housing and lowering housing affordability.

### **Recommendation:**

35. DPIE collect and publish all data associated with Section 7.11, 7.4 and VPA contributions plans and these be reconciled against the delivery of infrastructure. (Also see recommendation 10).

### **What could the NSW Government do to improve efficiency in planning system administration and ensure economic and community benefits?**

- ***Increasing government funding for planning resources in government agencies***

For many years under both Labor and Coalition Governments government agencies have been asked to produce efficiency dividends (savings) as a contribution to the government's fiscal position. Typically, these savings have been generated by "non-frontline service delivery" i.e.: categories such as nurses, teachers, firefighters, train drivers, police officers are exempt. This has resulted in agencies like RMS making significant cuts to "back of house" non-frontline public servants. As a result the expertise and resources servicing those agencies mandated concurrence for rezoning and development applications, both large and small, has been massively diminished.

This applies not only to agencies including RMS, Transport for NSW, Sydney Water, etc, but also to the department of Planning itself. Consideration should be given to targeted funding to councils, the Department of Planning, to IPC and regional panels to increase the planning resources with a direct link to them improving the timeframes for the delivery of concurrences and assessments. This alone would produce a significant multiplier effect as currently billions of dollars of capital investment are being

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<sup>24</sup> General Purpose Financial Statements for the Year Ending 30 June 2019, City of Parramatta Council, p 22.

held up by the significant delays involved in the planning assessment process. Some developers just give up and invest elsewhere.

It may seem ironic to some that the Urban Taskforce is calling for increased funding for public servants. However, the significant bottlenecks within the system of planning are in no small part directly the result of myopic decision making when seeking to deliver savings targets imposed by government.

- ***State Significant Development***

Councils should not have authority to assess and determine State Significant Development applications. SSD should be assessed and determined by the Department of Planning, Industry and Environment, an appropriate state-level agency with sufficient resources and expertise to undertake a thorough assessment of what can often be complex and difficult applications. Councils should be encouraged to make submissions on relevant SSD applications but not exercise any assessment authority. Removing these applications from council control will also free up council resources to focus on local development applications and strategic planning.

- ***Regional Centres of Excellence***

Centres of Excellence for Planning should be shared by groups of councils. Planning is inevitably about balancing competing issues and while a 'tick the box' approach can work for some projects, many performance based proposals will need to be assessed and this should be done by non-political planning professionals. There are at times concerns about the level of skills typically found in a council and a possible solution is to increase the pool of skills by combining planners from 6-7 councils into a shared 'centre of excellence'. A larger planning office will have a range of skills and greater career prospects for individual planners.

Centres of Excellence could be established for groups of council as well as Regional Planning Panels and the Independent Planning Commission.

- ***One stop shops to efficiently process planning concurrences and referrals***

Housing costs in Sydney are among the most expensive in the world and a more streamlined planning system to increase the supply of new dwellings would improve housing affordability. The complex referral system of planning applications to state government agencies is adding months to the processing of applications. At times, it can take a year to get comments back from NSW state government agencies, while Queensland's one stop shop approach has nearly all determinations back to council in 40 business days. Most of the delays in NSW are because the agency commenting on a referral is focussed on other priorities and has no incentive to get comments back to a local council in a timely manner. Queensland had the same problem and they restructured the referral process to create a more accountable approach. This was identified as a recommendation on the NSW Planning White Paper<sup>25</sup> The Queensland SARA website sets out KPIs that the agency must meet in making decisions on behalf of state government departments. 98 percent of total applications are to be decided within 40 business days and 60% within 20 business days.

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<sup>25</sup> [A New Planning System for NSW – White Paper](#), NSW Government, April 2013

- **Impact of zoning restrictions on house prices**

The impact of zoning restrictions has been the fastest growing component of Australian house prices since 2000. Zoning restrictions add between \$150,000 and \$500,000 to new homes in Australia's biggest capital cities. Zoning costs now account for around 40 percent of house prices in Sydney and Melbourne<sup>26</sup>.

This is because government zoning regulations restrict the supply of land for property. The effective tax extracted for the average new house-and-land package in Sydney due to the impact of zoning is approximately \$500,000 (see table below).

In a study by the Reserve Bank, housing in all Australian cities is afflicted with massive imposts via zoning regulations which create 'administrative scarcity'.

RBA researchers Ross Kendall and Peter Tulip have found that the reason land is expensive is not because it is physically scarce.

Market	Cost of zoning	Zoning Impact (above the cost of supply of land)	Zoning impact (As percentage of total house price)	Zoning impact (High density dwelling - percentage of price)
Sydney	\$489,500	+73 per cent	42 per cent	85 per cent
Melbourne	\$324,000	+69 per cent	41 per cent	30 per cent
Brisbane	\$159,000	+42 per cent	29 per cent	26 per cent
Perth	\$206,000	+54 per cent	35 per cent	Not calculated

Source: RBA, authors' calculations, CoreLogic

To illustrate its reasoning, the RBA research used an example of the average Sydney house, valued at \$1.16 million in 2016. It valued the structure at \$395,000 on a \$765,000 block of land. The report said property buyers in effect valued Sydney property at roughly \$400 a square metre, or \$277,000 for the average block of \$489,500 less than the market value. This difference represents what homeowners need to pay for the right to have a dwelling at that location or the cost of 'administrative scarcity.'

This difference is known as the 'zoning tax' because the wedge between prices and costs is induced by government-determined scarcity.

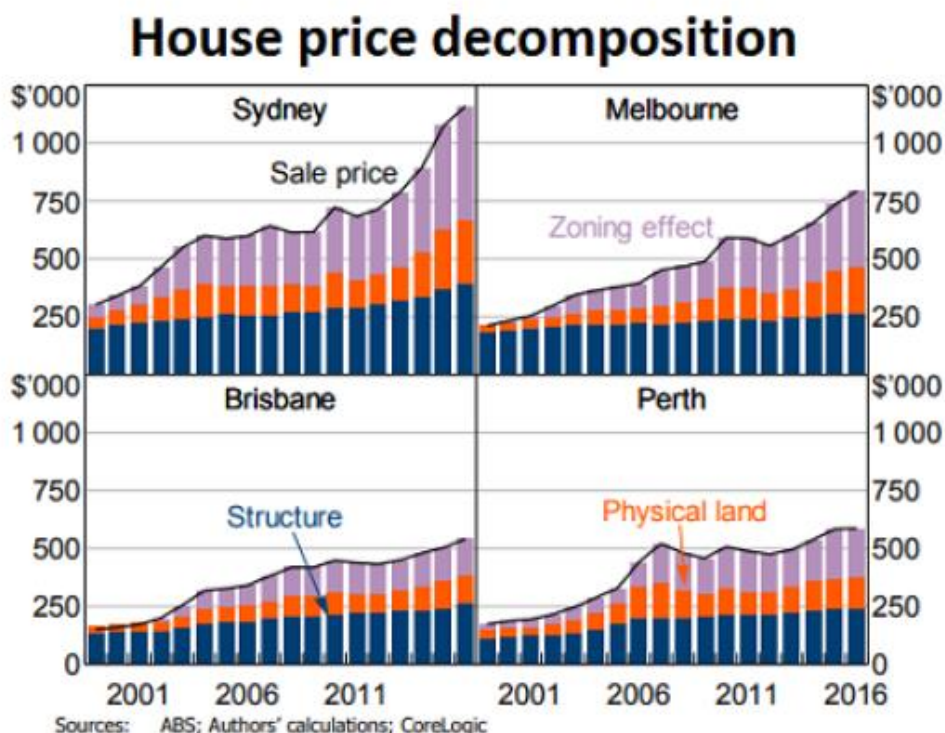
Evidence in the report suggested zoning could have a huge effect on land value. Then authors cited a 363-hectare site in Wyndam Vale near Melbourne, which increased in value from \$120 million to \$400 million following its rezoning from rural to residential<sup>27</sup>.

<sup>26</sup> Research Discussion Paper RDP 2018-03, The Effect of Zoning on Housing Prices, Ross Kendall and Peter Tulip, Reserve Bank of Australia

<sup>27</sup> Research Discussion Paper RDP 2018-03, *The Effect of Zoning on Housing Prices*, Ross Kendall and Peter Tulip, Reserve Bank of Australia

Such large increases in value as a result of zoning changes are inconsistent with the view that a physical shortage of land itself is the main cause of high land values and housing prices, and instead point towards a high 'shadow price' of government permission to build dwellings as a likely explanation<sup>28</sup>.

The study found rezoning restrictions raised detached house prices in Sydney by 73 percent on average<sup>29</sup>.



As housing demand continues to grow, existing zoning restrictions will bind more tightly and place continuing pressure on housing prices.

- **Proposed tribunal**

Chapter 8.8 of the *Kickstarting the Productivity Conversation Discussion Paper* alleges that a lack of tribunal to handle minor planning disputes or appeals is driving additional costs and delays.

The paper appears to suggest that the removal of the jurisdiction for small matters from the Land and Environment Court and place them in a separate tribunal<sup>30</sup>.

<sup>28</sup> Research Discussion Paper RDP 2018-03, *The Effect of Zoning on Housing Prices*, Ross Kendall and Peter Tulip, Reserve Bank of Australia

<sup>29</sup> Research Discussion Paper RDP 2018-03, *The Effect of Zoning on Housing Prices*, Ross Kendall and Peter Tulip, Reserve Bank of Australia

<sup>30</sup> *Kickstarting the Productivity Conversation Discussion Paper*, NSW Productivity Commissioner, October 2019

The paper's proposition is flawed in several respects.

Firstly, the Land and Environment Court merit appeal jurisdiction (known as class 1, class 2 and class 3) already operate with reduced technicalities and streamlined procedures. For example, the rules of evidence do not apply. Many legal rules/ devices commonly found in other courts do not apply (or are difficult to invoke) such as adverse costs orders for substantive proceedings, discovery etc.

Development applications appeals are generally heard by commissioners (some of whom are not lawyers and their numbers include qualified architects and town planners).

Secondly, there is already a super-streamlined procedure for dealing with matters concerning a single dwelling or dual occupancy. This is known as 'section 34AA'. Such proceedings are subject to their own practice note and such matters are resolved in a much faster time frame (When compared with other matters). However, due to a shortage of courtrooms, Land and Environment Court time frames have brown out, for example section 34AA cases have gone from 3 months to resolution to 9 months.

The main reason that technical issues arise in the Court's merit jurisdiction **is due to the fundamental complexities of the state's planning laws** (including the multi-layered system of conflicting planning controls). Any appeal forum that properly engages with most suites of planning controls will appear complex to observers. If there is a desire to reduce technicalities, the answer is not to eliminate the forum that deals with these complexities (and resolve them in a fair matter). The answer is to instead **reform the planning controls themselves**. Such reform needs to:

- better focus planning controls on issues of substantive community concern
- reduce the scope for conflicts between planning controls (within the same document and between different layers of planning controls) or
- Reduce the extent of arbitrary prohibitions that cannot be varied in appropriate circumstances
- Refocus the planning system on planning rather than legal issues.

The suggestion that parties before a tribunal should be deprived of the ability to be represented by lawyers would lead to gross injustice and significant legal errors by the new tribunal (that would then need to be resolved in the courts).

Generally, banning lawyers in an appeal process advantages large organisations who are able to employ professional (non-legally qualified) internal staff to handle disputes. Individuals and small businesses cannot have such internal staff. Effectively a lawyer-free tribunal will advantage local councils at the expense of 'mum and dad' property owners and small business operators.

In short, the Land and Environment Court is the principal institution that maintains the integrity of the planning system to the benefit of development proponents and public authorities alike. The Court has unrivalled expertise in dealing with development application appeals. It makes no sense for government to fragment this role across two different forums (by introducing a separate tribunal). The Court's role should not be reduced.

If anything, there is a case that some of the present administrative review processes (such as rezoning reviews) should be merged in the Land and Environment Court appeal process. This would increase the likelihood that the decisions of those reviews actually give effect to the relevant planning policies - improving accountability, transparency and creating greater investment certainty. At present, in a general sense, this is not being achieved.

The Urban Taskforce recommends additional resources be allocated to the Land and Environment Court. A boost in funding could help clear the backlog of cases before the court. Given the identification of timeframes as a significant issue within the NSW planning system, every opportunity must be taken to alleviate this concern.

- ***Increasing government funding for planning resources in government agencies***

For many years under both Labor and Coalition Governments government agencies have been asked to produce efficiency dividends (savings) as a contribution to the government's fiscal position. Typically, these savings have been generated by "non-frontline service delivery" ie. categories such as nurses, teachers, firefighters, train drivers, police officers are exempt. This has resulted in agencies like RMS making significant cuts to "back of house" non-frontline public servants. As a result the expertise and resources servicing those agencies mandated concurrence for rezoning and development applications, both large and small, has been massively diminished.

This applies not only to agencies including RMS, Transport for NSW, Sydney Water, etc, but also to the department of Planning itself. Consideration should be given to targeted funding to councils, the Department of Planning, to IPC and regional panels to increase the planning resources with a direct link to them improving the timeframes for the delivery of concurrences and assessments. This alone would produce a significant multiplier effect as currently billions of dollars of capital investment are being held up by the significant delays involved in the planning assessment process. Some developers just give up and invest elsewhere.

It may seem ironic to some that the Urban Taskforce is calling for increased funding for public servants. However, the significant bottlenecks within the system of planning are in no small part directly the result of myopic decision making when seeking to deliver savings targets imposed by government.

## **Recommendations**

36. The proposal to introduce a separate tribunal to deal with certain minor matters instead of the Land and Environment Court is not supported. However, the Urban Taskforce does support funding supplementation to be provided to the Land and Environment Court to improve timeframes for hearings before the Court.
37. Reduce restrictions on zoning and adopt a new zoning system that seeks to maximise flexibility in the fields of land uses, building heights, particularly in areas where the government has made significant investment in new transport infrastructure.

38. Establish a 'one stop shop' to efficiently process planning concurrences and referrals from councils based on the successful Queensland State Assessment and Referral Agency.
39. Increase government funding for planning resources in government agencies.
40. Establish regional planning 'Centres of Excellence' for groups of councils as well as Regional Planning Panels and the Independent Planning Commission.
41. Remove councils from determination of State Significant Development.

The Urban Taskforce welcomes a Productivity Commission investigation of the current restrictions within the NSW planning system. The Urban Taskforce commends the recommendations made in this submission and looks forward to the opportunity to discuss the contents of this submission with the NSW government further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tom Forrest', with a stylized flourish extending to the right.

**Tom Forrest**  
Chief Executive Officer  
Urban Taskforce Australia