

**Submission  
No 31**

## **LAND RELEASE AND HOUSING SUPPLY IN NEW SOUTH WALES**

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HOUSING INDUSTRY ASSOCIATION



# Housing Australians



**Reforming Building & Planning Laws**

Submission to the  
Legislative Assembly Committee on Environment and Planning  
**Inquiry into Land Release and Housing Supply**

July 2017



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## ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the industry, HIA represents some 40,000 member businesses throughout Australia. The residential building industry includes land development, detached home construction, home renovations, low/medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

*"promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."*

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into manufacturing, supply, and retail sectors.

The aggregate residential industry contribution to the Australian economy is over \$150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 23 centres around the nation providing a wide range of advocacy, business support including services and products to members, technical and compliance advice, training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.



## 1.0 INTRODUCTION

The Housing Industry Association (HIA) welcomes the opportunity to provide comments to the NSW Legislative Assembly's Environment and Planning Committee in response to its Inquiry into Land Release and Housing Supply in New South Wales (NSW).

The Inquiry's Terms of Reference cover a broad range of matters affecting HIA's members particularly those involved in new home construction and the release of land for housing.

The Committee has singled out the issue of housing supply as the core matter for investigation in this Inquiry which is appropriate as the current affordability crisis is the result of many years of undersupply. Despite dwelling approvals and completions currently being at record levels, this is only making up for many years of under supply. It is appropriate that the NSW Parliament hold an inquiry into housing supply to investigate options available to Government to improve housing affordability. The operation of the planning system is a logical starting point for an inquiry into housing supply. Layers of complexity and red tape are major factors contributing towards rising costs and delays and the Committee's investigation into these issues is welcomed.

It is noted that Glenn Stevens in his report to the Premier on housing affordability pointed to housing supply as a key factor that many observers agree has struggled to keep up with demand. He indicates that supply despite being near record highs is only making up for a previous period of undersupply that has been estimated to be as many as 100,000 homes. A number of the observations made by Mr Stevens in respect of housing supply, for example the time it takes to rezone land, de-politicisation of development application decisions, are particularly relevant to the matter under investigation by the Committee.

Currently there are a range of impediments which are preventing housing supply meeting or even nearing demand. In a very broad sense the supply of land for housing development is influenced by zoning, subdivision approvals and the operation of the planning process. Developers and home builders are facing a range of barriers to building on land zoned for residential development that can be applied at any stage of the planning process. Many of the constraints affecting the supply of housing tend to be applied either at or after the time of rezoning and severely hamper the potential for land to be fully developed consistent with its zoning. Many councils will zone land for residential purposes and apply an environmental constraint layer to the planning controls that in some cases are intended to discourage future development of the land. It is important that Governments (State and local) provide certainty in the application of planning controls on residential land.

The imposition of levies and charges on new housing significantly affects affordability and contributes towards making a new home unaffordable for new homebuyers. The cumulative impact of local contributions paid to councils and Special Infrastructure Contributions (SIC) paid for State and regional infrastructure can be an impediment to orderly and affordable residential development and significantly add to the upfront cost of new homes. The recent announcement made by the Government to remove the cap on local contributions and introduce ten new SIC levies will only worsen the current situation and put home ownership out of reach of many more families.

This submission has been prepared with the view of informing the Committee on a range of planning issues that either limit the release of land for housing or add significant costs to the final product. Combined these issues either add to the cost of housing or make it economically unviable, thereby preventing the timely supply of new housing. HIA would be prepared to discuss these issues further with the Committee should hearings be held in Sydney or elsewhere.



## 2.0 PLANNING SYSTEM

### 2.1 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The Environmental Planning and Assessment Act 1979 (EP&A Act) is almost 40 years old and has been amended more than 150 times. The EP&A Act continues to serve its purpose of regulating land use planning and development assessment within New South Wales (NSW) albeit with many new layers of red tape and administration.

Today the approval of a residential subdivision will normally involve multiple approvals which may include a land rezoning under the local environmental plan, a development application for land subdivision and an associated followed subdivision certificate and then a development application for the dwelling house and an associated construction certificate. In addition, there are more layers of bureaucracy involved in the development process including design review panels, joint regional planning panels and external referral bodies.

Prior to 1998, land use planning within NSW was split between development applications made under the planning legislation and building and subdivision applications made under the Local Government Act 1993 and Local Government Act 1919 respectively. In the majority of cases, the construction of a dwelling house on land zoned for residential purposes only needed a single approval, which was a much simpler process than the approval process created under the EP&A Act in 1998. The usual practice would have involved a building application comprising plans and specifications for the house with minimal need for planning reports given the low impact nature of this development type. Larger more complex proposals such as medium density housing and mixed use developments required both development consent under the EP&A Act and building approval under the Local Government Act 1993.

The introduction of complying development in 1998 has retained a single application approach for minor residential development similar to the building application. Initially the Government left it up to local councils to determine the type of development that would be permitted as complying development. In many cases councils were quite conservative in terms of the types of development they identified in their complying development Development Control Plans. This ultimately changed in 2009 when the State Government took control and State Environmental Planning Policy (Exempt and Complying Development) 2009 (Codes SEPP) was made. Currently, complying development now makes up a significant proportion of single dwelling approvals undertaken in NSW.

### 2.2 WHITE PAPER AND PLANNING BILL

After the introduction of a series of planning reforms in the period between 2005 and 2009, the EP&A Act increasingly was described as complex, rigid, clunky and cumbersome. Since its commencement in September 1980 the EP&A had been subject to more than 150 amendments of both minor and major significance. In recognition of the growing criticism of the EP&A Act, in 2011 the newly elected NSW Government initiated a comprehensive review process of the NSW planning system to fulfil an election commitment.

The reform process involved a broad community consultation led by former Minister Tim Moore and Ron Dyer. This listening and scoping phase contributed towards the development of a green paper in July 2012 which outlining options for reform. Following the Government considering the feedback to the green paper, a White Paper was released by the Minister in April 2013. The White Paper was supported by two draft exposure bills (Planning Bill 2013 and Planning Administration Bill 2013). Despite strong calls from the development industry for these reforms to be passed, the Legislative Council only passed the Planning Bill with substantial amendment. The NSW Government was not prepared to accept these amendments and the bills lapsed.



Following this, the Government's reform agenda has continued but at a much slower pace. In January 2017, the then Minister Rob Stokes released a detailed package of planning legislation amendments for public comment. The Government has yet to introduce this bill into the Parliament.

### **3.0 ROLE OF MINISTER, DEPARTMENT, GREATER SYDNEY COMMISSION & COUNCILS**

#### **3.1 MINISTER FOR PLANNING**

The functions of the Minister for Planning under the EP&A Act are very broad and include many defined functions such as the making of local environmental plans, providing directions and advice to councils about contributions plans, functions in relation to State Significant Development and Crown Development. Also the Minister has functions regarding the appointment of members to bodies such as the Greater Sydney Commission, Planning Assessment Commission, Planning Panels and the like. In addition, the Minister for Planning has responsibilities spelt out in section 7 of the EP&A Act.

Many of the functions assigned to the Minister by the EP&A Act are exercised by other bodies or persons in accordance with the general delegations allowed under section 23 of the EP&A Act. It is appropriate that these routine matters are undertaken by Departmental officers or statutory bodies such as the Greater Sydney Commission or the Planning Assessment Commission.

The current Minister for Planning also serves as the Minister for Housing. In February 2016, the Premier announced the appointment of the Hon. Anthony Roberts MP as the Minister for Housing. The appointment of a specific Minister for Housing and the inclusion of the role in Cabinet were appropriate and elevated the issues affecting the housing sector to the highest level of the State Government.

Following his appointment, the Minister has a clear focus on housing supply and appears to be keeping watch over housing approvals and completions across Sydney and NSW. It is important that the Minister is aware of housing data to see how well the Government's policy settings are working in terms of housing delivery.

In terms of legislation for which the Minister has direct responsibility, apart from the EP&A Act, the relevant statutes are the Greater Sydney Commission Act 2015, the Growth Centres (Development Corporations) Act 1974 and the Landcom Corporation Act 2001. The Minister for Housing administers no legislation.

The other pieces of legislation that are relevant to the housing sector but are managed by other Ministers in the Government, examples include:

- Minister for Finance, Services and Property – Conveyancing Act 1919, First Home Owner Grant (New Homes) Act 2000, Home Building Act 1989, Real Property Act 1900, Strata Schemes Development Act 2015.
- Minister for Innovation and Better Regulation – Building and Construction Industry Security of Payment Act 1999, Building Professionals Act 2005, Plumbing and Drainage Act 2011.

Where the above legislation and their subordinate regulations and other instruments have significant impact on housing policy, those responsibilities would be better managed from within the same ministerial and departmental cluster as the Minister for Housing.





The existing cluster arrangements with the Minister for the Environment, Minister for Heritage and Minister for Local Government could be improved by transferring key housing and building regulation into the same cluster as the Minister for Housing.

### **3.2 DEPARTMENT OF PLANNING & ENVIRONMENT**

The Department of Planning and Environment (Department) is the primary agency of the NSW Government with responsibility for the planning system. As such it has enormous power and resources at its disposal to drive reform and outcomes in respect to land release and housing supply.

The Department's responsibilities in this area include the development of planning policies for the State, identification of land for new housing, the coordination of land rezoning for housing and in some cases the assessment of development proposals for new housing. These functions are either managed centrally within the Department's head office or across the State in the Department's regional offices.

A criticism often leveled at the Department has been its lack of understanding about the development industry and how the culture within the Department is generally negative towards businesses engaged in the creation of housing and jobs. A major outcome of the White Paper in 2013 was the need for cultural change within the Department and the planning profession generally. Although there has been some noticeable changes recently with an improved customer focus, there are still some areas of the Department's operations that are in need of cultural change.

### **3.3 GREATER SYDNEY COMMISSION**

The Greater Sydney Commission (GSC) was established in January 2016 to lead the metropolitan planning for the Greater Sydney region. The GSC's primary role is to develop the high level planning for the region. During 2016 the GSC released for public comment an update to Sydney's regional plan, A Plan for Growing Sydney and also six draft district plans. The commission is currently reviewing feedback received from the public and is expected to finalise these documents in early 2018.

Given the GSC has only been in existence less than two years, it is difficult to determine how effective it has been in terms of delivering specific housing outcomes. The development and release of draft district plans has been welcomed but the implementation of those plans into opportunities for new housing within local environmental plans will be the ultimate measure of its success.

### **3.4 COUNCILS**

Councils exercise certain planning functions for their area under the EP&A Act including strategic planning, development assessment and some compliance functions.

#### ***Rezoning***

In most cases, a local council is the relevant planning authority for the purpose of section 54 of the EP&A Act. A land owner can make a request to the council for a rezoning of their land in the form of a planning proposal. The council upon considering the planning proposal may decide to proceed or reject the land owner initiated planning proposal. If a council resolves to proceed with a planning proposal it must submit it to the Department requesting a Gateway determination under section 56 of the EP&A Act. Following the granting of a Gateway determination, the planning proposal is returned to the council to implement the planning proposal. A planning proposal becomes a local environmental plan after it is made by the Minister for Planning or in the case of the Greater Sydney Region, the GSC.



If a council rejects a land owner initiated planning proposal, a dissatisfied land owner may seek a Rezoning Review where the merits of the planning proposal are independently reconsidered, and if supported, may proceed to a Gateway determination either with an alternate relevant planning authority or the council (if it has a change of mind).

The Rezoning Review process was introduced in 2012 by the Department and was known as a Pre-Gateway Review. The Department undertook a review of this process in 2015 and a final report released in August 2016 with the new operating procedures for the Rezoning Reviews that incorporated a strategic merit test. The continued use of Rezoning Reviews is supported to ensure that planning proposals having strategic merit can proceed despite local council opposition.

### ***Development Applications***

Under Part 4 of the EP&A Act, local development applications are made to a consent authority. The relevant local environmental plan identifies the consent authority applying to land under the plan. In most cases the local council is the consent authority. Certain types of development will be referred to a Regional Planning Panel (or Sydney Planning Panel for the Sydney region) to be determined.

A recent amendment to the EP&A Act due to commence in March 2018 will also mandate the formation of Local Planning Panels (based on Independent Hearing and Assessment Panels). The panels will consist of a chair appointed by the Minister. Two members selected by the council from a pool of technical experts approved by the Minister and one member from the local community. Once these changes commence, the role local councils in the development process will be significantly altered.

The amendments to the legislation will not change the role of the council planner who will continue to assess development applications and prepare recommendations for consideration of the new panels. A significant factor in the time councils take to assess development applications due to a shortage of experienced planners working for councils. Many councils are faced with employing relatively inexperienced planners in senior roles and assigning them to undertake complex planning assessments. The Government needs to act to ensure that councils have adequate staff resources to undertake their DA assessment functions in reasonable timeframes.

## **4.0 IDENTIFICATION OF NEW LAND FOR HOUSING**

### **4.1 METROPOLITAN DEVELOPMENT PROGRAM (MDP)**

Since the 1970s the NSW Government has sought to maintain the supply of new home sites to accommodate Sydney's growing population through its urban development program. This program has been known as the Metropolitan Development Program (MDP) since 2001. The MDP provided for the tracking and managing of housing supply and covered both major infill site in existing areas and new release areas in greenfield areas. The program provided a 10 year supply forecast for new housing in the Sydney metropolitan area.

The MDP was used by other agencies, in particular Sydney Water, to inform investment decisions regarding the timing and location of new infrastructure.

### **4.2 SYDNEY REGION GROWTH CENTRES**

In December 2004, the NSW Government announced a new land release plan for the South West and North West Growth Centre a key component of Sydney's metropolitan planning. At the time of the announcement, the growth centres were expected to accommodate about 30% to 40% of Sydney's long term housing growth by providing for around 181,000 new dwellings.



By June 2005, the Government released the draft plans for the growth centres and State Environmental Planning Policy (Sydney Region Growth Centres) 2006 in early 2006. After the SEPP was made, the responsibility for planning the growth centres was transferred to the Growth Centres Commission (GCC). The GCC was abolished in 2008 and responsibility for the Sydney Region Growth Centres returned to the Department.

The North West Growth Centre (now known as North West Priority Growth Area) comprises land in the local government areas of Blacktown, The Hills and Hawkesbury. When the growth centre was first identified it had potential for approximately 70,000 new dwellings distributed across seventeen (17) precincts. To date, rezoning has occurred at North Kellyville, Schofields, Riverstone, Riverstone West, Riverstone East, Box Hill/Box Hill Industrial and Marsden Park/Marsden Park Industrial precincts. Planning is still underway for the Marsden Park North, West Schofields and Vineyard precincts. Recent updates to the planning for the North West Growth Area have seen housing projections increase to 90,000 in the next 30 years.

The South West Growth Area (now known as the South West Priority Growth Area) comprises land in the local government areas of Camden and Liverpool. When the growth centre was first identified it had potential for approximately 115,000 new homes distributed through eighteen (18) precincts. To date, rezoning has occurred at Edmondson Park, Turner Road, Oran Park, East Leppington and Austral & Leppington North. In 2016, amendments were made to the South West Priority Growth Area to deliver consistent planning controls across precincts.

Both of the Sydney Region Growth Centres have been renamed as priority growth areas to better align with the Department's current strategies for growth which has taken a more balanced approach comprised of both urban renewal and greenfield release areas. The focus on a mixture of greenfield and urban renewal areas is appropriate and should provide for wider housing choices for homebuyers.

### **4.3 A PLAN FOR GROWING SYDNEY**

"A Plan for Growing Sydney" is the current metropolitan plan for Sydney and was released by the Government in December 2014. The strategy evolved from a discussion paper released in May 2012 responding to Sydney's expected population growth – estimated to be 1.3 million additional people by 2031 and need for more than half a million more homes.

A key focus of the Strategy is the acceleration of housing supply across Sydney. The Government has stated that its goal is to deliver the housing that Sydney needs. Demographic projections indicate that Sydney will need an additional 664,000 new dwellings over the next 20 years (by 2031). In order for this target to be achieved the Government has said it needs to work with councils to identify where development is feasible, identify where investment in local infrastructure can create housing supply, target locations which deliver homes closer to jobs and directly facilitate housing supply and choice through UrbanGrowth NSW and a focus on new priority precincts and priority growth areas close to new transport infrastructure.

The Department has commenced investigations on more than twelve priority precincts and growth areas capable of delivering more land for new housing. The timeframes involved with completion of investigations and developing planning controls can vary depending on the complexity of land constraints and stakeholder issues. It is important that appropriate resources and staff be allocated to the area within the Department responsible for undertaking this work. This should consider the short term secondment of council planning staff or engagement of external planning contractors if necessary to ensure that the supply of land for new housing avoids unnecessary delay.



In November 2016, the GSC released a draft amendment to “A Plan for Growing Sydney” which reflects significant decisions made since the finalization of the Strategy in 2014. The amendment takes a longer timeframe of 40 years looking forward towards 2056. The GSC has indicated in the draft amendment that since the release of the Strategy, the growth projections for Sydney have been revised upwards and a further 725,000 dwellings will be required in the 20 years until 2036. The amendments details how the planning system will provide additional capacity to allow for new housing to be provided across Sydney, including through urban renewal, medium density infill and new housing in land release areas. The balanced approach to accommodating new growth in Sydney recommended by the GSC is appropriate.

The strategy represents the NSW Government’s plan for the future of the Sydney metropolitan area for the next 20 years. Implementation of the strategy is achieved through a section 117 direction issued by the Minister and requires any planning proposal prepared by a council to be consistent with “A Plan for Growing Sydney”.

## **5.0 REZONING AND SUBDIVISION PROCESS FOR LAND SUPPLY**

### **5.1 REZONING OF LAND FOR HOUSING**

The rezoning of land for housing is either initiated by the public authority (local council or State government) or by a private land owner or group of land owners. There are many examples in recent times where the State government has initiated the rezoning of land for housing, including the Sydney Region Growth Centres, the current Priority Growth Areas being investigated at Greater Macarthur, Wilton, Greater Parramatta, station precincts along the Sydney Metro (Northwest and Bankstown to Sydenham) and Ingleside. These are either carried out using State Environmental Planning Policies or amendments to the relevant local environmental plans.

Each local council as part of its review of the planning controls in its local environmental plan will investigate opportunities for housing growth which may take the form of urban renewal in town centres, higher densities in residential zones or redevelopment of surplus industrial/commercial land. Councils are required to ensure their local environmental plans are consistent with relevant strategies (section 117 directions issued by the Minister) and achieve the objects of the Act having regard to any relevant change of circumstances (section 73).

A recent example of council leadership in this area is the former Kogarah City Council which initiated a local environmental plan in 2014 following a new Standard Template LEP being made. Council developed an updated Housing Strategy (Kogarah 2031 Housing Strategy) which became the basis for new planning controls to provide for greater housing choice for its residents. Based on population projections for 2031, the Kogarah LGA would need an approximately 7,350 additional dwellings to be built in the next 20 years. The Council in response to this predicted need developed a planning proposal to amend its local environmental plan to create development opportunities for new housing. The new planning controls were incorporated into Kogarah’s LEP with the approval of Kogarah Local Environmental Plan 2012 (Amendment 2) on 26 May 2017.

### **5.2 SUBDIVISION PROCESSES**

Land subdivision requires development consent under Part 4 of the EP&A Act from the local council. The subdivision of greenfield land for residential purposes must take into consideration the design requirements of the local council which generally will be aimed towards good residential amenity and acceptable engineering practice. Most local councils have developed development control plans for their subdivision requirements and/or engineering codes for road layout and stormwater design. At present the subdivision of land is not possible using complying development and a development application (DA) is necessary.



DA processing times for land subdivisions can be extremely lengthy. The Local Development Performance Reports issued by the Department provide a source of quality data to assess the delays associated with local council DA processing. During 2014/15 the average processing time for subdivision applications in the 8 major local government areas supplying greenfield land in Sydney were generally in excess of 100 days. Data for 2015/2016 and 2016/2017 is not yet publicly available.

Local Government Area	2012/2013	2013/2014	2014/2015	3 year average	Average number of applications
Blacktown	126 days	140 days	145 days	137 days	69
Camden	120 days	151 days	245 days	172 days	60
Campbelltown	192 days	148 days	177 days	172 days	26
Hawkesbury	266 days	205 days	175 days	215 days	29
Liverpool	76 days	185 days	151 days	137 days	64
Penrith	55 days	110 days	184 days	116 days	63
The Hills Shire	126 days	140 days	145 days	137 days	119
Wollondilly	100 days	199 days	260 days	186 days	29

Source: <http://datareporting.planning.nsw.gov.au/ldpm-executive-summary>

The average processing time for subdivision applications in Sydney's growth areas is generally more than 3 times the regulated benchmark of 40 days for a deemed refusal of a DA. The reasons for the very long processing times are difficult to pin point however anecdotal information suggests a combination of both shortage of experienced planning staff and slow response times from external State agencies and utility service providers. This is an area of the land release process where the State government needs to undertake more reforms to streamline the development process to reduce delays.

### 5.3 CERTIFICATION OF SUBDIVISION WORK

Under the EP&A Act, once a subdivision DA has been approved, the land can be developed for residential purposes. This usually involves civil works such as the construction of roads and stormwater drainage that support urban development. These works require a construction certificate (subdivision) to be issued prior to works commencing. After completion of the physical works, a subdivision certificate under Part 4A of the EP&A Act is required to enable registration of the plan of subdivision with the Registrar General.

Currently, section 109D(1)(d) of the EP&A Act restricts the issue of a subdivision certificate to the relevant local council where the land is located. This has been an area of the development process where private certification has been excluded. Once the DA has been approved, the certification process could be undertaken by an accredited certifier provided there were sufficient safeguards (such as the provision of a bond or other form of security) are in place to ensure that infrastructure intended to be dedicated to the local council was satisfactory.





## 6.0 SERVICING OF LAND

### 6.1 SYDNEY WATER CORPORATION

Within Sydney, Blue Mountains and the Illawarra, the Sydney Water Corporation (Sydney Water) is responsible for the provision of reticulated water and sewer services. Sydney Water is a State-owned corporation established by legislation for the purpose of supplying water, provision of sewerage and stormwater drainage systems within Sydney and certain surrounding areas.

Sydney Water provides trunk infrastructure in new urban release areas including water supply reservoirs, pipes and pumping stations. The delivery of new infrastructure is coordinated in accordance with a Growth Servicing Plan (GSP) prepared every 5 years. The current GSP for 2014 to 2019 sets out Sydney Water's plans to provide water, wastewater and stormwater infrastructure to service urban growth in the Sydney region. Planning for the GSP was based upon the growth forecasts contained in the Metropolitan Development Program 2010-2011. The GSP indicates that during the period 2014 to 2019 Sydney Water predicted it would invest approximately \$856 million on infrastructure and asset related expenditure to service urban growth. Nearly 90% of the expenditure will be allocated to servicing priority growth areas in the North West and South West Growth Centres, other parts of Western Sydney and the Illawarra. The infrastructure will provide capacity for about 138,000 new homes, including about 43,000 to be located within greenfield areas.

Sydney Water is responsible for providing trunk infrastructure in accordance with the GSP. Developers can accelerate the servicing of their land ahead of the GSP by entering into a commercial agreement with Sydney Water. In these circumstances, the developer plans, designs, and constructs the infrastructure to Sydney Water's requirements. In greenfield areas, the developer is responsible for providing lead-in mains to connect homes to the Sydney Water trunk infrastructure. A developer's 'reasonable and efficient' costs for this infrastructure can be refunded by Sydney Water once the works are commissioned and handed over to Sydney Water.

It is important that Sydney Water regularly reviews and updates its planning for new infrastructure delivery so that it is consistent with land use and development planning. The recent update to Sydney's regional strategy, six district plans and priority growth areas will no doubt lead to some reallocation of Sydney Water's resources and priorities. Future versions of the GSP should be flexible documents that ensure Sydney Water investment is consistent with Sydney's development plans.

### 6.2 JEMENA

Jemena owns and maintains the gas distribution network which delivers gas to most parts of New South Wales, including the major urban centres of Sydney, Newcastle and Wollongong. Homes in new urban release areas commonly require a natural gas connection for cooking appliances, heating and hot water service. It is necessary for Jemena and its contractors to arrange the installation of the gas network infrastructure within new housing estates in advance of dwelling completion and occupation.

It is vital that avoidable delays associated with the supply of this infrastructure and connection of new homes are minimised as delays can have significant impacts on the builder and homeowner. HIA members have expressed some concern with the service being provided by Jemena and its contractors in recent months which have held up completion of homes and delayed owners taking possession of their homes. In some cases, builders have had to supply temporary solutions such as gas bottles in response to the excessive delays encountered. It is important that utility providers such as Jemena work closely with the housing sector to avoid these types of problems occurring.



## 7.0 FUNDING AND DELIVERY OF STATE INFRASTRUCTURE

### 7.1 SPECIAL INFRASTRUCTURE CONTRIBUTIONS

Special Infrastructure Contributions (SIC) were introduced into the EP&A Act in 2006 to finance infrastructure at a regional level and usually delivered by the State government. Examples include transport infrastructure, education facilities, health facilities and emergency services/justice facilities in high growth areas. The contributions can only be collected in 'special contributions areas' which are listed in Schedule 5A of the EP&A Act. There are currently three special contribution areas, being Western Sydney Growth Area, the Wyong Employment Zone and the Warnervale Town Centre. In June 2017, the State government has announced the establishment of an additional 10 SIC areas.

The rate of a SIC is determined by the Minister in accordance with section 94EE of the EP&A Act. The current rate of contribution for Western Sydney Growth Centres is \$210,168 per hectare of net developable area. This amounts to approximately \$11,000 per lot which is paid at the time of subdivision approval and passed onto the eventual homebuyer in the price of the land, and is subject to GST and stamp duty.

#### *Hunter SIC*

In October 2016, the Department released a discussion paper proposing the implementation of a SIC in the Hunter region. The SIC is intended to fund infrastructure which will support the region's future growth as set out in the Hunter Regional Plan 2036. The types of infrastructure identified in the discussion paper to be funded by the SIC includes emergency services, educational facilities, health facilities and transport. The costs of new infrastructure should be fairly apportioned between homebuyers in new urban release areas, those in infill areas, existing residents and other members of the community such as workers and visitors. The Department has not made its position clear on how it thinks the cost of new infrastructure should be shared in the potential implementation of this SIC. Preliminary information suggests that only new home buyers will be subject to the charge.

HIA in providing feedback on the discussion paper was concerned about how the contribution would be applied across the region and the inequitable burden that would be placed upon homebuyers of new housing. Essentially, the SIC would be a unfair tax on new housing whilst the benefits of the new infrastructure delivered will be available to the whole community, not just those in the new developments who have paid the charge.

A significant issue that will need be considered is how the SIC will impact on project viability. Development in the Newcastle central business district and other high growth areas will be less impacted by the cost of the levy than more marginal developments outside of the core growth areas. The rate of any SIC imposed will need to have regard to the feasibility of development projects.

#### *Future SIC Areas*

Recently the Premier made an announcement that an additional ten (10) SICs would be introduced across Sydney's growth areas to fund infrastructure in communities with housing growth. Beyond this announcement, the Department has not issued any specific details of where these levies that will be applied and the amounts of the contributions to be collected. It is expected the SICs will be implemented in priority growth areas which are mostly areas of major urban renewal. A new SIC has been announced for the redevelopment of the Greater Parramatta Priority Growth Area and the renewal precincts associated with the Sydney Metro will involve urban renewal in existing areas.



The proposed State and regional infrastructure provided in these areas will be funded through a SIC despite being used by existing and new residents as well as workers and visitors to the area. It is neither fair nor equitable for new homebuyers to fund infrastructure and amenities which are used by both new and existing residents. As this these facilities belong to everyone they should be funded by everyone through general taxation revenue mechanisms.

## **7.2 HOUSING ACCELERATION FUND**

The Housing Acceleration Fund (HAF) was established in 2012 with \$875 million of funding from the NSW Government to deliver critical enabling infrastructure to stimulate and accelerate housing development in New South Wales. Since 2012 the fund has provided \$528 million of funding to 27 projects which has contributed to a rapid increase in housing completions. A total of 16 key infrastructure projects have been completed including major road upgrades to Camden Valley Way and Richmond Road in Western Sydney. An additional \$600 million of funding from Restart NSW Fund has been set aside for the HAF following the announcement of the Government's Housing Affordability Strategy in June 2017. Access to HAF funds is based on the project's ability to unlock land for new housing development.

This approach by the State to support the local delivery of infrastructure that facilitates housing supply and more important facilitates economic activity has been a significant element in the increase in NSW home building.

## **8.0 LOCAL INFRASTRUCTURE**

### **8.1 SECTION 94 CONTRIBUTIONS**

Local contributions have been collected under section 94 of the EP&A Act since 1979. However it was not until changes introduced in 1992 when councils were required to prepare contribution plans, that the collection of monetary contributions became widespread. Before a local council can charge contributions on development it must prepare a contributions plan in accordance with directions issued by the Minister.

Section 94 contributions have been capped since 2009, initially at \$20,000 and then in 2010 at \$30,000 for greenfield areas. The caps were set following a review of local infrastructure contributions carried out in 2009 which found many councils were collecting levies for services not related to the development subject to levy. Some councils were charging in excess of \$60,000 per dwelling under their contributions plans, some being located in established areas of inner Sydney and not subject to the demands for infrastructure being encountered in the growth centres.

Recently the Premier announced the removal of section 94 caps with the removal of Local Infrastructure Growth Scheme (LIGS) funding from 1 July 2020. Councils entitled to LIGS funding will have their caps progressively increased progressively from 1 January 2018 until their eventual removal in 2020.

Other areas proposing contribution rates in excess of \$20,000 (or \$30,000 for greenfield areas) will need to submit their plans for assessment by the Independent Pricing and Regulatory Tribunal (IPART). IPART will review draft contributions plans against the Department's Essential Works List, which includes land for open space, land for community services, land and facilities for transport and land and facilities for stormwater management. It is likely the removal of the caps will see many councils attempting to gain approval for new contribution plans exceeding the previous capped rates.

In order to ensure new housing is affordable, section 94 contribution rates need to be reasonable and only cover essential infrastructure items.



## 8.2 SECTION 94A CONTRIBUTIONS

Following changes made to the EP&A Act in 2005 local councils have been allowed to levy section 94A contributions. This method of levying contributions reflects the different circumstances applying to infill development in existing local government areas where 'new' greenfield housing has long since ceased and hence traditional section 94 contributions were not possible. Section 94A contributions involve a fixed levy calculated as a percentage of the cost of the development and is very much designed around the contributions method in use in the City of Sydney under section 61 of the City of Sydney Act 1988.

The current rates of section 94A levies are 0.5% for development valued between \$100,000 and \$200,000 and 1% for development valued above \$200,000. There is no levy for development with a value less than \$100,000. A council cannot charge both a section 94A levy and a section 94 contribution.

In a very general sense, section 94A levies would be applied to developments that are not presently required to make contributions under a section 94 contribution plan but which will generate demand for additional public amenities and services. A typical example of this is where a new home is built on an existing residential lot after the demolition of an existing house. In this case, the council would claim that the new home would contain more bedrooms than the dwelling it replaces and the additional accommodation is driving the demand for new services. Unless there is a significant shift in occupancy rates between 3 bedroom houses and 4 bedroom houses, the demand for additional services generated by the replacement of an older style cottage with a new house is negligible. These types of developments should not be subject to a section 94A levy.

The collection of section 94A levies has become a revenue raising opportunity for local councils that have had their revenue raising means limited by rate pegging. Some councils have elected to exempt certain specific development types from section 94A levies including development involving the provision of affordable housing and granny flat development. These types of exemptions are appropriate and should be extended into other similar categories of development that are not specified. These exemptions should apply across the State.

## 8.3 VOLUNTARY PLANNING AGREEMENTS

The introduction of voluntary planning agreements (VPA) into the EP&A Act in 2005 enabled the developers to make a monetary contribution, dedicate land free of cost or provide any other material public benefit towards public purposes, as part of a rezoning or development application.

They tend to be prevalent mainly in connection with large-scale developments as is happening in growth centres and urban renewal areas where a specific type of infrastructure is required and traditional funding mechanisms are unable to allow for timely delivery of the project. The VPAs were intended to allow recognition of the additional infrastructure a developer may seek to include in a project as a contribution to local infrastructure.

There are good examples available to demonstrate the success of the VPA to negotiate good planning outcomes. Yet there is strong criticism of the VPA arrangements where they have been used in the rezoning process under Part 3 of the EP&A Act. As there is no requirement for a council to accept a planning proposal from a landowner, in most cases the council have made the submission of a VPA mandatory before even considering a planning proposal. Many local councils have used VPAs as a tool to extract additional contributions from developers that would not typically have been paid under a contributions plan. This has happened when new development proposals, involving higher densities, are proposed without the benefit of coordinated strategic land use and infrastructure planning. Situations exist where a council has failed to prepare a strategic infrastructure plan to support additional density and instead are requiring developers to



enter into a VPA to pay for a contribution for each extra square metre of floor space above the existing planning controls.

Another issue has been where developers are being asked to enter into a VPA to fund works or services that have no clear nexus to the development being proposed. It is important for a council to establish the nexus between the development and the community needs associated with it. There needs to be an assessment of local community needs to inform negotiations between the council and the developer. More importantly the VPA process must remain voluntary and apply at the request of the proponent and not the consent authority.

Arising from these industry stakeholder concerns, the Department of Planning and Environment released a package of draft documents in November 2016 aimed at improving VPA processes so that there is a clear public benefit arising from an agreement, that the negotiation process is fair and reasonable and transparent to the broader community and that the identification of infrastructure in an agreement is informed by an assessment of local community needs.

The proposals made by the Department in November 2016 go some way towards a sensible approach on contributions, there is very clearly more than can be done to reduce the unreasonable impost being placed on first homebuyers from the various infrastructure levies and charges applied by State and local government.

## 9.0 COMPLYING DEVELOPMENT

### 9.1 STATE ENVIRONMENTAL PLANNING POLICY (EXEMPT AND COMPLYING DEVELOPMENT CODES) 2008

#### *Amendments to Housing Code*

Amendments recently finalised to Part 3 of the Exempt and Complying Development Codes SEPP were intended to simplify the planning rules for new housing which were difficult to understand and apply. The previous code was undermining the intent of the SEPP which was to make it easier, faster and cheaper to undertake complying development. The changes have reduce the complexity of a number of key development standards to enable reduce confusion and uncertainty regarding the interpretation of those standards.

Although the introduction of the new code has disadvantaged a number of home builders due to the replacement of floor space and landscaping requirements, the Department has given an undertaking to implement transitional arrangements which will save the requirements of the previous code. The finalisation of these arrangements will ensure that home builders are not disadvantaged as a consequence of this change.

It is important that the Department continue to engage with stakeholders such as the housing industry to ensure that the planning controls for complying development reflect market trends and preferences.

It is understood the NSW Government has set out a target for increasing the use of complying development particularly for single dwelling approvals and this is one of the priorities of the NSW Premier.

#### *Draft Greenfield Housing Code*

During 2017, the Department undertook a review of complying development in greenfield areas including the exhibition of a draft greenfield housing code. The development of planning controls tailored particularly for new release areas is appropriate and reflects the unique opportunity for faster approval of new homes in these areas using complying development. The draft code, once approved, will allow for faster home approvals in NSW's growth areas both in the Sydney region and regional NSW. Consideration should be given to





expanding the scope of complying development to other minor low impact forms of development which currently requires merit assessment through a development application.

### ***Draft Medium Density Housing Code***

A proposed medium density code was released for comment during 2016 and will provide a new pathway, using complying development, for low-rise medium density housing. Included in the draft code are terraces, dual occupancies and manor homes capable of being subdivided under either Torrens title or strata-title. Once the code is approved, fully compliant proposals that have been designed in accordance with an accompanying design guide will be capable of being approved using a complying development certificate.

The implementation of the medium density code will require an accredited certifier (including Council-employed certifiers) to ensure that proposals fully meet the requirements of the code and will rely upon a design verification statement issued by the designer for evidence of compliance with the design guide. Unlike a development application, there is no merit-based assessment involved with complying development, proposals must be fully compliant with all relevant requirements. Initially there may be some community concern encountered during application of the code. It will be important that the department undertake to inform and educate the community on this code and how it will operate.

Initiatives such as the medium density code will cut assessment times significantly and reduce delays and uncertainty experience in the approval process. Naturally, reforms such as the medium density code will have the support of the development housing construction sector. It is equally important that the Department and other agencies in Government work with the community to ensure that this process has the confidence of local communities.

## **9.2 STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009**

### ***Secondary Dwellings***

Secondary dwellings (often referred to as granny flats) are a form of low cost housing which have seen a resurgence in their numbers around Sydney as housing affordability becomes more acute. The Affordable Rental Housing SEPP provides a pathway for the development of a secondary dwelling. Applicants can either proceed with a proposal using a merit-based assessment (clause 22) or complying development (clause 23). Schedule 1 of the SEPP provides relevant development standards a secondary must satisfy in order to qualify for complying development.

Despite secondary dwellings being treated as affordable housing, they are required to pay section 94 contributions in some council areas. Contribution rates for secondary dwellings vary across Sydney with some councils exempting this form of development from payment of any contribution and others charging as much as \$15,000 in some high growth areas. This usually comes on top of the contribution paid for the lot with the original land subdivision which could be \$30,000. Given that secondary dwellings cannot be subdivided and can often be used by the same family unit as the primary dwelling, the levying of a contribution by councils is contrary to their role in solving Sydney's housing affordability crisis.

An additional cost incurred with secondary dwellings is the cost of meeting BASIX requirements. A new secondary dwelling is required to achieve pass scores for water, energy and thermal comfort in order to generate a BASIX certificate. This often will only come after including low e glazing, photovoltaic system on the roof and energy efficient hot water system. Depending upon the site orientation and other factors (breezes and shading) a new secondary dwelling can be burdened with significant additional expense in order to comply with the BASIX tool.



## 10.0 POLICIES AFFECTING MULTI DWELLING HOUSING

### 10.1 STATE ENVIRONMENTAL PLANNING POLICY NO 65 - DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

State Environmental Planning Policy No 65 (SEPP 65) has been in operation since July 2002 and aims to improve the design standard of residential apartment buildings. The policy applies to residential flat buildings and mixed use developments with 4 or more dwellings and 3 or more storeys in height. Clause 28(2) of the SEPP requires developments to be designed to meet the design principles set out in Schedule 1 of the SEPP and the Apartment Design Guide released in July 2015.

The SEPP was substantially amended in 2015 following a comprehensive review of the policy. The review found the policy and associated Residential Flat Design Code (RFDC) were working well, stakeholder and community consultation identified there were some changes required to account for population change and to help make apartments more affordable. The previous RFDC was found to be contributing to escalating apartment construction cost and new controls were needed to support the supply of affordable apartments.

The development of the Apartment Design Guide has reflected a desire for greater flexibility and design innovation, whilst maintaining the principles of good design. It also came about through a desire to move away from a prescriptive code to a more flexible guide. Many council planners were applying the RFDC as if it were a LEP or DCP rather than as a guideline.

Although the amendments made to SEPP 65 and the Apartment Design Guide are regarded to be an improvement, particularly in terms of affordability, aspects of the amended SEPP are still a concern and need constant review and update where necessary. SEPP 65 and the Apartment Design Guide need to encourage outcomes that are affordable and allow for a range of alternative design solutions that reflect the current housing market and evolving availability of building material and products to aid modern architectural design.

### 10.2 REQUIREMENTS FOR ACCESSIBILITY

Most local councils have developed policies that require new residential buildings to be designed to provide a specific level of access for people with disabilities. These requirements are usually contained in development control plans so the requirements are applied with some degree of flexibility and take into consideration the circumstances relevant to each proposal. These council codes have not been the subject of any regulatory cost benefit analysis and they are inconsistent with the National Construction Code, seeking to apply building standards in planning controls.

The City of Sydney DCP 2012 requires new developments to adopt accessible design and provide access which complies with the Building Code of Australia and all Australian Standards relevant to accessibility (eg. AS1428). The provision of adaptable housing (AS4299) is also a requirement within the City of Sydney. The rate at which adaptable housing units are to be provided are 1 dwelling for every 7 dwellings. The council also encourages the use of the Universal Housing Guidelines in new developments. The mix of standards and methods of application through uncoded council codes adds to the cost of home design and does not ensure that those people in most need of improved accessibility have the opportunity to purchase the homes or apartments that are designed with this in mind.

Kiama Council requires duplex developments to be designed and constructed as Adaptable Housing (AS4299) at the rate of 1 per 2 dwellings. This requirement involves a significant cost burden being forced upon the homebuyer. Due to the steep terrain in most parts of Kiama local government area it is often difficult to provide level access from the street into the front entrance of new homes. The additional costs this



requirement incurs include \$2,000 for a consultant report confirming the standard can be achieved, approximately \$6,000 of additional costs during construction and a further \$60,000 to \$70,000 of costs to retrofit the dwelling in the future should adaption be required. Given the topography of land surrounding Kiama, it would be more than likely a retiree would decide to sell up to relocate to a home more suited to their heath and mobility rather than spend \$60,000 of their savings to convert their existing home.

Given the rising costs associated with meeting requirements for wheelchair accessible housing design, especially with more widespread acceptance of Universal Housing design principles which offer a more practical and cost effective approach, there is an urgent need for a more consistent approach to be adopted and for these requirements to only apply after a regulatory impact assessment has been undertaken by the State government.



## 11.0 PLANNING REGULATORY CREEP

### 11.1 BUILDING SUSTAINABILITY INDEX - BASIX

In July 2017, the Government increased the BASIX energy and thermal comfort targets applying to residential dwellings. The targets for detached dwellings in Sydney increased from 40% of a pre-BASIX home to 50%. The proposal, which was first announced in 2013 and revised, formed part of the Government's "Draft Plan for Saving NSW Energy and Money" released by the Minister for the Environment in November 2016. Information supporting the proposal incorrectly predicted an average cost of approximately \$600 per dwelling and in many cases design changes capable of meeting the higher targets.

It was not until the beta version of the BASIX tool was released only six weeks from the commencement date of the change, that users were given access to the higher targets to allow the true costs of the more stringent requirements to be understood. It was found that average costs were more likely to be in the order of \$6,000 and beyond \$15,000 in some cases. The impact of the policy change on existing consumers who had or were finalising building contracts would be very severe.

As a concession to industry and recognition of the poor approach to implementation, the Government agreed to transitional arrangements for the commencement of the new targets in order to reduce the impact on homebuyers. Users would be given access to the pre-1 July energy and thermal comfort targets in certain cases where eligibility criteria was met. Whilst the approval of the transitional arrangements was welcome, the implementation of the transitional arrangements has been appalling, requiring a process to request approval for access to the original targets and the lack of clarity about who is eligible to apply.

This issue is having a critical impact on housing affordability particularly for new homebuyers and particularly for first homebuyers who have a limited budget. The Government needs to acknowledge the impact this policy is having on housing supply and affordability in all regions and Western Sydney where recent subdivision patterns have featured smaller allotments which restrict a building designer's ability to improve a house design to achieve the higher targets.

### 11.2 RURAL FIRE SERVICE

Bushfire and planning regulations were amended by the NSW Government in 2012 and again in 2014 to streamline the requirements applying to bushfire-prone land. The amendments removed the need for multiple assessments and referrals by allowing bushfire risk to be addressed once at the subdivision stage. The changes were targeted at new urban release areas where the construction of new houses follows closely after land subdivision. When the changes were announced they were described as cutting red tape and saving home builders \$800. Despite the changes to the regulations, homebuyers still need to obtain a Post-Subdivision Bushfire Attack Level certificate which involves some cost to the homebuyer despite bushfire risk having already been considered during the rezoning and subdivision stages of development. This is another cost burden that new homebuyers are encountering despite the availability of information regarding bushfire risk.

The planning and building regulations applying to bushfire-prone land are complex and involve substantial overlap. The planning rules, set out in the EP&A Act and Regulations call up the RFS document Planning for Bushfire Protection. After planning approval is obtained, building regulations, including the Building Code of Australia and the Australian Standard AS3959:2009 determine the construction requirements applying to new housing. These building regulations, particularly the requirements of AS3959, have a significant impact on the cost of construction and housing affordability depending on the technical specifications required which may add as much as \$20,000 to \$50,000 of costs to the project.



### 11.3 BIODIVERSITY OFFSETS

The Government has reformed biodiversity conservation laws that repeal the Threatened Species Conservation Act and replace it with a new Biodiversity Conservation Act. The new legislation will require the consideration of biodiversity impacts with local development applications and require proponents to offset any loss of biodiversity either through a payment to the newly created Biodiversity Conservation Trust or the acquiring/retiring of offset credits.

The new legislation commenced on 25 August 2017 although savings and transitional arrangements put into effect have delayed their commencement (as far as local development applications are concerned) for three months (now start on 25 November 2017) and for seven local government areas in Western Sydney for one year (now start on 25 August 2018). The transitional arrangements are welcomed and give extra time for the Government and stakeholders to resolve implementation issues, particularly regarding the issue of availability of credits for key ecological communities in Western Sydney. It is important that the Government continue to work with stakeholders on how these issues will be addressed and any consequential impact on housing affordability is minimised.

### 12.0 CONCLUSION

Housing supply and affordability in NSW, and particularly Sydney, have been significant issues for both the Commonwealth and the NSW Governments. The ability to drive reform and change in this area is primarily within the scope of the NSW Government through both the planning system and the policies of other State agencies affecting land release and zoning. The complexity of the land development process means there is no silver bullet that will deliver a solution to the problem.

Despite the Government undertaking positive reforms and initiatives to drive supply and increased the release of land for new homes, it appears that other sections within the Government are introducing new layers of red tape and costs intended to slow approvals and increase the costs of housing. An immediate response to this problem must be to integrate all arms of the Government involved with housing supply within a new ministerial cluster with oversight by the Minister for Housing. Any new government proposal or initiative likely to impact on housing supply or affordability should be subject to a full Regulatory Impact Statement to determine what the impacts of the change are likely to be and whether the proposal should proceed as planned.

HIA remains committed to work with the government to find workable and affordable housing solutions that assist our members to provide homes for homebuyers. Whilst the industry is often unfairly targeted, it does recognise that it is part of the overall affordable housing solution. We look forward to participating in this Inquiry further through attendance at any hearings scheduled and eventually reviewing the Committee's final report and recommendations.

