Regulation of the Housing Construction Sector and Related Issues

A submission prepared by the Property Council of Australia for the Victorian Competition and Efficiency Commission

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The Property Council of Australia

The Property Council of Australia represents the broad interests of the commercial property sector. The Property Council is the largest and most influential industry organisation within its sector and has in excess of 2000 member companies throughout Australia, with approximately 500 of those in the Victorian Division, representing property assets of over $140 billion nationally.

Our interest in this issue

The Property Council’s interest in this issue is fourfold:

- A significant portion of Property Council members develop residential property or risk capital in the residential sector. The Property Council in Victoria has a Residential Development Committee with membership comprising the leading companies in the residential market in Victoria.

- The Property Council supports the promotion of rational regulation; regulation which is consistent with interstate jurisdictions, complementary to other relevant regulation and that attracts investment to the state rather than hindering it.

- The Property Council supports regulation that protects the community by providing minimum standards. We believe that innovation is stifled by regulation that does not reflect market reality, or is too onerous on the industry.

- Any regulations prescribed by the Victorian Government must also be met by its own departments and agencies.

The Property Council’s advocacy agenda for the residential sector is focused on major policy issues, rather than the day to day operation of the residential construction industry. On those matters, the Property Council looks to the Master Builder’s Association and the Housing Industry Association to provide advice to Government.

Inquiry Scope

The Property Council is disappointed by the narrow terms of reference. The key issues for the sector are broader than those listed in the Issues Paper and the terms of reference. The critical issues for the property sector are precisely those excluded from the terms of reference being:

- Taxation arrangements (Stamp duty, land tax, council rates, valuations)

- Land supply issues (Melbourne 2030 implementation, urban growth boundary, infrastructure provision)

- Industrial relations (including the new OH&S legislation)

- Native vegetation management (particularly within the Urban Growth Boundary)

The Property Council has provided its policy position on these matters in an appendix to this submission.
Response to Issues Paper

2.1 Main legislation and regulation landscape

The Property Council agrees that there is growing evidence that local governments are extending their influence into building regulations over and above those contained in the Building Code of Australia. This is most evident in sustainability principles and in disability access. Some local councils are trying to achieve certain levels of building standards through their planning provisions.

The potential for 79 different local government regulations on such matters is a concern to the industry. Inconsistent local government regulations cause time delays and costs to achieve compliance. It also creates more possibilities for appeals and objections, further delaying development projects. Ultimately these costs will be passed on to the end user, reducing housing affordability. The Property Council supports the administration of building regulations by the Building Commission, not at the individual local council level.1

2.2 Main Regulatory Bodies

The Property Council supports the current arrangements and division of responsibility between regulatory bodies.

2.3.1 Regulation Affecting Housing Construction

Most of the questions asked in this part of the issues paper are operational questions, which is outside the scope of the Property Council’s policy agenda. However we would like to comment on the following issues:

Building approvals and private certification

The Property Council believes the private certification system has provided benefits to both local councils and the development industry by providing a competitive environment. This has streamlined the approvals process and therefore provides cost savings.

Regulation arising from local governments

As mentioned earlier in this submission, the Property Council is concerned about the incidence of local governments introducing their own building regulations. It undermines the objectives of the Building Code of Australia, and lacks the rigour associated with introducing regulations at the state or national level.

The Property Council members have provided anecdotal evidence to suggest an increase in local government intervention in building regulations; however the full extent is not measured.

The Property Council does not have a comment on the dissemination of proposed local law amendments.

The Property Council strongly believes that the processes for introducing new regulations affecting housing construction at a local level are not sufficient to take into account the full costs and benefits involved. The Productivity Commission has made a number of recommendations relating to this issue2. The Property Council supports consideration of these recommendations by the States and Territories collectively.

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1 The Property Council is an active participant in the Access to Premises Standards currently being overseen by the Australian Building Codes Board. We believe disability access regulation (both for public buildings and residential dwellings) should be developed at a national level to achieve consistency in both the regulations and the design outcomes in each state.

Regulation arising from standards

The Property Council is engaged in dialogue with Standards Australia about improvements to the process of developing new Australian Standards. This issue should be managed at a national level through Australian Building Codes Board (of which state regulators are members), Standards Australia, and industry groups.

Deemed to satisfy regulations

The Property Council believes any projects to enhance performance or prescriptive standards should take place through the Australian Building Codes Board in conjunction with relevant stakeholders. If Victoria were to use its own deemed to satisfy solutions in parallel with the BCA, this would undermine the effectiveness of the BCA and the objective of national consistency.

The operation of regulatory bodies

The Property Council believes the regulatory bodies in Victoria such as the Building Commission and the Plumbing Industry Commission work in an efficient and open manner. The Property Council works more closely with the Building Commission than the Plumbing Industry Commission, and supports the Building Commission’s commitment to building excellence and its approach to stakeholder engagement.

The Building Commission’s website, brochures and courses are effective communication tools.

Building Permit Levy and other levies

The property industry is the most heavily taxed sector in Australia. The Property Council encourages transparent reporting on the use of the building permit levy, the HIH levy and the BACV levy.

The Property Council did not support the introduction of the BACV levy to fund the building dispute resolution service. A large portion of the levy collected is from commercial builders, who would receive little, if any benefit from the BACV service. The HIH levy and the BACV levy should reviewed regularly to determine their necessity.

Supply of skilled workers

The Property Council is concerned at the ageing demographic of the building sector. Shortages in skilled workers contribute to construction costs. The Property Council advocates greater investment into apprenticeship and traineeships to ensure the long term viability of the sector.

In addition, the shortage of skilled town planners and the high turnover rate at local councils causes delays for development applications and therefore increases costs. This is a major issue for the wider development industry, as well as the housing sector.

2.3.3 Development contributions system

The recent amendments to legislation governing the development contribution systems have not been in place long enough to determine their impact.

Industry has expressed doubt that the new controls will adequately ensure development contributions are spent on related infrastructure. The Property Council will be monitoring this issue.

The Property Council believes the current system does not provide adequate protection against home-buyers paying twice (or multiple times) for infrastructure. To prevent or reduce this incidence, a fundamental shift in the way the state and local governments fund
infrastructure must take place. Funding infrastructure through development contributions, rates, levies and state taxes is inefficient and unsustainable.

The increasing infrastructure demands placed on local councils are significant. The Property Council recently commissioned research by the Allen Consulting Group\(^3\) into financing Victoria’s infrastructure. The report found development contributions were the least economically beneficial option to fund infrastructure. The Property Council’s position on funding infrastructure is that governments should look to options other than recurrent expenditure and developer levies. The use of debt and public private partnership should be investigated.

\(^3\) The Allen Consulting Group *Financing Public Infrastructure in Victoria* 2004
Appendix 1: Other issues impacting the sector

The critical issues for the property sector are precisely those excluded from the inquiry’s terms of reference being;

- Taxation arrangements (Stamp duty, land tax, council rates);
- Land supply issues (Melbourne 2030 implementation, urban growth boundary, infrastructure provision);
- Industrial relations (including the new OH&S legislation); and
- Native vegetation management (particularly within the Urban Growth Boundary).

Taxation

Property is the highest taxed sector in Victoria. The following is a list of state taxes on property:

- Land tax;
- Land transfer duty;
- Mortgage duty;
- Rental business duties;
- Other miscellaneous duties;
- Debits tax;
- Metropolitan improvement rate;
- Property owners contribution to fire brigades; and
- Financial accommodation levy.

This list excludes other levies such as the Building Permit levy, HIH levy, BACV levy, council rates, development contributions, open space contributions etc.

Such taxes affect the viability of projects and are ultimately passed on to the end-user. The Victorian Government will collect over $3.5 billion in tax revenue from the property sector this financial year. Not only are the taxes an impost on business, they are not competitive with other jurisdictions.

For example, Victoria’s top marginal land tax rate is currently four percent. This compares with 1.4 percent in New South Wales and 1.8 percent in Queensland. This is an annual tax based on the unimproved value of the land and does not correlate with a taxpayer’s income or capacity to pay. Land tax is a burden on residential developers, who may hold land for a number of years prior to development. This annual cost will be ultimately passed on to the home owner. Independent research by Access Economics has shown Victoria’s land tax system is inefficient and is in need of reform.

When the GST was introduced, all state governments signed an Intergovernmental Agreement (IGA) committing to review the need for the retention of state taxes such as stamp duties by July 2005. Research by Access Economics has shown the economic benefits of reforming inefficient nuisance taxes such as stamp duties. The GST was intended to provide a revenue stream for state governments in exchange for the phasing out of state taxes. While

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5 The Revenue costs and net economic benefits of restructuring land taxation Access Economics 2004
6 Impact of changes to Victorian Business Taxation Access Economics 2000
some reforms have taken place, the state taxes that would deliver the most economic benefits (such as stamp duty on commercial transactions) remain.

State taxes, combined with myriad of rates and levies are inefficient, inequitable and impact on housing costs in Victoria.

Land supply issues/Melbourne 2030
The Property Council supports the objectives of Melbourne 2030. However there are certain aspects of Melbourne 2030 that impact on affordability. They are:

- The introduction of the Urban Growth Boundary (UGB);
- Shortage of skilled planners to process development approvals within the Melbourne 2030 framework;
- A failure to recognise construction costs will impact on the success of medium-high density living; and
- A lack of communication to the general public of the benefits of Melbourne 2030.

The Urban Growth Boundary has inflated land prices in the outer areas of Melbourne. This immediately impacts on first home owners who typically purchase in these areas.

The shortage of town planners is well documented. The introduction of Melbourne 2030 as well as a property boom has placed additional burdens on planners. The result is delays and costs for developers, but also “Mum and Dads” who may be seeking a development approval for a renovation or for owner-builders trying to build their own home.

Currently construction costs for apartments are uncompetitive compared with detached houses in the outer suburban areas. This undermines the policy of increasing housing density in or near activity centres. Current market forces indicate that quality apartments cannot be built for under $400,000. This is uncompetitive in outer suburban areas.

The community has not fully embraced the drivers behind increasing density in Melbourne. This has led to appeals, protests, court case and projects being abandoned. This undermines the potential for a variety of housing stock at affordable rates being available across Melbourne.

The solutions for such issues range from better communication with the community to substantial investment in the planning process. The Property Council supports the Development Assessment Forum (DAF) to encourage the harmonisation of Australian development assessment systems through the promotion of leading practice regulatory reform. The Property Council acknowledges the Victorian Government’s participation in DAF and advocates the adoption of the DAF model in Victoria.

Industrial Relations
The Property Council is concerned that the recent changes to the Occupational Health & Safety Act could negatively impact on housing costs. Of particular concern is the capacity for union right of entry onto domestic construction sites. This could create delays and costs to the domestic construction industry. The Property Council is currently in discussions with the Victorian Workcover Authority to ensure the administrative protocol surrounding this legislation is appropriate.

Native Vegetation Management
The Property Council, Housing Industry Association and the Urban Development Institute of Australia prepared a joint submission on proposed guidelines to native vegetation management. Problems arise when sites which are earmarked for development (particularly within the Urban Growth Boundary) are found to have native vegetation that must be protected.
There is a broad industry view that the Net Gain Framework and the Melbourne 2030 policy do not appear complementary in areas likely to be subject to future urban development. Of particular note is the likelihood that land inside the Urban Growth Boundary (UGB) is unlikely to produce the ‘dwelling yield’ projected in Melbourne 2030 as a result of the policy. Consequently the Framework is likely to result in a push for more changes to the UGB than might have been otherwise anticipated.

At this stage the development industry will be faced with an increase in lead times for the consideration and issuing of planning permits, where permission for vegetation removal is sought; a potential increase in VCAT hearings due to councils failing to make a decision; and an increase in the financial cost imposed by the ongoing management and purchase of vegetation offsets.

It is important to note that, as always, the additional costs associated with development will ultimately impact on the end user. In the case of the housing industry this means the home buyer. Instead of the Victorian community paying for the actions of the historical land clearing practices, the Net Gain process targets the sectors that are most easily controlled through planning regulations and from an affordability perspective, more exposed to additional charges by default. In light of the State Government announcement for urban growth boundaries where it contains urban development, the industry now finds itself in a situation where the development of future greenfield and infill developments will constrain how land can be developed.

The Property Council acknowledges the complexities associated with this issue, and will continue to work with the Department of Sustainability and Environment to achieve certainty for the industry and the community alike.

**Conclusion**

The factors that impact on housing affordability are numerous. The Property Council is disappointed the scope of this inquiry was limited primarily to building regulations. While some efficiencies in the regulatory framework may be possible, there are other fundamental issues such as Victoria’s tax system and the planning environment which directly contribute to the cost of housing in this state, and therefore should be considered.

**Next Steps**

The Property Council would be pleased to meet with the members of the Inquiry to further discuss this submission.

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