

## PLANNING AND HOUSEBUILDING

Summary of a discussion hosted by the Australian-UK Housing Network

5 December 2024

The session was chaired by Prof. Mark Stephens (U of Glasgow) and featured commentary by Prof. Richard Dunning (U of Liverpool), Dr Catherine Gilbert (U of Sydney), Dr Phil O'Brien (U of Glasgow), Prof. Bill Randolph (UNSW), and Dr Ryan van den Nouwelant (UNSW). A summary of speakers' key points follows. The [video recording](#) of the discussion can be accessed on the CaCHE website.

### Introduction (Prof. Mark Stephens, U of Glasgow)

Both Australia and the UK are seeking to build their way out of the housing crisis. Narratives that planning is the principal barrier to housebuilding, and that more housing supply is the answer to worsening affordability, pervade policy discourse in both countries, and are strikingly similar. This is despite differences in how planning systems operates and the structure and characteristics of the housebuilding industry.

This inaugural thematic session of the Australia-UK Housing Network brought together experts in planning and housebuilding to (1) discussed the planning and housebuilding systems in both countries; and (2) examine in more detail some of the distinctive planning system features in two jurisdictions: New South Wales (NSW) and England. Addressing the Network's core objective to promote knowledge exchange, policy development, and research collaboration, the session concluded with reflections on potential policy lessons and areas for further comparative research.

The discussion revealed that despite common claims about the role of planning in constraining housing production and worsening housing affordability, the principles and operation of planning systems in the two countries differ, with nuanced implications for housing production, housing types and locations and housing tenure. It is impossible to understand the role of planning systems in housing supply without understanding developer behaviour, with the two being closely interlinked.

While there has been a plethora of research interest by economists in planning regulation and housing production, research on the economics of land markets and, particularly, the way in which land markets interact with planning is comparatively limited. The discussion revealed an opportunity to explore more deeply the economics

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of land markets and how they interact with the planning system across the two countries.

Across the jurisdictions discussed, planning for housing has largely been reduced to a numbers game, with community shaping and social development goals sidelined. It is clear that rethinking the role the state could play in addressing the housing crisis is needed, including what might be gained in terms of housing affordability and quality from a more proactive approach.

## **Features of planning systems in Australia (Dr Catherine Gilbert)**

### *Distribution of responsibilities for planning*

In Australia, responsibility for planning sits with the six states and two territories. This means that each state / territory has its own planning legislation and planning system. Responsibility for detailed land use planning and the majority of development assessment sits largely with the more than 500 local governments that exist across Australia. Local plans are made at the local government level in accordance with state legislation and policy.

### *Approach to development control*

Australia uses land use zoning as the principle means of development control. Land use zoning sets limits on how land can be used and developed. It can also imply development rights beyond existing use. Land value uplift occurs at rezoning (not development consent).

Zones are primarily defined in local plans. These plans outline what development is permissible with consent within each zone. They also outline controls on building height, site coverage, and aspects of building design. Not all development rules and standards contained within Australian land use plans are quantifiable. Plans also contain more qualitative objectives / desired outcomes. This means that for many classes of development, the development assessment process includes elements of merit assessment, e.g. consistency of the proposed development with area character, likely social and environmental impacts.

While implied through zoning, development rights are only formally conferred once a proponent applies for permission to undertake development and a development consent is issued by the applicable consent authority. This is typically local government, but it depends on the scale and location of the project. The consent authority can either approve, approve with conditions (most common) or refuse a development application. Over time, across Australia, development assessment decisions about higher value, higher impact development have increasingly been brought to the state level.

Historically, many development applications were determined by elected councillors. But over time, this has shifted to planning and built environment professionals. Development assessment processes include opportunities for community members to object to planning proposal in their area. But there are no 'third party' appeal rights in most states. Development proponents can appeal a development refusal, however,



and can also appeal to the courts where a development application is not determined within a statutory timeframe.

Increased use of complying or 'as of right' development rights, professionalisation of decision making, and limited or non-existent third party appeal rights mean that in practice, opportunity for communities or their elected representatives to 'block' development is limited.

## **Features of planning systems in the UK (Dr Phil O'Brien)**

### *Distribution of responsibilities for planning*

There are four UK planning systems – English, Scottish, Welsh and Northern Irish – but with shared origins and close functional similarity. There are also four systems of law, with Scots law being a mix of common and civil law and the other three common law. Scots, Northern Irish and English law are historically distinct legal systems while Welsh law encompasses laws made by the Welsh parliament since 2007. The UK parliament passes planning legislation, and sets policy to be taken account of by local authorities, for England, while the Welsh and Scottish parliaments, plus the Northern Irish Assembly, do the same for their own jurisdictions.

The basis for planning lies in the English 1947 Town and Country Planning Act and the 1946 New Towns Act, subsequently translated into Scots and Northern Irish law. These were originally intended to operate in tandem, with the great majority of new residential development intended to be built by the New Towns Corporations and the local authorities on greenfield sites. The role of the planning apparatus established by the Town and Country Planning Act was to regulate, on a case-by-case basis, the anticipated minority of private sector residential development.

Within the planning systems established by the Town and Country Planning Act the local authority creates an indicative land use plan, allocating sites for development in particular uses, together with written rules that may be generic to the plan area or, less often, place-specific.

### *Approach to development control*

The planning process entails the submission of 'planning applications' by developers or landowners which the local authority may at its discretion award 'planning permission', reject, or award with conditions. Decisions are made on a case-by-case basis upon consideration of the application's compliance with the plan, together with other 'material considerations' (matters established in the courts). There is wide scope for negotiation because the plan does not demonstrate explicit intentions. This is in fact the basis for Section 106 (Section 75 in Scotland) agreements, as contracts setting out developer contributions (discussed below), which by value are mainly in the form of land for affordable housing.

Local land use plans are therefore not very prescriptive as to what may be developed. Since the winding down of the New Towns Corporations and the retrenchment of local authorities from housebuilding from the mid-1970s, public development has been scant. Planning across the UK is therefore passive, with little means to bring land forward for development.

The main narrative around housing unaffordability has been criticism of the negotiated nature of planning decisions and the lack of certainty granted by the planning system. A counter-argument is that the planning system is not able to supply land, as such, but rather confers development rights on land brought forward in planning applications. It

would arguably require an active form of land policy, as applied under the New Towns Act, to supply land.

Local authority decisions are not binding, there being a route for applicants to appeal to a quasi-judicial body, this being the Planning Inspectorate in England. Around one third of appeals are upheld.

Local authorities have little control over design and layout because: a) without a zonal plan prepared by the local authority, the developer determines the layout of the development ahead of submitting the planning application; and b) the Planning Inspectorate has a tendency to uphold appeals on design grounds especially (though stronger recent design guidance in England may be changing this).

### **Housebuilding in Australia (Prof. Bill Randolph)**

While Australia has a large land area, the majority of new housing supply is concentrated in five major cities. Therefore, development is fairly geographically concentrated. New housing supply in Australia, and particularly Sydney, is now a mix of apartments and detached homes.

Australia has two land title systems: Torrens title (1850s), which is equivalent to UK freehold; and, strata title (introduced in 1961) which applies to apartments. The latter enables lenders to lend on a lot within a building (similar to commonhold in England) and has supported an industry that develops apartments for sale. There is very limited leasehold land in Australia.

The Government has target for [240,000 new homes nationally over 5 years \(1.2 million total\)](#). 176,000 were completed in 2023/24. In explaining housing target shortfalls, there is a strong focus on planning. But research has also revealed that there are large numbers of apartments that have been approved, but not commenced in Sydney (suggesting planning approval is not the key barrier).

Major challenges for new housing construction currently include escalating finance, labour and construction costs.

In contrast to the UK, greenfield developers generally undertake land subdivision and then sell serviced lots to buyers who commission a builder to build a house on the land. As a result, greenfield development tends to be less speculative than in the UK. The apartment development sector, by contrast is very speculative. Developers build to sell, with the majority of sales to buy to let investors (over 60% at height of the apartment boom in the 2010s).

Incremental land development in existing urban areas, through the phenomenon of individual landowners (households) knocking down a smaller older home and building a larger one (knock down rebuild) is very common across 'middle ring' suburbs of capital cities, particularly Sydney. Another form of incremental infill development is secondary dwellings (granny flats) constructed in suburban backyard either for family use or to rent out. In NSW, this type of supply has been particularly enabled through

changes to planning rules. There is very little monitoring of this type of supply, including how secondary dwellings are being used.

While early apartment developments in Australian cities consisted of three storey walk-ups, apartment complexes have become much larger over time (high rise, on-site amenities). This has led to concern about the 'missing middle' of built form and policy interest in using the planning system to enable and encourage medium density forms of infill housing.

Feasibility is fundamental to development in Australia and a central concern / focus within planning systems as well. Developers typically require a 20% return. During the 2010s development surpluses where over 30%. So it is a very profitable sector at times.

### **Housebuilding in England (Dr Phil O'Brien)**

In England, monofunctional residential developments on greenfield land still dominate, against a declining share elsewhere in western Europe, where urban densification and 'no net land take' policies have directed new housing towards existing urban areas. Volume housebuilders (those completing >2000 units annually) dominate the industry and are becoming increasingly more dominant. The share of new units delivered by the biggest ten housebuilders in the mid-1970s was 20%, this having reached 50% by the mid-2000s.

A vertically integrated business model is standard, driven by the search for the greatest possible profit, which accrues at the point of the award of planning permission, within a context of little state activity in bringing sites forward. Relatedly, housebuilders prioritise profit margin over volume of units completed because the latter raises exposure to risk. (See this [CaCHE report](#) for a thorough discussion of housebuilder behaviour and motivations.)

Risk mitigation is a key concern. Housebuilders operate against a background of a market heavily reliant on a preference for owner occupation (although this is declining as a share of total tenure due to its unaffordability) and within a deregulated mortgage market (although this was tightened up slightly following the GFC). This exposes housebuilders to shocks such as house price deflation that reduces the value of sites between land acquisition and house sales, restrictions in mortgage availability, and reduced sales restricting cashflow. In response, housebuilders seek to take a large share in land markets at particular locations, control the rate at which they build houses so as to control prices, deliver houses rather than flats, build standardised products across the UK, invest minimally in placemaking, and use design schemes that can be adjusted to control outputs and costs.

Although speculative housebuilding still dominates, two trends that have grown over the past decade or so are worth noting. One is land promoters - firms that typically

partner with landowners to take a share of the sale price if they successfully secure planning permission or buy sites themselves with the intention of selling with planning permission. This sector has grown in market share since the GFC. The second increasing area of focus is in developing land before selling de-risked plots to housebuilders. This breaks the standard vertically integrated model and thereby opens up scope for less risk-reactive strategies on the part of housebuilders.

Financial institutions have become involved in 'Built to Rent' (BtR) housing, usually forward funding developments before maintaining these as long-term assets. This is driven partly by the growth of the private rented sector as home ownership has become unattainable for many, and partly by declining returns available on many commercial assets.

### **Specific features of planning policy in NSW (Dr Ryan van den Nouwelant)**

The NSW planning system has been significantly reformed over the past two decades. Recent policy changes reflect several longer-term trends, including increasingly centralised land use policy making and development assessment (away from local councils); a shift towards intensification of land use within existing urban footprints ('infill development'); and re-conceptualisation of the role of planning to focus on enabling private developers. Reforms have been pushed on the grounds of 'making it easier to build houses', with language about 'accelerating development', 'fast tracking development', 'streamlining development'. How these have played out in different areas of planning is discussed below.

#### *Strategic planning*

Responsibility for broad strategic policy settings was centralised in 2005 when Sydney got a metropolitan plan (administered by the state government). After a period of very little concerted metropolitan scale strategic land-use planning, Sydney had 'the city of cities' plan. It introduced a mantra of 70:30 – 70% growth within the urban footprint; 30% outside (although most of that 30% was land already earmarked for growth). This was accompanied by housing targets for local governments, including those in the inner and middle rings of Sydney. The NSW government continues to set [5-year housing completions targets for local governments](#) across Greater Sydney, as well as target for regional NSW.

#### *Land use policy making*

Efforts to drill down from that state strategy into local plans proved hard. Not long after this, the state started intervening more in plan making, including in the zoning codes (or legislative instrument that actually regulate land-use). This was through the



introduction of a ‘standard instrument’ Local Environmental Plan that every local government in NSW has to follow. The process of bringing Local Environmental Plans onto this template involved a heavier hand from the state, before they would sign off on a local plan. See this [Practice Note](#) on preparing Local Environmental Plans.

The state also started using more heavily a parallel set of [state planning regulations](#) (that override local plans – called State Environmental Planning Policies) and effectively took the lead on plan making for anywhere expected to undergo significant growth.

### *Development assessment*

The state government also increasingly centralised the development assessment/approval process. This is achieved in two ways. The first is through a big expansion of ‘complying development’. This is codified, ‘as of right’, pre-approved development. If development is classified as [‘complying development’](#) and meets the standards for that development (typically now defined in a state level policy) it does not need to undergo a full development assessment by council and can be approved by a ‘private certifier’ who confirms the proposal is permissible under the code.

The growth in complying development started in 2008 and applied to single detached houses (intended to speed up delivery of new, greenfield housing estates). By 2009, you could add extensions to existing homes. By 2010, you could knock down an existing house completely and (see above) put a new one up. In 2009, you could also add a ‘granny flat’ (accessory dwelling unit in NA). So, we start seeing existing residential areas undergoing some change. But, since 2020, the system has allowed owners to knock down a suburban house, and replace it with two (dual occupancies), three (townhouse) or four (small apartment blocks) – subdivide them and sell them. So, this is likely to lead to some significant changes to existing suburbs with limited planning oversight.

The complying development assessment pathway just changes whether a proponent needs to get council approval. It doesn’t change whether the development is permissible in the first place. Some councils were holding the line by making sure these apartments and townhouses were not permitted in a lot of neighbourhoods. But the state, late last year, made [wholesale amendments](#) across all local plans, permitting medium and high density housing types in residential zones, in locations near to local centres and public transport.

The second way the state has taken development assessments responsibilities away from local governments is through [‘state significant development’](#). This has involved the standardisation and increased use of state government ‘call in’ powers for projects



with particular land uses, in particular precincts, or above particular value thresholds. Recently, any project that includes ‘affordable housing’, build to rent housing, or seniors housing can also be state significant.

### *Transit oriented development reforms*

A recent policy shift in planning in NSW has been a re-energised interest in ‘transit oriented development’ or TODs (high density renewal around train stations). Recently, the state government [designated a number of potential TOD sites](#) across Sydney as ‘state significant’.

Using state policy instruments, the state government has dramatically increased the permitted heights and densities around many stations. The aim is to incentivise private sector development. There is no appetite for the state to acquire and amalgamate sites, and then coordinate development – despite international practice, and that this is often sited as the barrier in these precincts. There are also concerns about infrastructure needs in these precincts which has led to some post-hoc planning exercises to reconcile infrastructure needs.

### **Inclusionary planning in NSW (Dr Catherine Gilbert)**

In comparison with other global cities, a distinctive feature of planning in NSW / Sydney is the very limited use of the planning system to require affordable housing as part of new development. Social housing in Australia currently accounts for less than 4% of housing stock. Apart from economic stimulus programs in the post-GFC period, there has been very little government investment in social and affordable housing over the last four decades. But in contrast to other jurisdictions e.g. in the UK and US, where the scaling back of direct government provision of social housing has been accompanied by introduction of requirements for private sector developments to include affordable housing within their projects, the use of mandatory inclusionary housing policies has been limited and highly resisted in NSW.

### *Inclusionary zoning*

In Sydney, in the 1990s and early 2000s there was some experimentation with mandating small proportions of affordable housing (2-3%) within government led inner city renewal projects (aimed at managing gentrification and displacement effects). But the development industry remained hostile to implementation of widespread mandatory inclusionary zoning, and governments have been reluctant to push it forward citing concerns over the potential ‘feasibility’ implications.

Historically use of mandatory inclusionary zoning by local governments in NSW was not permissible under the planning legislation / state policy (with the exception of a few inner city local government areas). Since 2019, local governments have been able to implement local affordable housing contributions schemes, but less than half of local governments in Sydney currently have schemes in place. Small requirements apply in recently upzoned TODs, but contributions remain small by international comparison e.g. 2% of gross floor area and there is a continued emphasis on contribution requirements needing to be 'feasible'.

### *Density bonusing*

Instead, state governments in NSW have favoured incentive-based inclusionary housing policies, particularly density bonusing. In 2009, a state-wide policy was introduced, granting a density bonus for infill residential projects that include a proportion of affordable housing. The bonus was a scaled bonus, depending on the proportion of gross floor area allocated for affordable housing (at least 20% or at least 50%). The density bonus applies to all sites where multi-family housing is permissible with consent, provided it is accessible to public transport (most areas in Sydney). Affordable housing units delivered under the policy are required to be rented to eligible low and moderate income households at no more than 80% of market rent and 30% of household income; and remain affordable for 10 years (later extended to 15 years)

Over 12 years, we estimated that over 2,500 affordable rental dwellings in project utilising the density bonus were approved. But that equates to 0.01% of dwellings approved within multi-unit residential projects. Most developers are not using it.

In 2024, the state government scaled up the density bonus and reduced the amount of affordable housing required following 'targeted' consultation. The extent of take up of the new bonus remains to be seen.

### **Specific features of planning policy in England (Prof. Richard Dunning)**

2024 brought in a change in UK government (affecting planning in England) and discourse about housing and planning policies (across the UK). Each of the constituent countries has distinct contemporary popular narratives of housing (England = overall supply; Wales = affordable and second home; Scotland = social housing; NI = spatial balance in demand/supply), though elements of each are present across all.

In England, the potential restructuring of local government could have a substantive impact on the location and type of housing delivery. Changes to the Standard Method for calculating local housing requirements have increased the overall quantum of land required and redistributed that requirement.

Land Value Capture is primarily supported by s106 (site by site negotiation) and Community Infrastructure Levy (CIL, spatially determined local authority levy), with an additional Mayoral CIL operating in London. Questions regarding the purpose of both mechanisms prevail, with criticism (scale of supply of affordable housing) that it does not always respond to the initial purpose of the mechanism. S106 in particular has been subject of very different criticisms from different political positions (growth to degrowth). Current government discussion about the role of Compulsory Purchase (removing hope value) could change the balance of power in land value capture for greenfield sites.



### Acknowledgement

#### **Professor Tony Crook (1944-2024)**

Participants at the event noted with regret the passing of [Professor Tony Crook](#) who made an enormous contribution to both understanding the practices of land value capture and in shaping government policies. He will be missed.

The [Australia-UK Housing Network](#) is a collaborative initiative bringing together leading academics, policymakers, and housing professionals from Australia and the UK. Our mission is to address shared housing challenges through cross-country dialogue, research, and policy innovation.