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To whom it may concern

Thank you very much for the opportunity to comment on the Department of Planning, Housing and Infrastructure's Discussion Paper – A review of land acquisition in NSW (**Discussion Paper**).

The API comprises a membership cohort of 7900 Australian property professionals and 4000 firms. We advocate for our members with a range of stakeholders, providing the professional recognition each member deserves. Our members are active across all sectors of the property profession – in private practice and the public sector, including those working in valuation, property management, facilities management, property law, property education, property development, funds and asset management, town planning, property consultancy and advisory.

Opening Comments

The API congratulates the NSW government on its review of the process of land acquisition; noting the important role valuation and valuers play in the acquisition process. Valuers that are members of the API are bound by the highest standards of professional practice, ethical behaviour and professional conduct. The API is committed to upholding and lifting the qualities of integrity, experience, competency, professionalism and specialist expertise of API members.

The API recognises that valuation for the purposes of land acquisition is a highly specialised area, influenced by legal precedent, and requiring particular expertise. The API is committed to providing up to date and accurate education and training to its members in this area of valuation practice, thus ensuring that members who work in this area have a solid understanding of the land acquisition process in NSW.

The API notes that a “qualified valuer” is defined under section 59(2) of the *Land Acquisition (Just Terms Compensation) Act 1991* (“**the Act**”) as including a person who has membership of the API (other than student or provisional membership) acquired in connection with his or her occupation as a valuer. Qualified valuers are required to achieve Certified Practising Valuer (CPV) to undertake valuations without supervision. It would be more accurate to provide in the section 59(2) definition that a qualified valuer includes a member of the API that holds CPV.

More broadly, the API supports more prescription and clarity in the legislation to ensure accurate valuations and minimise dispute and litigation in the determination of compensation paid for land acquisition.

Addressing the options for reform as listed in the Discussion Paper:

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Theme 1 – Genuine Negotiation

The API is generally supportive of the proposed reforms outlined in this part of the Discussion Paper. In particular, the API supports the inclusion of a valuation report (or at least a breakdown of the offer) with the letter of offer as this will assist the landowner in assessing the reasonableness or otherwise of the offer.

However, it is important to acknowledge that no offer of compensation can be made without a valuation and no valuation can be made without the necessary information being provided by the landowner. Delays in the provision of this information can be a major factor in any delays in the production of a letter of offer.

The API also supports allowing landowners to apply for advance payment for legal, valuation or other relevant expert services to ensure a fair opportunity to landowners (who do not necessarily have ready funds for such advice) to obtain an expert assessment of the acquiring authority's offer.

Theme 2 - Mediation

The API supports an ability for landowners to access mediation to support acquisition by agreement. We acknowledge that both the acquiring authority and the landowner will need to have valuations prior to participating in any mediation.

Theme 3 – Clarify Compensation Provisions

The API supports clarification of the definition of “special value”; noting that many claims of special value are more appropriately dealt with as disturbance.

The API supports the expansion of disturbance costs to beyond legal and valuation costs to include town planning, quantity surveying, geotechnical and hydrology reports as well as the professional services of business valuers and accountants. Expert information in these reports is used by a valuer to prepare an accurate valuation which will ensure that appropriate and fair compensation is paid. The API also notes that other Australian land acquisition legislation allows for such costs to be claimed.

The API considers that the retention of the ability to claim for lost profits arising out of the relocation of a business or its extinguishment by acquisition would be fair for impacted landowners.

Regarding compensation for stamp duty paid for purchasing replacement land, we note that the Act currently only allows payment of stamp duty and other financial costs associated with purchasing replacement land when the person is being relocated, essentially precluding compensation for these costs to an affected investor or developer. An alternative approach would be to provide for a stamp duty exemption for the purchase of any replacement property, but consideration could be given to the payment of the other costs involved in purchasing replacement land, without limiting them to persons being relocated.

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The API supports, on the basis of fairness, the ability of strata lot owners to claim compensation for the acquisition of common property.

The API notes the proposed extension of solatium claims for tenants. The API would support more detailed guidance or prescription to assist in the determination of quantum for such solatium claims.

The API supports clarification of the definition of “reinstatement compensation” and seeks a more prescriptive definition of “limited market” in the legislation.

The API supports clarification of the compensation available for impacts of substratum acquisition and a right to claim costs (including valuation costs) where an acquisition process is abandoned before issuing a proposed acquisition notice.

Theme 4 - Hardship

The API supports the proposal to allow an applicant to claim costs (including legal costs and valuation fees) to support a hardship application.

Theme 5 – NSW Valuer General determinations

The API appreciates the need for timely compensation determinations while supporting the proposed “stop the clock” mechanism. The API also supports the mandating of the payment of the services fee by acquiring authorities to the NSW Valuer General.

Theme 6 – Legislative amendments to clarify requirements

The API supports the proposed amendments to clarify the meaning of “land” and “interest in land” considering the decisions of *Olde English Tiles Australia Pty Ltd v Transport for NSW* [2022] NSWCA 108 and *Dial a Dump Industries Pty Ltd v Roads and Maritime Services* [2017] NSWCA 73.

Theme 8 – Consistency in government acquisition processes

The API supports the development of minimum standards and requirements, codes of practice, templates and guidelines for acquiring authorities and their contractors. The API supports, and is willing to work in partnership with the NSW government to provide, standard training in acquisition processes (including valuation) to acquiring authorities.

The API supports a proposal to strengthen guidance on native title and Aboriginal land rights when acquiring land.

Sydney

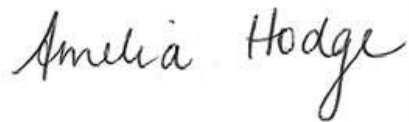
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Yours sincerely



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