



Thank you for the opportunity to provide a submission in response to the *Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020*.

This submission is provided on behalf of both the Property Council of Australia and the Urban Development Institute of Australia (UDIA) National – who collectively represent the full spectrum of the nation’s urban development sector.

We have had the opportunity to actively engage in the consultation undertaken by the Independent Review into the EPBC Act, chaired by Professor Graeme Samuel – and appreciate consultation on the legislation now before the Senate.

The Property Council and UDIA National welcomed the review and potential for legislative, regulatory and administrative reform of the EPBC Act as an opportunity to better balance economic, social and environmental objectives and outcomes.

This is essential given:

- The housing and construction sector accounts for approximately 7.5 per cent of the nation’s economic output – and directly and indirectly generates 750,000 jobs
- There is a consensus among all three tiers of government that peri-urban growth is essential to help meet the demands of growing state and local communities
- The industry fully supports the principles of Ecologically Sustainable Development (ESD) as it is the best approach to align environmental goals with economic and social objectives
- The industry makes a disproportionately strong contribution to creating jobs, 9 FTE per million dollars spent, and supporting Australia’s economic recovery from COVID-19.

It is also worth noting that the property industry is the largest user of the assessment and approvals pathways available under the existing Act – accounting for 27 per cent of all referrals in 2018-19.

We believe the principles outlined in the Bill are sound and consistent with the objectives of the Independent Review, including:

- Creating a balanced and efficient regulatory framework that spans economic, environmental and social goals
- Creating a more streamlined assessment and approvals process that reduces red and green tape, as well as fostering outcomes that support good urban development
- Boosting resources across the system to improve the efficiency of assessment timeframes, quality of data and support a smooth transition to a new system.

The Bill represents a good first step in accommodating a more strategic and seamless approach to the effective delivery and functioning of bilateral arrangements, and associated management of issues and provisions needed to sustain them. Our two organisations support the goal of devolution and single point of assessment.

To that extent, we do support progression of the legislation.

However, in doing so, we note it is of paramount importance that more scrutiny is applied to the next steps in the evolution of the EPBC arrangements.

These include:

National Environmental Standards

Our focus is on two areas:

- We believe the legislation should provide for a subordinate capacity to create the new NES (for example, via regulation). This will ensure elements of the NES are not fixed in place permanently, as they would be through legislation, and can be more easily adjusted to take into account ongoing feedback on their effects. If the NES becomes a creature of legislation, we will wait another twenty years before any unintended consequences are properly addressed.
- The transition to new NES must be accompanied by a full Regulatory Impact Statement – to test their effects on both existing and upcoming projects. This is also essential to ensure projects currently under assessment do not face dislocation or delays during the transition. We strongly suggest this include testing any proposed new standards (initial or long-term) via live case studies that ensure there is no increase in regulatory costs or requirements.

Litigation risk

As a principle, the Property Council of Australia and UDIA National urge avoidance of new terminology in the adoption of NES. The Review process has identified potential for new – but undefined terms – to be applied. We would strongly resist this as should standards be implemented by using undefined terms, there is a risk projects would be subject to litigation and delays while legal challenges resolve their intent.

‘No net loss’ serving as the right test for housing assessments

There are a range of threshold tests being contemplated for major projects, but we believe ‘no net loss’ is the most balanced test for the housing and construction sector. Alternative concepts such as ‘maintain and enhance’ risk bringing housing to a halt.

As much as the housing industry invests heavily in sustainable development outcomes, it is:

- By nature, always occurring on top of the land and requiring significant permanent changes to the majority of the site including dwellings, roads and utilities
- Constrained to specific sites based on the strategic planning, infrastructure connectivity and other regulatory frameworks applied by state and local governments in particular
- Unable to remediate sites, given housing by its nature is permanent.

In combination with a ‘no net loss’ threshold, clarity must be provided surrounding the offsetting regime that will support housing development projects. This is particularly important for developments in peri-urban areas where the need for housing is greatest and the availability of sites is limited.

Transitional arrangements and resourcing

It will be crucial that governments – federal and state – effectively resource the transition to, and operation of, any new system. This will include ensuring that projects currently underway do not face delays as the transition to a new system occurs. Additionally, further investment will be needed in data, mapping and the efficient assessment of projects within the new system to ensure that it operates as intended.

