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Department of Climate Change, Energy, the Environment and Water

via email: regionalplanning@dcceew.gov.au; alison.mcmorrow@dcceew.gov.au

Dear Ms McMorrow

EPBC Regional Planning Submission

Thank you for the opportunity to provide our comments on the proposed Regional Planning Act (NPE Act).

In the interests of time, we have provided a summary of the main issues we see following our review of the consultation documents provided.

UDIA National remains a strong supporter of the Government's initiative to overhaul the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* to streamline assessments and approvals as well as improve environmental, social and economic outcomes. We appreciate the Minister and Department's consultative approach.

UDIA National appreciates the Department's consideration of our previous submissions, and in the interests of time we have kept this submission to the essential points.

Overall our primary comments are:

- The Regional Planning framework in itself is fine and should be supported by industry as an opportunity to deal with EPBC issues associated with growth corridors/development areas at a strategic level rather than the current case by case basis.
- The key however is to ensure that the regional planning process provides for outcomes that balance planning/housing/infrastructure delivery with MNES outcomes – the balance cannot be overly skewed to MNES.
- It is also critical that the process work hand in glove with state planning agencies and industry to ensure alignment between social, economic and environmental outcomes.

- A key concern for industry however, is that currently pilot Regional Plans such as those being done in Queensland, have not sought industry input even after the Minister's office has specifically requested industry be involved.
- Equally, we are concerned that the ongoing process for developing Regional Plans will ignore expertise in land use as well as the experience and needs of business and industry.
- Industry needs to see Regional Plan processes prioritise:
 - Lockstep involvement of industry, business and community in the formulation and development of Regional Plans.
 - A more concrete protocol in the framework that ensures Regional Plans cannot be developed without due industry consultation on economic, social as well as environmental issues.
 - Government should aim to develop Regional Plans for most areas involving housing to ensure there is a precise understanding of the development impacting communities.
 - The industry should be directly involved in developing the regional plans and recovery strategies to determine bare minimum information included and to avoid vaguely framed plans.
 - The regional plans traffic light (Red, Yellow, and Green) outcome should be simple to implement and minimise yellow to better guide development and the community.
 - The regional plans should cover a region at a sufficient scale to deliver an overall net positive outcome and be based on relevant ecological boundaries.
 - Clarify that the responsibility for restoration measures lies with the State.
 - Clarify and limit when regional plans can be varied to avoid creating uncertainty
 - Clarify the roles of Commonwealth, State, and local government in regional plan operation, with the State managing day-to-day implementation of the regional plans.
 - Detail around the gain that will be required, and how restoration actions and contributions will be calculated, measured and implemented should be provided as soon as possible such as:
 - how will requirements for restoration actions and contributions be determined and calculated?
 - what percentage net gain will be required, and will this differ depending on listing status or other items?
 - worked examples of how restoration contribution payments will be calculated.

- Offset arrangements should take up the best features (simplicity, speed of delivery and affordability) of the present Commonwealth and state arrangements.
- Ensure restoration payments to go to State-based agencies such as the Offset Fund Management and Delivery in the Department of Environment and Science in Queensland.
- Consult and clarify with industry regarding impact on projects of a Minister's variation of a regional plan including: projects registered or unregistered with the EPA.
- Reforms under the Nature Positive plan should be periodically reviewed in consultation with industry and community stakeholders, allowing for necessary adjustments to meet environmental, social, and economic objectives.
- Regional plan should give a clear guide to locations for offsets but not overly restrict offset delivery to within the local government area, unless there are valid environmental grounds.

Below is more detail on aspects of the specific issues raised above.

Regional Planning – Need for Land Use Planning Expertise.

Regional planning should improve environmental outcomes and help guide development to less environmentally sensitive areas, assisting proponents to reduce their impacts. Regional plans will be used in regions where there is conflict between conservation and development interests.

The Draft Framework refers to harmonising regulatory systems, and that the “Commonwealth, state and territory planning systems guide the regional plan making process. These planning systems form a foundation for regional plans.”

Reference is made to state and territory planning instruments. UDIA emphasises that those “planning instruments” must include the state or territory’s strategic land use planning that identifies areas for future urban development.

The development industry is the delivery mechanism to supply new housing and meet the National Housing Accord targets. The development industry invests where the demand is clear and where the risk is manageable. Risk is lower where there is a clear strategic line of sight signalling where federal, state and local government are more likely to support a development proposal consistent with their strategies.

The Commonwealth regional plans must therefore be done in close consultation with the state/territory’s department of planning / housing as well as industry to ensure that the regional plan supports the realisation of the state’s existing strategic land use plans and expectations for delivery of new homes and jobs.

In the example of a regional plan for South East Queensland preparation of a regional plan will be a particular challenge. The major urban areas of Queensland are located on top of important habitat.

These urban areas presently house 3.78 million people in 1.5 million homes and are expected to grow over the next 25 years by 2 million people, 900,000 homes, and perhaps 70,000 hectares of additional urban land. Similar growth pressures exist in the Lower Hunter, Central Coast and Illawarra regions of NSW and parts of WA and Victoria.

It is critical that land use planning skills are brought to bear in the plan, not just environmental skills. Environmental protection and regeneration in the region are presently undertaken in a piecemeal or patchwork way by the silos of government levels and environment departments. Achieving a net positive bio-regional plan will require making a step change in trade-offs and planning from the present. Seeking just to enforce present preserved isolated patches will continue lack of guidance for the community, and land use conflict. Planning - not environmental - skills are required.

Consultation is critical

Industry is extremely concerned to ensure that regional plans actively balance environmental, economic and social issues in their development as it is one of the few checks in a system that ensures there are sensible and practical outcomes for the environment and industry.

At present the proposed Environmental Protection and Biodiversity Act (**EPBC**), although unfinished, gives no comfort to industry that a general application (outside a regional plan), will have due consideration of the environmental/economic balance in decision making.

The Department has assured industry that regional plans themselves will pay due regard to the ecologically sustainable development (**ESD**) in their drafting, but the behaviour of states developing pilot plans has not reflected this intention. State Plan drafters have not sought to include industry in its approach. This is particularly concerning given the Federal Minister's office has previously introduced Plan drafters to the broader community with the purpose of encouraging open dialogue.

To date, as an example, the development industry and community are not in the picture regarding the proposed regional plan for South East Queensland. Beside the announcement of the intention to progress a regional plan for South East Queensland and that the Queensland State Government Department of Environment, Science and Innovation is engaged on the work, the Queensland development industry is unaware of what has been progressed.

It is acknowledged that many details of the regional planning process are yet to be settled however initial discussions with industry should have been held. The lack of contact gives worrying signs that like in the past, a plan only developed in isolation by the department, lacking critical inputs, and based on limited methodology, will be delivered and become an immovable object that will not meet industry needs. Consultation early and through all stages on development of the regional plan is required for industry to support, provide input, and enable industry transition.

Other issues

The experience of regional planning through the strategic assessment process of the EPBC Act across Australia has been seen as very slow. The Cumberland Plain Conservation Plan (CPCP) took around 4 years, the Perth and Peel (WA) strategic assessment commenced in 2011 and in 2020 progress on the strategic assessment was put on indefinite hold. While these comprehensive processes are progressed, uncertainty is generated for industry, also state government policy development is delayed or altered in expectation of the plan.

Any new regional plan process needs to come with timely delivery, and delivery parameters or performance indicators to give clear expectations to industry and the community.

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

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

Yours sincerely

A handwritten signature in black ink, appearing to be 'Col Dutton', with a small dot at the end.

Col Dutton

UDIA National President

APPENDIX 1: Detailed Additional EPBC Act amendments needed in the drafting instructions (by exception)

We note the following commentary made in EPBC lockup 3 which pertain to standards properly reflecting regional planning – they are included so they are not left out of the process.

a) Regional planning

The regional planning process will replace strategic assessments to facilitate priority development outcomes and net positive environmental outcomes in certain areas where there is land use conflicts. The urban development sector is likely to be one of the largest users of regional plans and is a wary supporter of the regional planning process, subject to seeing how the process can work. However, a number of current powers may erode the certainty regional plans can provide industry.

The regional plans will set out development zones, where certain classes of actions specified in the plan can be undertaken (priority actions). The regional plans will also set out conservation zones where restricted actions cannot be undertaken. To achieve nature positive, regional plans will set out a series of restoration measures and/or restoration payments. It is positive to see the responsibility for restoration measures to be shifted to the States and Territories.

- The draft exposure bill remains unclear on restoration payments. UDIA National is concerned that the current drafting appears to indicate that payments cannot go to State-based agencies such as the Biodiversity Conservation Trust in NSW and the Offset Fund Management and Delivery in the Department of Environment and Science in Queensland. These agencies are established to accept and manage conservation payments. The requirement for restoration payments to go to a Commonwealth agency potentially doubles up. **This should be clarified in future drafts.**
- If the intent of this section of the Act is to provide a mechanism for the Commonwealth to recoup moneys contributed by the Commonwealth to restoration measures, this should be clarified.

As for the call in power, UDIA National is buoyed to see the inclusion of social and economic matters in the list of items the Minister must have regard to when deciding whether or not to make a regional plan. UDIA National appreciates this balanced measure in regional plan making and goes a long way to comforting the industry on the effectiveness of the regional plans.

The Minister has broad ranging powers to vary regional plans. UDIA National remains concerned about several of these variation powers:

- 1) In certain circumstances, the Minister must vary a regional plan including when a new critical protection area is identified in a development zone.
- 2) The Minister may vary a regional plan in certain circumstances, for example when the objectives of the regional plan are not being met, new information is available about threats to a protected matter, the action is likely to have unacceptable impacts, net positive outcomes are not being achieved, etc.

- **The wording around the Minister “must” vary a regional plan should be changed to “may” and there should be mechanisms in place to ensure existing projects are not captured in any variations.**

These abilities to vary a regional plan introduce a high degree of uncertainty for proponents.

- We can see a situation where a proponent has purchased land within a development zone on the understanding that this land is essentially certified for development. The ability to vary the plan could result in this land no longer being suitable for development, resulting in significant financial loss for the proponent. **UDIA National recommends the wording around the Minister “must” vary a regional plan should be varied to “may”.** This provides the discretion to the Minister to vary a regional plan when they see that the circumstances are suitable.
- The clauses around when the Minister may vary a regional plan also refers to when the variation is agreed to by the State or Territory. **This clause should not sit within this section, but should be a separate clause requiring the variation to be agreed to by the State or Territory, as required by the original plan.**

To overcome this, the NPE Act sets out circumstances in which the conditions of a variation would not apply, including to projects registered with the EPA; to an action which was not a priority action previously but is now a priority action and is in a development areas, provided it has commenced; to a priority action registered in a development zone and the variation result in that area no longer being identified as a development zone.

- Some of these clauses refer to the person, and not the action. Projects are often on-sold once approved; for example, a wind farm or residential development where approval is sought by one entity and then sold to a second entity to develop. **The clauses around exemptions to variations should refer to the action and not the person.**
- **There is also a need for an additional clause here that specifies that for a person who has commenced an action which did not require approval under the NPE Act (i.e. not a priority action in an unzoned area which then becomes a priority action in a development zone, or becomes a conservation zone) then the regional plan does not apply.**

A person taking an action in a development zone may register the action with the EPA (H43).

- No information is provided on the detail required to register an action. For example, can a proponent register an action without having a detailed masterplan for a subdivision, or is highly detailed information required. This influences UDIA National’s concerns around the variation process; if a project can be register upon purchase of land then the impact of any future variations are mitigated. **Further information on the registration process should be provided.**
- H48 of the NPE Act specifies it is a penalty not to register a priority action in a development zone. Section H43 should be modified from “may” to “must”. H48 could then be deleted.
- **We note that part (g)(ii) of the section should really refer to net positive outcome (NPO), rather than "more than compensates" and NPO should be better defined.**

We note that part (g)(iii) refers to climate change – **shouldn't climate change be done as part of the climate change legislation – we are specifically not measuring against climate change.**