NATIONAL OFFICE
Level 6, 50 Clarence Street
Sydney NSW 2000
GPO Box 56
Sydney NSW 2001

T. 02 9922 4711 **F.** 02 9957 2484
E. info@consultaustralia.com.au
W. www.consultaustralia.com.au
ABN. 25 064 052 615

CONSULT AUSTRALIA

Driving Business Success for Consulting Firms in the Built and Natural Environment

19 September 2014

Rebuilding NSW
GPO Box 5341
Sydney 2001

To Whom It May Concern,

RE: Rebuilding NSW Discussion Paper

Consult Australia is pleased to provide some comments in response to the Department of Premier and Cabinet *Rebuilding NSW Discussion Paper.*

Consult Australia is the industry association representing consulting firms operating in the built and natural environment sectors. These services include design, engineering, architecture, technology, survey, legal and management solutions for individual consumers through to major companies in the private and public sector including local, state and federal governments. We represent an industry comprising some 48,000 firms across Australia, ranging from sole practitioners through to some of Australia's top 500 firms with combined revenue exceeding $40 billion a year.

Consult Australia's policy priorities for NSW reflect our member firms' focus on:

- Planning and developing the infrastructure pipeline;
- Releasing new funds for infrastructure investment;
- Supporting best practice procurement; and
- Creating a better business environment.

To gain a further understanding of our policy recommendations for NSW please refer to our policy platform, *Promoting Excellence in the Built Environment.* This document also highlights Consult Australia's support of the recycling of existing assets with the allocation of all funds released into Restart NSW. This includes our support for electricity reform and the lease of the NSW electricity grid providing significant flow-on benefits for infrastructure investment supporting state productivity.

Please find below our more detailed comment against those relevant questions posed in the Discussion Paper:

a. How can the Government help communities and businesses to better plan for the opportunities made available as a result of new infrastructure investment?

Moderating the Extremes of the Boom/Bust Cycle
With targeted intervention, there is an opportunity for governments to enhance productivity and moderate the extremes of the boom/bust cycle that has characterised infrastructure investment in years past. In the longer-term this will lower construction costs for future investment when an upswing in demand will require skills lost in the downturn. In this environment it is critical that we capitalise on our

investments to date, by supporting local industry and invest in productivity for the medium and long-term with a transparent well coordinated long term infrastructure pipeline.

Integrated Strategic Planning

There is an intimate relationship between planning and funding. Funding the vision, and financing of infrastructure and development is as much a planning issue as it is a finance issue. Too often, strategic planning is undertaken without sufficient consideration of the overall economic implications and financing mechanisms. The concept of achieving best value for money should not be the only driver of strategic planning, but it should be a key consideration.

Consult Australia believes good planning provides the potential to achieve integrated, sustainable outcomes more efficiently and provides a robust framework to guide funding, project development and delivery over a long period. Good planning must cascade through all levels of government to ensure the benefits of integrated planning. Effective spatial planning, development controls and approval processes at state and local levels of government provide a powerful means of understanding and resolving social, economic and environmental functions.

b. Which potential projects would create the greatest benefit in terms of economic growth, productivity and quality of life?

Applying Broader, Stronger Cost Benefit Analysis

Critical in assessing the merits of public investment in infrastructure is the application of broad cost-benefit analysis. Increasingly infrastructure projects are assessed individually, over relatively short time-frames and viewed as 'ready to proceed' only where utilisation is close to capacity. The benefits of a longer-term view of infrastructure investment, and governments' vital role in facilitating those longer-term benefits as part of a vision for our cities and regions, needs to be re-established.

Governments need to consider less easily quantified benefits that come with some forms of infrastructure investment. The transformation achieved in Bilbao through the construction of the Guggenheim Museum is often quoted and in some cases poorly emulated. Similarly, the Sydney Opera House demanded unforseen investment by the governments of the time. But there is no doubt that this is a similarly 'transformational investment' that has been recouped both economically and culturally in the decades that have followed—though this would not likely have been reflected in any cost-benefit analysis.

The criteria governing cost benefit analysis are generally not well understood by the public and are also subject to change and influence. Good governance is critical to resolving this issue, as outlined above. Equally, where appropriate, cost benefit analysis should be conducted across multiple projects, and have regard to wider economic benefits that come through agglomeration, jobs growth, and the delivery of more sustainable and liveable communities. It is this approach that has been successfully applied overseas, for example in London through the delivery of the Crossrail project, and which has resulted in significant new private sector investment.

c. Are there other ways to leverage NSW Government investment to expand infrastructure services across the State (eg: deliver more infrastructure for the same amount of Government funding)?

In considering opportunities to deliver better value for money for the NSW tax-payer we commend to you the recommendations from the Productivity Commission Report into Public Infrastructure. The Report is a valuable contribution to policy development supporting more intelligent and efficient use of infrastructure funding supported by smarter delivery.

To that end, our response to this question draws on those similar issues addressed through the Commission's work, in particular with reference to: identifying alternative infrastructure financing options; and, procuring the design and delivery of infrastructure, achieving greater value for money for the tax payer:

1. Alternative Infrastructure Financing

An Integrated Approach to Funding & Financing

Consult Australia's 2010 Report *Transporting Australia's Future* canvases a range of infrastructure funding and financing mechanisms emerging around the world that can provide sound and proven revenue streams to support infrastructure delivery.

Though not always well articulated in broader public debate, infrastructure will either be funded through public finance (taxes/debt), or user charges. This might be supported by asset sales, or asset sweating, but ultimately it is the tax-payer that foots the bill in either scenario. Alongside effective funding streams, innovative financing mechanisms should be structured to support infrastructure projects and to deliver more equitable, value-for-money outcomes for governments. Public Private Partnerships, including for example value capture and bond banks, provide new opportunities to leverage greater private sector investment across a range of projects. Consult Australia does not consider any single financing or funding policy will by itself provide a stand-alone solution to the substantial challenge for governments, however all options present opportunities for reform. To that end, some key issues for further consideration are outlined below:

Overcoming Institutional Resistance: Value Capture

Overcoming institutional resistance to more innovative policy solutions will be critical to delivering new financing mechanisms. It is important to realise that not every tool available to governments will be appropriate for every project. Nonetheless steps should be taken to ensure all options are available so they can be used where appropriate.

In the case of Value Capture, institutional resistance, and/or a lack of awareness of potential benefits may be one of the major barriers to implementation. Consult Australia has identified numerous opportunities and lessons that can be learned from overseas experience in successfully implementing value capture mechanisms. Our report, Capturing Value, published jointly with Sinclair Knight Merz in September 2013, sets out the ten success factors for value capture in Australia establishing a new reference point for a whole of government approach. [1]

[1] Consult Australia & Sinclair Knight Merz, Capturing Value, November 2010, www.consultaustralia.com.au

Fostering a More Informed Public Debate: Road User Charging

A comprehensive debate regarding the full application of road user charging, including the development of a national scheme, is long overdue in Australia. Reliance on traditional fuel excise as the key revenue tool to fund infrastructure is internationally recognised as having limited longevity, with diminishing reserves and increased fuel efficiency curtailing revenues. An infrastructure funding regime based on fuel taxes has no sustainable future.

Confusion in public debate about the difference between funding and financing limits governments' ability to make a persuasive case for a funding framework that supports an efficient equitable approach to user charging. There is no doubt the implementation of any systemic approach to user charging is a long-term goal, and again one contingent on the hypothecation of revenues to infrastructure projects. But achieving that goal is reliant on governments considering international experience, understanding the barriers to implementation and developing pilot schemes to support community engagement and understanding. The establishment of the Transport Reform Network[2] in 2012 bringing together over 35 key organisations with a united message is an important step towards delivering the consensus necessary to support more ambitious policy for new funding and financing approaches.

Creating New Markets for Private Investment

In 2013 Consult Australia, as part of the Urban Coalition[3], released A New Deal for Urban Australia outlining how a new infrastructure investment asset class could be developed offering lower risk, credit enhanced returns for both institutional and retail investors. A New Deal outlines how funds raised would capitalise a special purpose statutory investment vehicle to provide attractive seed finance to qualifying projects. The goal is to develop long-dated investment products that deliver guaranteed total returns more attractive than standard government bond rates: Credit enhancement through a tax rebate of 10 per cent and a capped government guarantee are proposed.

A New Deal represents the type of innovative thinking urgently required to better leverage public and private investment in infrastructure across urban and regional Australia. As the Committee undertakes this Inquiry, the Urban Coalition is currently building on the recommendations outlined in A New Deal with a view to developing a more comprehensive approach to infrastructure funding that draws on the experience of the United Kingdom's City Deals policy initiatives. This approach will propose new financing mechanisms delivered through a better understanding of the value and breadth of productivity benefits that flow, not just from individual projects, but from packages of projects and initiatives. This approach better reflects the true value of infrastructure investment supporting jobs and more liveable, productive and sustainable communities.

[2] www.transportreform.org.au

[3] Comprising: Consult Australia, Association of Building Sustainability Assessors, Australian Conservation Foundation, Australian Institute of Architects, Green Building Council of Australia, National Growth Areas Alliance, Planning Institute of Australia, Property Council of Australia, Urban Development Institute of Australia

2. Better Procurement

Proportionate Liability

The NSW Government's consideration of model legislation prohibiting contracting out of proportionate liability represents an enormous opportunity to improve the legislative and business environment supporting infrastructure procurement and delivery, supporting demonstrated cost savings, and ultimately better value for money outcomes for the taxpayer.

Under proportionate liability, each party's liability is proportionate to the loss that they are responsible for. Proportionate liability was introduced following the crisis in the insurance market around a decade ago, and drives better and more efficient project outcomes. However, the ability to contract out in some jurisdictions, particularly NSW, has undermined this reform, and a range of stakeholders including Consult Australia have been advocating for a uniform national position prohibiting contracting out of proportionate liability.

A full exploration of the case for reform of proportionate liability is provided in our detailed submission[4] to the NSW Government responding to the Standing Council of Law and Justice Model Provisions released earlier this year.

Contracting out of proportionate liability, or circumventing it through the use of indemnities, not only threatens the sustainability of our industry and other similar professional occupations, but also potentially exposes the community to uncertain and unmanageable risk and liability. The ability to contract out of PL is of national concern, where it leaves the market for professional indemnity insurance vulnerable to the same kind of market failure as occurred during the insurance crisis of 2001: with the creation of exposure to uninsurable risks beyond the control of policy holders.

Risk Allocation and Management

The allocation of risk between parties represents a significant issue impacting the cost and outcomes of procurement in relation to the built environment generally. Liability must be managed equitably, with regard to good risk management and the ability of professional indemnity insurance to respond to claims and cover losses. It is important to note that consultants generally have few assets beyond their insurance cover, and hence limited ability to cover liabilities that go beyond that level of insurance cover, or where insurance doesn't respond to a claim.

It is common practice amongst many clients (especially including public sector clients) to offload all risk and contractual liability to the service provider they are contracting, even where the impact of this move runs contrary to government policies. This includes contracting out of proportionate liability, as well as a range of other onerous terms that have been canvassed in other submissions to government.

One important consequence of clients allocating liability to service providers is that they believe they have managed the risk associated with their project, when in fact they have done the opposite by allocating it to a party less able to manage that risk for the overall benefit of the project.

Consult Australia is opposed to requirements of excessive liability contained in a contract on the basis that these requirements promote the acceptance of risks which are beyond the control of any consulting

[4] http://www.consultaustralia.com.au/docs/default-source/contracts-liability/proportionate-liability-reform-submission--march-2014.pdf?sfvrsn=2

firm. Such practices threaten the sustainability of our industry, produce uncertainty and higher costs for clients and do not promote good risk management to the expectation of the community.

The imposition of onerous clauses, including the contracting out of proportional liability legislation in contracts with these firms, put at risk the affordability and availability of professional indemnity (PI) insurance covering services provided by professionals and providing protection to the consumers of those services.

Such practices ignore good risk management and see the parties responsible assume unknown risks where insurance is not available to cover the liabilities sought. Such behaviour distorts the terms on which firms compete for work, and expose all parties to the possibility of project failure, unforseen costs and poor value for money outcomes.

Tendering Arrangements

The quality of tender documents is frequently a source of frustration to our industry. Firms frequently report briefs containing inadequate information, refusing to verify the data upon which a bid design will be based, or containing assumptions (or even errors) that require a "non-conforming" bid, amongst other concerns. For a firm considering a bid, the poor quality of tender documentation may lead to one of the following outcomes:

- Spending resources to test the brief's assumptions. These contribute to a greater design cost, and will likely be passed on to the client.
- Submitting a bid that doesn't produce the outcome the client really wanted, creating the need for project variations following engagement, and the increased cost this will create.
- Submitting a non-conforming bid that achieves the outcome the client was after, which may create probity concerns if other bidders weren't aware they had the option to do the same.
- Making the decision not to bid for the work, reducing competitive pressures, and reducing the options for innovation that might drive increased efficiency.

The quality of project briefs will be improved dramatically through increased investment in the initial concept design specification, including through engaging a consultant to develop or reverse-engineer the brief. It is vital that the brief be flexible enough to allow for innovation through contesting design specifications, but also that the brief verify the specifications put forward to save bidders duplicating that same work at great cost.

Suggestions in the recent Productivity Commission Inquiry into Public Infrastructure Report that government should contribute to tender costs for all bidders in exchange for owning the design, addresses our industry's concern that the cost of bidding for work is high, and often prohibitive, even when the contract is won. This arrangement has previously been used under some delivery models with a high level of private sector involvement. If this arrangement is used for design and construct projects, there is also scope to reduce some of the onerous risk management practices that often occur.

We also note the Productivity Commission's recommendations that Building Information Modelling (BIM) be used as a means to help lower bid costs. Australia's infrastructure design firms are well advanced in their adoption of BIM, but it must be noted that the adoption of BIM demands significant upfront capital investment by industry and ongoing training. The March 2014 report from McGraw Hill Construction, *The Business Value of BIM in Australia and New Zealand: How Building Information Modelling is Transforming the Design and Construction Industry,* explores these issues in more detail. Whilst industry adoption of BIM in Australia is strong, in comparison to other regions, Australia is still behind the mark in terms of commitment to, and use of BIM. There is a great opportunity for us to learn from elsewhere in the world, adopt best practice and deliver value for money for solutions for all parties. Just as the United Kingdom has exported BIM capabilities through Europe, so to could Australia become a centre from which BIM expertise could be exported through Asia.

d. How can regional communities share in the benefits of Rebuilding NSW, including economic productivity and jobs creation?

Consult Australia has worked with our members to highlight the long term and broader benefits of community engagement which will be the key to ensuring that regional communities can reap the benefits of Rebuilding NSW including economic productivity and jobs creation.

Consult Australia's *Guide to procuring engagement services*[5] explores the benefits and risks associated with effective engagement, and explains the procurement process for engagement services in detail, including:

Clear, relevant and timely communication
Clear, relevant, timely communication should help ensure that all participants (internal and external) have all the relevant information and are encouraged to participate in a productive manner. Effective engagement should innovate to connect participants and maximise their involvement.

Transparent decision making
Engagement should provide clear feedback processes and reporting that links the engagement with the decision making process, providing clarity and transparency for participants.

Inclusiveness
All relevant stakeholders should be identified, understood, respected and involved as early as possible and throughout the engagement process. Effective engagement will create an accessible environment that encourages diverse participation and creates new connections between participants.

Collaboration and cooperation
A cooperative approach should encourage participants to appreciate each other's perspectives and seek mutually beneficial outcomes.

Integrity
Genuine engagement will build trust throughout the process, identify shared benefits and outcomes beyond self-interest, and foster mutual respect.

Ultimately, effective engagement aims to add value and provide better outcomes in relation to policies, programs, services and projects and allows communities to embrace, plan and prepare for the changes upon them. This is particularly relevant in regional communities, where the local economy is not able to rapidly adapt to share the long term economic and productivity benefits of infrastructure investment in the manner that centralised communities can.

[5] Consult Australia 2013. Guide to Procuring Engagement Services, www.consultaustralia.com.au

Conclusion and Next Steps

Thank you for the opportunity to contribute to the work of this consultation into the works of Rebuilding NSW. This submission has highlighted a range of issues of concern to Consult Australia and our membership, including suggestions to improve outcomes for the Government as a provider of vital infrastructure.

We would be pleased to provide further information in person, or through other consultation mechanisms. If you would like to further discuss any issue raised in this submission, please contact me on alexia@consultaustralia.com.au or 02 8252 6708.

Yours sincerely,

Alexia Lidas
NSW Manager