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Dear Bruce,

EPBC Cost Recovery Submission

Thank you for the opportunity to provide our comments on the Cost Recovery for Environmental Assessments under the Environmental Protection and Biodiversity Conservation Act 1999 (**Cost Recovery Initiative**).

Property Council of Australia and UDIA National are strong supporters of the Government's initiative to overhaul the Environmental Protection, Biodiversity and Conservation (**EPBC**) system to streamline assessments and approvals and otherwise improve environmental, social and economic outcomes. We appreciate the Minister and department's consultative approach to a complex and important suite of reforms.

We are however increasingly concerned that the Cost Recovery Initiative has several fundamental problems that if not rectified, will fatally undermine EPBC reform before it has a chance to prove itself.

It is essential that the Department is appropriately funded to be able to undertake environmental assessments efficiently and effectively. We agree with the principle of user pays to ensure the efficient delivery of government services. Any cost recovery model however must be based on appropriate costing assumptions and efficient work effort, including careful allocation of productive resources to balance private benefit and public good. Any cost recovery mechanisms must be designed to incentivise continuous improvement of government service delivery including achievement of target timeframes.

Unfortunately, the current proposal does not do that and the magnitude of the cost increase on a broken system, will stall property projects. It simply cannot be sustained by many in the industry.

In particular, the sharp rise in costs to users reflects a currently overly complex and inefficient system that is in the process of being overhauled.

We note that the Cost Recovery Initiative is currently geared towards long term projects that are very large with ongoing high revenues into the future.

Unfortunately, the current, Cost Recovery Initiative does not work for the property industry. 85% of industry developers are small to medium sized enterprises. The size of development projects needing EPBC assessment can be very small, and there are no ongoing revenues past the initial sale. This means all added costs must be absorbed within a circa 12-18 month cycle with limited revenues. Assessment fees can vary, however, given a Government EPBC assessment fee for a controlled action can often be circa \$100,000, a x10 increase means an eye watering \$1m new fee to be absorbed by a project development. For a 20-lot development, this would add a massive \$50,000 per house, blowing out housing affordability. Depending on the region, this size project might have a development cost of circa \$5m and the EPBC cost increase would jeopardise project viability. In effect the Cost Recovery Initiative will stall many smaller projects and jeopardise the viability of larger development projects and reduce housing supply.

This timing and magnitude of this initiative will directly undermine affordable housing initiatives, housing supply initiatives, the Government's Housing Affordability Future Fund and first home buyer initiatives. It cuts directly against Government's attempts to bring cost of living under control and represents costs of administering a broken system.

In any event, the cost recovery of 7 to 10 times existing costs will be fundamentally unworkable in any context given the majority of the industry are small to medium sized developers who will be deeply impacted.

The only logical response would be to complete the EPBC overhaul to realise operational and cost efficiencies and then implement the cost recovery initiative on a more reasonable cost increase, aligned with commensurate improvements to service delivery and timeframes. The industry should be consulted directly on how the initiative levies and fees should be formulated so a viable solution can be workshopped with Government.

Irrespective of when it is implemented, the Cost Recovery Initiative should exempt affordable and social housing and projects predominantly aimed at first home buyers at a minimum. The initiative should also have a hardship exemption which excludes projects that show the increased cost would jeopardise viability, housing supply or housing affordability.

Finally, given all property projects will have the supply of housing impacted by substantial increases in fees, there should be an exemption for projects under a certain threshold development cost, where it becomes problematic to absorb higher fees to prevent stalling projects. In the alternative it could be an exemption with a lot threshold for any developments (under (say) 200 lots), to prevent affordability impacts to housing supply.

Below is a more detailed discussion on the key aspects of the initiative.

The Issues

a) Current Issues with assessment of applications

We understand from your own information that assessments are not meeting statutory timelines in 80% of cases. The existing problems with the system's complexity, inefficiency and uncertainty are being reviewed under EPBC initiatives being run concurrently.

Fundamentally, changing fee structures without resolving basic issues in the assessment arrangements that currently apply, exacerbates existing problems. These need to be fixed to yield efficiencies and reduce costs for everyone. The issues are very well documented, including the issues with the Business Portal that almost all users have been experiencing.

Critically, however, over and above the fees you intend to charge, the inability to regularly hit timeframes is a considerable cost to business that needs to be resolved quickly. Delays resulting from a deeply inefficient system represent a huge cost impost on individual projects and an economic drain overall.

One member example shows that a 600+ dwelling project for over-55 estate has been under assessment since last August (6 months). The time taken to approve the project is resulting in additional holding costs and related delay costs such as increases in construction costs - tenders expire and then have to be retendered, including the professional fees to redo tenders. Those costs related to the delay are outweighing the fee, effectively increasing the developer's assessment costs as a result of government inefficiency. It is not reasonable to ask the developer to pay even more for service while also bearing the additional costs of that poorly executed service.

Our members also reflect that assessment officers in the department often do not come from environmental / town planning backgrounds and the department's back-of-house technical experts (zoologist/botanists) also have limited to no practical application of land development or planning. This simply adds to the cost and delay for our industry. We note that this is one of the issues you want to address, but it needs to be addressed ahead of full cost recovery or you will pile costs upon costs.

Time issues also result from current arrangements for assessments that are not transparent or accountable, with delays often extending with no certainty on how to resolve the issues.

One of the biggest issues for cost and delay during the assessment phase, relates to the department's assessment officers and information requests. Once an Information Request is issued, the Department does not move forward on any part of the application while the ball is back in Applicant's court. While some of the Information Requests may be warranted, more often than not, the requests are cosmetic changes which should not slow the assessment and processing toward a decision. Most matters can be updated concurrently to their assessment during the existing timeframes.

Members have also provided their view on their experiences (from 2016/17 onwards) regarding interactions with Department Officers with the most frequent cited issues being:

- Officers continually changing in their view of what is an impact, what is mitigation, what constitutes an offset etc. and what assessment tool is to be used.

This inconsistency slows things down with Applicants having to go back to the drawing board, paying for updates, losing time for ultimately very little or no material change to the outcome.

- Making unsubstantiated changes to calculator inputs, including those that are based on metrics not subjective opinion. This often and most usually results in increasing calculator scores, which “wind up” the optics of the impacts (with a similar impact of winding down offset improvement scoring). There is rarely any way to argue against or understand the changes.

Some members have gone to extreme lengths to demonstrate grow rates of vegetation at offset sites and management measures, only to have their position on risk of loss (% that the offset would not meet the goals in 20 years), wound down to an arbitrary number (e.g. 60% - that means in theory, the department only has confidence that 3 in 5 offsets will work despite these being common practice and well understood). There are very real cost and project implications from effectively unverified analysis.

- Similarly, the triggers for assessment by the department are ambiguous. At present a large number of applications are prepared seeking to confirm that formal referral is not required. This confirmation takes a considerable time to achieve from the department, which slows housing delivery and adds costs both to the industry and the department. This represents significant cost that could be streamlined with clearer guidelines.
- Equally there are serious consequences for the industry experiencing duplication of assessment on matters such as koalas that are already comprehensively assessed at the state and local government level. Multiple permits are generally required to document the same information for the different levels of government.
- The complexity matrix for applications is also uncertain. This leads to permits defaulting to higher levels of assessment and requirements on applicants than is warranted.

It is not our intention to go through all the issues that exist with the current system, but these basic examples show that there are considerable savings to be made by the concurrent initiative to overhaul the EPBC system. Equally, it indicates that not all costs relate directly to the job at hand but are also significantly contributed to, by actions of the department itself and the rules in place. It would be far more effective to allow the overhaul of the EPBC before working out cost recovery, with the added benefit that there is an incentive to complete the overhaul quickly.

b) Cost Recovery Initiative Impacts

As noted above, the negative impact of the current proposed approach would be extensive on the property development industry.

Overall, the Cost Recovery Initiative proposes a 7 to 10 times increase in costs for users.

There are some fundamental practical issues to consider:

- To secure necessary financing, lenders in general require development projects to seek a specific return above the direct costs of the development. Projects failing to achieve that specific return (regardless of a positive return), will not receive funding from lenders. Typically, due to the risk, developers need a circa 20% return to get funding from lenders, otherwise the project will not go ahead.
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- For residential land development, a typical project cycle is only 12 to 18 months. All costs are upfront, and revenue comes all at once at the back end when the lot sales go to settlement. There are no ongoing revenues past this sales income at the end of the project cycle. The relatively short time to market with no ongoing or follow-on revenues means any added fee or other cost impact is relatively immediate for property development, adding to the peak debt profile and impacting the ability to access upfront finance. This is unique for our industry, in contrast to other industries with long run projects where costs may be averaged over the life of a project with sustained revenue.
- 85% of industry developers are small to medium sized enterprises that develop projects that are often not large. Assessment fees can vary, however, given a Government EPBC assessment fee for a controlled action is often circa \$100,000, a x10 increase means an eye watering \$1m new fee to be absorbed by a project development. This is untenable.
- For a 20-lot development, this would add a massive \$50,000 per house, blowing out housing affordability. Depending on the region, this size project might have a development cost of circa \$5m and the EPBC cost increase would also jeopardise project viability.
- Property feasibilities balance the costs against revenue with the remainder being profit. If costs go up, either the undeveloped land will need to reduce in value, or the price of the finished product will need to increase. In the short term, owners won't sell the land at a lower price. Therefore, any substantial fee increase will result in either constrained supply or rising house prices, negatively impacting on housing affordability. Every extra dollar of cost removes stock and increases prices. Likewise, introducing compliance fees for existing approvals, which have not been budgeted for, could potentially result in projects being unable to continue.
- In effect the Cost Recovery Initiative risks stalling many smaller projects, jeopardises the viability of larger development projects and reduces housing supply.

We note that the industry is diverse and although small to medium sized enterprises may not be able to lessen the impact due to limited revenues to offset and short durations, developers who can accommodate fee increases would benefit from 'fee caps' and 'fee deferrals'. These options may provide viable pathways for reducing financial stress. The capping of fees would provide a level of certainty about the fees, which could be factored into the feasibility of a project from a relatively early stage. Additionally, being able to defer the payment of fees until the project commences reduces the upfront costs of obtaining approval and would provide an applicant with a level of certainty about upcoming expenses whilst assisting in cash flow during the early stages of development. This of course only works where the fees do not represent a massive increase in costs for a project.

Consideration should also be given to the deferral of fees until project construction has been completed, which would allow the fee payments to be made once the project has started to earn money. For staged projects (e.g. different sales stages for land development projects) there could be fees due at the completion of construction of each stage proportional to the overall fee due.

An additional factor that should be kept in mind across all industries is that a steep increase in costs for assessment may undermine the EPBC itself by effectively acting as a penalty to organisations that seek to do the right thing and refer their project.

Currently, if a person believes their project will not impact on protected matters, they have the option to not make a referral. Users in many industries often seek the optional referral to manage project risks, which include being subject to referral late in the project's planning as a result of an updated MNES listing; or potential penalties for proceeding without an approval on a site that turns out to have an impact. However, a significantly higher fee may create a different risk assessment that tips the scale against referral for some proponents. This could undermine conservation efforts if the self-assessment inaccurately predicted the potential to impact on protected matters.

c) Identifying Appropriate Costs

Fees should reflect efficient work processes and be set at reasonable rates that will not impact viability of the industry nor Government housing initiatives. The Cost Recovery legislation should:

- 1) incorporate legislative objectives for costing services that include: protection of the environment, recovery of reasonable costs, enhancing the operation and productivity of industry users (do not significantly impede users by process or cost), continuous improvement of efficient work processes and independent assessment of reasonable fees and charges;
- 2) publicly report regularly on how the Cost Recovery Initiative impacts the legislative objectives;
- 3) measure against KPI's and metrics that target meeting timeframes, timely response to proponent queries, drive delivery improvement, assess process and cost efficiency; and
- 4) allow costs to be independently assessed by third party experts for projects with Government covering any costs considered unnecessary or exorbitant.
- 5) minimise the number of times a fee is required to be paid, or provide an allowance in the process to avoid multiple holds/time delays for a project while addressing the fee requirements.

Equally, however, assessments are also a community service. The process is to resolve applications and to protect the environment. Charging a full cost recovery fee indicates a client service with no cross over benefits. While Government is looking at attributing costs on the basis of public and private benefit, it is reasonable to expect that no user should be charged the entire cost of an assessment.

Consideration should also be given to reduced fees for more environmentally sound proposals. For example, a proposal that increases habitat should be both an expedited approval and have a fee schedule that incentivises better environmental outcomes.

Cost arrangements should also incentivise the strategic assessment of larger urban areas. Coordination of multiple landowners (or perhaps local governments) cooperatively assessing urban growth areas. Fees should also incentivise actions that strategically enhance landscape scale biodiversity corridors. Consideration should also be given to agreement arrangements that enable payment of relevant fees or levies as subsequent independent developments occur in a region.

Costs should be reduced for assessments that do not meet the statutory timeframes for completion, to incentivise more efficient processes.

Critically, the issue of resubmission fees is contentious while the EPBC process is broken and there is considerable concern that re-submission occurs because of the lack of guidance material and detailed parameters causing delay. Members note they have had experiences where the determination of sufficient information for lodgement differs from team to team and even day to day. In one instance, a member was requested to make changes prior to validation, only to be told upon resubmission that it must be changed back to how it was originally proposed. Clearly, a lack of guidance material also impacts how assessing officers interpret what is considered acceptable within applications. The guidance material must be clear and applied consistently; otherwise, this will be viewed as a clear cash grab. Equally, resubmission fees cannot be charged ahead of the complete overhaul of the EPBC.

Finally, the types of levies being proposed along with their relevance to the process should be workshopped with industry ahead of any decisions and include a study of the economic impact on industry and the social impact on the community.

d) Accelerated Timeframes

The concept of paying for an accelerated timeframe is only a legitimate cost where the EPBC process is already adhering to existing timeframes. At present, most timeframes are not being met, so users would effectively be paying extra money for the process they were meant to receive under the existing arrangements. It not only does not incentivise improving the efficiency of processes, but effectively rewards delays and ineffective processes.

In addition, without appropriate guidance material, there will be continued blowouts in timeframes in any event. Under the current approval process, much of the time is not taken up by the assessment from DCCEEW; it is preparing and finalising how to deal with the DCCEEW requirements, given the severe lack of guidance material. Creating an accelerated assessment pathway (including any associated fee) becomes irrelevant without clear, detailed and accurate guidance material. It is also necessary to appropriate resourcing arrangements for more senior team members to be involved in critical activities to reduce rather than add more people.

We support accelerated timeframes for additional cost only where the EPBC is overhauled to ensure standard timeframes are being met together with appropriate guidance. If the accelerated timeframe is not met, fee should be reimbursed.

e) Exemptions and Thresholds for cost recovery

The Cost Recovery Initiative needs to consider additional exemptions to ensure cost sensitive projects are not stalled or government initiatives are not undermined.

As noted previously, material increases in fees will significantly impact the price of housing and act to restrict supply. Government's first home owner initiatives, affordable and social housing initiatives and housing supply initiatives are all collectively undermined.

We suggest that there should be exemptions for affordable and social housing projects and developments targeting first home buyers.

There should also be a hardship exemption that allows users to apply for an exemption where the cost would jeopardise viability, housing supply or housing affordability.

Finally, given all property projects will have the supply of housing impacted by substantial increases in fees, there should be an exemption for projects under a certain threshold development cost, where it becomes problematic to absorb higher fees to prevent stalling projects. In the alternative it could be an exemption with a lot threshold for any developments (under (say) 200 lots), to prevent affordability impacts to housing supply.

The Summary Recommendations

Many of the issues we raise can be avoided by implementing a number of simple recommendations which will balance environmental protection and support the productivity of industry:

- **The Cost Recovery Initiative should only be implemented once the EPBC has been overhauled** to realise cost and process efficiencies – otherwise it will be too expensive and unfairly penalise compliance with the current complex, inefficient and bloated EPBC process.
- **The cost recovered from the property industry should not be 7 to 10 times current costs** – it is unaffordable, will stall projects and undermine key Government supply, affordability and first homebuyer initiatives.
- **Increased costs should not apply to existing projects within the EPBC system** – the project feasibility has been determined using existing pricing models and the increase will jeopardise viability of projects.
- **The Cost recovery legislation should incorporate objectives for costing services** that include: protection of the environment, recovery of reasonable costs, enhancing the operation and productivity of industry users (do not significantly impede users by process or cost), continuous improvement of efficient work processes and independent assessment of reasonable fees and charges.
- **Regular public reports should be undertaken to determine the cost recovery impact** on the legislated objectives.

- **KPI's and metrics should be incorporated** to target meeting timeframes, timely response to proponent queries, drive delivery improvement, assess process and cost efficiency.
- **There should be a mechanism to allow EPBC costs to be independently assessed** by third party experts for projects with Government covering any costs considered unnecessary or exorbitant.
- **There should be a program of process improvement as a part of the legislation** to continuously reduce costs.
- **Accelerated timeframes for additional cost should only be implemented where the EPBC is first overhauled** to ensure standard timeframes are being met together with appropriate guidance. Costs should be reimbursed if timeframes are not met in any event.
- **EPBC cost fees should be reimbursed if the statutory timeframe is not met** for any standard process.
- **Exemptions should apply to promote affordability and housing supply** - exemptions for affordable/social housing, developments targeted predominantly at first homeowners, projects with significant adverse impacts due to EPBC costs and projects for housing supply under 200 lots and/or a threshold development cost.
- **Government and industry should workshop types of levies**, their justification and economic impact ahead of any proposals.

We are keen to discuss these reforms with you at your earliest convenience.

Please do not hesitate to contact the UDIA National Director of Policy and Government Relations - Andrew Mihno on 0406 454 549 to discuss any aspect of this submission further.



Maxwell Shifman
UDIA National President



Mike Zorbas
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