

Australian Property Institute Limited

SUBMISSION

PRODUCTIVITY COMMISSION ISSUES PAPER: DATA AVAILABILITY AND USE

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Contents

1. Preface.....	3
2. Introduction	3
3. Comments and Recommendations	4
3.1 Public Sector Data	4
3.2 Collection and Release of Public Sector Data	5
3.3 Questions of Data Linkage	7
3.4 High Value Private Sector Data	7
3.5 Access to Private Sector Data	8
3.6 Resource Costs of Access	9
APPENDIX 1.....	10
APPENDIX 2.....	11

1. Preface

- 1.1** The Australian Property Institute (the Institute) is the leading and contemporary membership organisation for property professionals which develops and supports our members to advise the community and business. The Institute is impartial, objective and independent.
- 1.2** The Institute members can be found across all sectors of the property profession, in private practice and in the public sector. This broad base of qualified and skilled professionals is unique to the Institute. The Institute is committed to building and maintaining a strong base for the future of the property profession through broadening the expertise and knowledge of membership.
- 1.3** This submission to the Productivity Commission by the Institute on the Issues Paper entitled *Data Availability and Use*¹ is part of ongoing research efforts and dissemination of factual and dispassionate information about property rights in Australia. In preparing this submission, the Institute has been assisted by the Spatial Industries Business Association, NSW Regional Management Group (SIBA) as part of ongoing close joint collaboration between the property profession and spatial science professionals.
- 1.4** In addition, the Institute records its appreciation for the invaluable and numerous discussions that occurred during the preparation of the submission with members of the Submission Committee. This submission however does not necessarily represent the views of any of the individual members of the Submission Committee, sitting strictly extra-curially.

2. Introduction

- 2.1** This submission responds to the PC's *Issues Paper Data Availability and Use* especially the following sections: **Public Sector Data**, specifically questions at p. 14, **Private Sector Data**, specifically question at p. 18, and **The Resource Costs of Making Data Available**, specifically questions at p. 22. The Institute welcomes the opportunity to respond to the *Issues Paper* and in particular the provision of this submission by the Institute to the Commission.
- 2.2** A key question of this inquiry by the Commission as stated in the *Issues Paper* is to ascertain "the benefits and costs of increasing the availability and use of public and private data by Australian individuals and organisations, including individual's access to data about themselves"². That key question is supported by the Institute, and in particular it is noted with approval that the inquiry will also provide recommendations on "increasing data access while giving appropriate attention to ways to enhance individual's and businesses' confidence and trust in the way data is collected, stored and used, with particular focus on privacy and data security"³.
- 2.3** The property profession (and spatial science professionals) contribute to using and value-adding government data on a daily basis. The Institute (and SIBA) support open data by default within all levels of government, however it is considered that the following three key issues need to be addressed from the outset by the Commission, namely:

¹ Productivity Commission (PC) *2016 Data Availability and Use*, Issues Paper (Canberra: April)

² PC, 2 para. 1 "What has the Commission been asked to do?"

³ PC, 2 para. 1

- (a) For Open Data to be of real value to the community, it needs to be available through non-proprietary Application Programmable Interfaces, or equivalent to 3-star maturity rating as per the 5 Star Linked Open Data model. This should be a minimum maturity target;
- (b) It is noted the *Issues Paper* focusses on data quality and data quality (metadata) statements, however the Institute (and SIBA) consider that users are the assessors as to whether data quality levels are fit for a specific purpose. It is recommended that publishing data (with a quality statement) ought to take priority over improving data quality; and
- (c) Prioritisation of high-value datasets for publication should be undertaken in consultation with bodies such as the Institute (and SIBA), other industry stakeholders, and the broader community.

2.4 The following section of this submission responds to the questions posed in the *Issues Paper*, however the Institute looks forward to providing any further advice and consultation on this submission to the Commission if requested. For any further information or clarification, or to arrange a meeting please contact Amy Guy, National Manager – Membership Services and Advocacy

3. Comments and Recommendations

3.1 Public Sector Data

- ***What public sector datasets should be considered high-value data to the: business sector; research sector; academics; or the broader community?***
- ***What characteristics define high-value datasets?***
- ***What benefits would the community derive from increasing the availability and use of public sector data?***

Response:

The notion of high-value public sector data requires the identification at a particular point in time of the value attributed by stakeholders, both providers and users, but this identification may not be indicative of the future value of public sector data sets. For example demographic data which was collected 50 years ago may be regarded as having high-value to a land use planner undertaking a longitudinal study of property development trends, but the same data may be of little use to transport planners involved in the provision of infrastructure to meet current or near future population growth. Great care needs to be given to the identification of data sets within the categorisation of high-value public sector data and also the discarding of data sets which are no longer considered to be high-value.

The availability and use of public sector data can only benefit the community if any increase in either availability or use is coupled with consistency across local, state and Commonwealth jurisdictions. Such jurisdictional consistency needs to also be coupled with consistency in the format and formatting of available public sector data in a manner ensuring maximum transparency and especially accessibility.

In the Institute's submission of December 2015 to the Commission's *Issues Paper: Intellectual Property Arrangements*, it was stated:

...It is also observed by API that the development of sophisticated data such as 3D data information contracted by local government (such as the City of Sydney) cannot be readily obtained or shared.

However, the locking down of such information represents a significant disadvantage for property owners, potential property owners or even emergency services. The Building Information Model (BIM) which is in itself a 3D data representation, provides not only volumetric data as well as traditional plans, and if freed of intellectual property protection restraints could be used beneficially for the whole life cycle of buildings.⁴

The above example starkly reveals how public sector data sets such as that held by local government are currently not readily available for interested stakeholders such as property owners, the research sector, or the broader community. Clearly increasing the availability of such prosaic data sets on property matters would, if freed from existing constraints provide significant broad community benefits.

Hence, it continues to be a concern to the Institute that there remains systemic problems both within jurisdictions and between jurisdictions as to the ready availability and hence use of public sector data.

3.2 Collection and Release of Public Sector Data

- ***What are the main factors currently stopping government agencies from making their data available?***

Response:

The Institute (and SIBA) believe that the main factors inhibiting the availability of public sector data are:

- (a) Funding for the release and sustainment of the data sets and underlying infrastructure to provision machine-readable services:
 - Agencies are only really funded to provide gazette services and there is rarely any recognition of the additional costs required to release, maintain and service open data initiatives
 - Without proper funding these data sets may wither, and have a reduced utility to citizens, businesses and other agencies
- (b) Internal policies regarding security and privacy are issues that can be addressed by:
 - An 'open by default' policy put in place, and agencies will need to provision a case as to why specific data cannot be released
 - Remediation options made available to these agencies that will allow them to release sensitive data e.g. the ABS Census aggregates individual data into Statistical Areas to remove privacy issues
- (c) Culture is a significant impediment to releasing data not due to malicious reason but simply a range of concerns from:
 - Fear of scrutiny and identification of errors
 - Professional obfuscation – “this is complex data that only we can understand”
 - The release of data is not within the organisation’s remit

⁴ Australian Property Institute (2015) *Submission to the Productivity Commission on Intellectual Property Arrangements Issues Paper* (Sydney: 9 December), 5.

- Meeting the cost of data capture and management leading to the assumption of ownership by the organisation
- (d) Third party licensing can be an issue, particularly when third parties are used to capture initial baseline data sets. This issue may be ameliorated through provisions for fair re-use coupled with clear but reasonable compensation/commercial terms agreed to early in licensing negotiations

- ***How could governments use their own data collections more efficiently and effectively?***

Response:

The Institute (and SIBA) consider that more efficient and effective use of public sector data collections could occur through a framework of data collaboratives. The basis of such collaboratives is unsurprisingly open data sources and such efforts could offer multiple pathways to overcome existing barriers to efficient and effective use of data sets in the following ways:

- (a) Within jurisdictions and between jurisdictions (e.g. government to government)
- (b) Government to business in a mutually beneficial commercial arrangement
- (c) Government, business and tertiary/R&D in a mutually beneficial commercial arrangement
- (d) Business to tertiary/R&D in a mutually beneficial commercial arrangement
- (e) Citizens to business in a mutually beneficial commercial arrangement

Such a collaborative approach would facilitate the reduction in the duplication of capture, analysis and publication of data sets, and also provide a better foundation for the maintenance of existing public data sets.

- ***Should the collection, sharing and release of public sector data be standardised? What would be the benefits and costs of standardising? What would standards that are 'fit for purpose' look like?***

Response:

It is common ground that there should be ease of discovery, re-use and capture of public sector data, and the benefits of standardisation of public sector data lies in ready access to such data. Further, the central open data principle should be availability to the educated but lay enquirer, incompleteness of data should not inhibit access to data, and industry standards and service levels should be standardised.

- ***What criteria and decision-making tools do government agencies use to decide which public sector data to make publicly available and how much processing to undertake before it is released?***

Response:

The Institute (and SIBA) consider that the operative principle for public sector data should be 'open by default' subject to consideration of privacy, cultural sensitivity and security. Any issues identified should be

documented, and if possible identification of remediation and/or mitigation of risks that could allow partial or full release of data.

Quality should not be a barrier to publication as the fit for purpose and subsequent required quality should be determined by users.

- ***What specific government initiatives (whether Australian Government, state, territory or local government, or overseas jurisdictions) have been particularly effective in improving data access and use?***

Response:

As regards specific initiatives, the Institute (and SIBA) have been closely involved in the NSW open data policy. viz. URL -> <http://bit.ly/2ao3ABO>

3.3 Questions of Data Linkage

- ***Which datasets, if linked or coordinated across public sector agencies, would be of high value to the community, and how would they be used?***
- ***Which rules, regulations or policies create unnecessary or excessive barriers to linking datasets?***
- ***How can Australia's government agencies improve their sharing and linking of public sector data? What lessons or examples from overseas should be considered?***

Response:

There is a preference for an 'open by default' policy simply because no one can assume the utility of the data at a particular point in time or in the future. Hence, the knowledge or identification of the utility of data varies from stakeholder to stakeholder, and does not reside within a specific agency. Unnecessary or excessive barriers to linking data sets arise from outdated interpretations of copyright and legislation used to avoid publication of data.

3.4 High Value Private Sector Data

- ***What private sector datasets should be considered high value data to: public policy; researchers and academics; other private sector entities; or the broader community?***
- ***In each case cited, what characteristics define such datasets?***
- ***What would be the public policy rationale for any associated government intervention?***
- ***What benefits would the community derive from increasing the availability and use of private sector data?***

Response:

High value private sector data is often confidential and the Institute stated in its submission of December 2015 to the Commission's *Issues Paper Intellectual Property Arrangements*:

...In the Issues Paper it is proposed that there are seven different forms of intellectual property rights⁵. It is the view of API that an eighth form exists, namely private agreements. The Issues Paper, however, regards private agreements between firms as alternatives to intellectual property rights. The API considers that “secrecy or confidentiality arrangements”⁶ as identified in the Issues Paper form a much larger part of the manner in which intellectual property is maintained in Australia for the purposes of trade secrecy or more often, financial confidentiality.⁷

The ownership of high-value private sector data such as that identified above presents a serious problem to those creating the private sector data. The Institute remains concerned with the significant tension over the intellectual property embedded in private sector data, and the desirable outcome of availability and use of such data. The Institute suggested in the above mentioned submission to the commission as follows:

...Arguably, the existing private agreements-based system should be brought under the aegis of the existing legislative framework to ensure fairness and transparency.⁸

3.5 Access to Private Sector Data

- ***Are there any legislative or other impediments that may be unnecessarily restricting the availability and use of private sector data? Should these impediments be reduced or removed?***
- ***What are the reasonable concerns that businesses have about increasing the availability of their data?***
- ***What principles, protocols or legislative requirements could manage the concerns of private sector data owners about increasing the availability of their data?***
- ***Should the collection, sharing and release of private sector data be standardised in some way? How could this be done and what would be the benefits and costs? What would standards that are ‘fit for purpose’ look like?***
- ***To what extent can voluntary data sharing arrangements — between businesses / between businesses and consumers / involving third party intermediaries — improve outcomes for the availability and use of private data? How could participation levels be increased?***
- ***Would such voluntary arrangements raise competition issues? How might this change if private sector information sharing were mandated? Is authorisation (under the Competition and Consumer Act 2010 (Cth)) relevant?***
- ***What role can governments usefully play in promoting the wider availability of private datasets that have the potential to deliver substantial spillover benefits?***
- ***How can the sharing and linking of private sector data be improved in Australia? What lessons or examples from overseas should be considered?***
- ***Who should have the ownership rights to data that is generated by individuals but collected by businesses? For which data does unclear ownership inhibit its availability and use?***

⁵ Productivity Commission (2015) *Intellectual Property Arrangements: Productivity Commission Issues Paper (Issues Paper)* (Canberra) October, 5.

⁶ PC (2015), 10 (Box 4)

⁷ Australian Property Institute (2015) *Submission to the Productivity Commission on Intellectual Property Arrangements Issues Paper*. (Sydney 9 December), 4.

⁸ Australian Property Institute (2015), 7.

Response:

The above raft of questions poses, as mentioned in section 3.5 above, a somewhat confronting issue of increasing access to private sector data whilst allowing the private sector an incentive to provide availability of their data sources but on clear commercial terms and rates to ensure an open market. This is also necessary to avoid confusion with freely available data sets, which are also available at little or no cost to the user. It is recommended by the Institute (and SIBA) that a commercial marketplace could be established within government data discovery portals which would allow any users an ability to purchase private sector data, under standardised commercial data access terms. Protection of private sector data from unfair trading and loss of valuable intellectual property remains a concern which was the crucial theme of the Institute's submission on intellectual property arrangements in December 2015⁹.

3.6 Resource Costs of Access

- *How should the costs associated with making more public sector data widely available be funded?*
- *To what extent are data related resources in agencies being directed towards dealing with data management and access issues versus data analysis and use?*
- *What pricing principles should be applied to different datasets? What role should price signals play in the provision of public sector data?*
- *Is availability of skilled labour an issue in areas such as data science or other data specific occupations? Is there a role for government in improving the skills base in this area?*

Response:

Unsurprisingly the issue of costs remains a significant barrier to an 'open by default' setting within the various jurisdictions of government. Similarly not only costs but intellectual property protection remain significant barriers of considerable concern to the providers of private sector data sets. The Institute (and SIBA) consider that differentiation of individuals accessing data against high volume commercial data is crucial. Where a commercial operation is re-using data at a high volume and velocity potentially straining the underlying infrastructure, then options for amelioration are considered necessary. Such options could cover a range of potential actions such as the entering into of a public/private or private/private partnership, denial of access to the heavy commercial user, or commercial access for certain levels of data use.

⁹ The Australian Property Institute (2015) *Submission to the Productivity Commission on Intellectual Property Arrangements Issues Paper*. (Sydney 9 December).

APPENDIX 1

AUSTRALIAN PROPERTY INSTITUTE INC.

The Australian Property Institute, (formerly known as the Australian Institute of Valuers and Land Economists), has enjoyed a proud and long history. Originally formed in South Australia over 87 years ago in 1926, the Institute today represents the interests of approximately 8,000 property experts throughout Australia.

The Institute, the nation's peak professional property organisation and learned society, has been pivotal in providing factual, independent and dispassionate advice on a broad range of property issues addressed by the Commonwealth and State/Territory governments and their agencies since the Institute was formed.

In addition, the Institute's advice has increasingly been sought by international bodies such as the United Nations, the Food and Agriculture Organisation (FAO) and the World Bank, evidencing a level of expertise within the Institute and its membership, which is recognised regionally and globally.

As a professional organisation the primary role of the Institute is to set and maintain the highest standards of professional practice, education, ethics and discipline for its members. Institute members are engaged in all facets of the property industry including valuation, property development and management, property financing and trusts, property investment analysis, professional property consultancy, plant and machinery valuation, town planning consultancy, property law, research and education.

Membership of the Institute has become synonymous with traits and qualities such as professional integrity and client service, industry experience, specialist expertise, together with tertiary level education and lifelong continuing professional development.

APPENDIX 2

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