

SUBMISSION TO THE CONSULTATION PAPER ON COST RECOVERY UNDER THE ENVIRONMENT PROTECTION BIODIVERSITY ACT

31 October 2011

The Urban Development Institute of Australia (UDIA) welcomes the opportunity to provide this submission on Cost Recovery under the Environmental Protection Biodiversity Conservation (EPBC) Act to the Department of Sustainability, Environment, Water, Population and Communities.

UDIA is the peak body representing the property development industry throughout Australia. Our goal is to secure the economic prosperity and future of the development industry in Australia, recognizing that national wealth is dependent on our success in housing our communities and building and rebuilding cities for future generations.

Our members cover a wide range of specialist and industry fields, including: Developers, Valuers, Planners, Engineers, Architects, Marketers, Researchers, Project Managers, Surveyors, Landscape Architects, Community Consultants, Environmental Consultants, Lawyers, Sales and Marketing Professionals, Financial Institutions, State and Local Government Authorities, and Product Suppliers.

UDIA is supportive of the goals of the EPBC Act and we are generally in favour of the recently announced reforms to the Act, however we are unequivocally opposed to the proposal for cost recovery presented in the consultation paper. The Commonwealth Government already receives substantial GST revenues from new housing. The EPBC is designed to protect a public good – the environment. Compliance with the EPBC provides no additional private benefit to the developer or householder. Therefore, Commonwealth Government services that fall within this category should not be cost recovered.

We are aware of the difficult fiscal environment in which the Government is operating, but the administration of the EPBC Act should continue to be funded directly through taxation revenue rather than burdening the development industry with an unjustified charge that will have an inevitable negative impact on land supply and housing affordability.

The consultation paper states that in the four years till June 2011, proponents of residential development referred more projects under the EPBC than any other proponents. However, it is not only residential development that will bear the recovery costs of environmental impact assessment (EIA). Industrial, commercial and mixed-use developments, infrastructure and tourism projects will also be impacted by the cost recovery proposal, resulting in an escalation of costs across the board. The development industry is already subject to numerous taxes and charges from all levels of Government, which compound and contribute to the market price of land and housing. A cost recovery regime will inevitably be imposed on the community who would expect that the Federal Government provide the service within budget funding.

The impact of cost recovery on housing affordability

The consultation paper (pg.50) concedes that cost recovery could have a detrimental effect on housing affordability. While this is addressed under the context of a strategic assessment conducted with a state or territory Government, the same argument carries weight under EIA. A cost recovery mechanism would have adverse affects on the industry's ability to deliver affordable housing. A proliferation of inefficient taxes and a complex, unresponsive planning regime are responsible for exacerbating the price of housing. Developments which have required approval under the EPBC Act have often garnered substantial additional costs, in the form of expert consultant's fees, holding costs, mitigation efforts and the significant financial burden associated with environmental offsets. These costs are passed on to the home buyer and the proposed cost recovery system will compound an already difficult situation.

DSEWPaC must consider the impact of the cost recovery proposal on development as it will have differing impacts depending on the size of the project under assessment. For example, with the \$7,750 charge for the original referral decision plus \$86,800 in the event of a controlled action there is a potential charge of \$94,550 per assessment.

The per lot charge for a relatively small development of 15 dwellings on one hectare is calculated as:

- **Referred but not controlled action: Small development = \$516 per lot;**
- **Referred and controlled action: Small development = \$6,303 per lot;**

The per lot charge for a relatively large development of 1,200 dwellings on 80ha is:

- **Referred but not controlled action: Large development = \$6.46 per lot**
- **Referred and controlled action: Large development = \$78 per lot**

These figures are factually correct and have been validated by industry. The least impact of cost recovery will be a further increase in house prices and at worst it will render smaller developments unfeasible which impacts on land and housing supply.

Timelier and more efficient EIA

The Government's position is that cost recovery and the reforms they are intended to fund will allow for timelier and more efficient EIA by bringing down holding costs and providing a greater degree of certainty. We fundamentally reject this view and we do not accept that cost recovery will provide a more certain business environment brought on by a more efficient service. One of the key industry concerns, and the result of many delays in the DSEWPaC process, is that staff undertaking assessments do not necessarily have environmental education or training. We are aware that this is particularly problematic in Western Australia, where the officers are not versed in the environmental attributes of the region. As such this causes numerous delays associated with consultants having to explain the specific environmental details of a situation to assessment officers and effectively train them as part of the assessment process. If the outcome of the cost recovery proposal is to simply increase the number of officers, this will not improve the quality of the assessments and still result in unnecessary time delays.

Our members report that the EPBC Act is applied inconsistently and simply increasing the number of officers will not improve the implementation of the Act. As a result, cost recovery

will not minimise the delays and provide improved efficiencies. There has to be a concerted effort to provide relevant training to assessors and for the department to recruit assessors with proven environmental education and training, or the Government's stated deliverable of 'improved service delivery' will not be realised.

Approval on referral information

The proposal for approval on referral information (ARI) has a commitment of 35 business days to process and make a decision on approval. There are a number of positive aspects to this reform, particularly for smaller sites where the issues and mitigation strategy have been agreed with DSEWPaC prior to submission of the referral. For this to be helpful it would need to allow for offsite offsets to be included in the approval solution which is currently not the case unless the proponent goes through a full approval and public advertising process. UDIA is concerned that the majority of projects would not be eligible to be approved under this process.

The estimated cost of \$89,000 for ARI (pg.28) has surprised the industry. Given the 35-day turn around for this process, it is clear that this and other fees noted in the discussion paper exceed the rates currently being charged by experienced environmental consultants. UDIA has calculated the cost to equate to 8 full time mid-level scientists working for the 35 day period, which is unlikely.

The cost recovery includes a 'Business Improvement Charge' which appears to be in contradiction to the principle of 'the fee charged for an activity reflect the cost for that activity' (pg. 9). The reason for the cost is justified as proponents of projects under the EPBC Act will directly benefit from improvements to the EIA system over time. This may not be the case, particularly in situations such as submission of a referral by a proponent who only has one development as does not intend to engage in the process again once this development is completed.

Is cost recovery justified?

There is little justification for cost recovery given that the wider reforms to the EPBC Act should ease some of the cost pressures afflicting the department. The commitment to greater use of strategic assessments should go some way to easing the staffing pressures for residential development projects. This is evidenced by the consultation paper's estimation that the strategic assessment in Melbourne will avoid more than 250 referrals over 20 years.

The consultation paper emphasises that it is only appropriate to pursue cost recovery if certain criteria are met under the Australian Government's Cost Recovery Guidelines. The first criterion listed is that cost recovery is only appropriate if there is a clear beneficiary of an activity and where there is no clearly identifiable beneficiary such as the wider Australian public, cost recovery is not appropriate (pg.10). It is UDIA's firm view that residential, commercial, mixed use and tourism development together with roads and infrastructure clearly offer wider community benefits that extend far beyond the commercial benefits to the proponent and are not appropriate targets for cost recovery.

It must be remembered that State/Territory and the Federal Governments are all beneficiaries of taxation which is derived from urban development. These taxes form part of the base which should fund activities such as those performed by the Department in relation to the EPBC Act.

Impact on housing supply

The provision of housing also addresses the housing supply shortage. Each year the National Housing Supply Council, now run out of DSEWPaC, publishes the *State of Supply* report and each year the findings show the extent of the undersupply problem. The 2010 report found that the demand for housing in Australia is expected to grow over the next 20 years with an additional 3.2 million dwellings needed to meet underlying demand by 2029, and that the gap between supply and demand is also likely to continue to grow over this period with a projection of a 640,600 dwelling shortfall. The provision of much needed housing benefits the wider Australian public and economy which makes residential development inappropriate for cost recovery.

Conclusion

UDIA is fundamentally opposed to this reform as it is inequitable and unjustified where the community should expect a Government agency to function within budget funding. It will have differing outcomes for proponents dependent on the size of development and will result in smaller developments being rendered unviable leading to land and housing supply shortages.

While we support the goals of the EPBC Act, we do not support cost recovery as an appropriate source of revenue for the Department. We reject the argument that the additional income will result in greater certainty and an improved service unless the resourcing of the department is fundamentally improved with appropriately educated assessment officers who have a clear understanding of the Act and how its policies play out in the market. Should the Government move towards a cost recovery regime, it should place a lasting and definitive cap on the amount which can be recovered on a per lot basis to ensure that housing affordability is not unduly impacted.

The discussion paper notes that DSEWPaC is available to attend industry briefings to discuss matters raised in the paper and UDIA would like to accept this offer. It would be useful if each state were given the opportunity for a briefing.

We welcome the opportunity to discuss any aspect of this submission. Should you require further information, please contact James Voortman on 02 6230 0255 or at udia@udia.com.au.