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Australia's property industry
Creating for Generations

30 July 2021

The Hon Dominic Perrottet
Treasurer
52 Martin Place
SYDNEY NSW 2000

By email: TaxReformTaskforce@treasury.nsw.gov.au

Dear Treasurer

NSW Property Tax Proposal – Progress Paper

The Property Council welcomes the opportunity to comment on the NSW Property Tax Proposal Progress Paper released in June 2021 (the Progress Paper). We support the work that has been done to date in progressing the property tax reform conversation and look forward to continuing this important policy reform.

Economic challenges posed by COVID

Since the release of the Progress Paper in June, we have unfortunately seen COVID outbreaks across the state which have triggered lockdowns and related restrictions. The property industry has responded by ensuring premises are COVID-safe, supporting small business tenants and managing the temporary shutdown of construction sites in and around Sydney.

We are committed to working with government to ensure NSW is able to navigate this current crisis and be in the best position to bounce back once it is safe to do so.

In the immediate term, this includes ensuring we can reopen construction safely and continue to undertake essential services. Once restrictions are eased, it will be critical to redouble our efforts on priority measures to support our economic recovering, including:

- reactivating CBDs and encouraging people to support the arts, hospitality and retail sectors,
- unblocking our planning systems to fast track much needed housing supply – as noted in the recent NSW intergenerational report, we will need to add 42,000 homes per year to meet demand, and a failure to do so will greatly exacerbate housing affordability pressures, and
- abandoning the "Retain and Manage" policy for the *Metropolis that works* with a clear path to boost housing supply in Sydney's Eastern Suburbs.

We see the above as clear priorities for the next 6 months. It is also critical that the Government remain committed not to introduce new or higher taxes on business and investment. In the short term, such measures would be a disastrous blow to business confidence. And in the medium term it would be an additional drag on the economy during a time of recovery, when every additional investment dollar is needed.

Response to Progress Paper – reform principles set out in March submission

As we noted in our previous submission, dated 19 March 2021, the Property Council strongly supports the NSW Government's intention to phase out stamp duty for the good of the wider economy, however, we appreciate the enormity of the challenge to design a replacement tax that is not itself distorting or economically harmful. The Progress Paper acknowledges the complexity of the issues to work through and we welcome the Government's decision to release this additional paper and not rush the policy design process.

Our submission drew on industry's experiences in the ACT and put forward seven principles which should be reflected in the NSW property tax reform model. We have set out below our comments on how the current proposal compares against those seven principles.

Principle	Comments
1. Genuine opt-in choice	We welcome the Government's commitment to providing taxpayers the choice to opt properties into the regime – this is a key feature of the policy design and ensures there is no risk of double tax where a taxpayer becomes subject to both stamp duty and land tax, and importantly allows taxpayers to determine which regime best suits their circumstances.
2. Reform does not result in higher taxes for commercial property sector	We are concerned that in the period between the November Consultation Paper and the June Progress Paper there has been the introduction of a 0.3% surcharge for aggregate landholdings above \$1.5m. This would mean that the effective tax rate on most commercial property would be 2.9%. The introduction of a surcharge, before the reforms even begin, heightens industry's concern that the reforms will result in the commercial property sector bearing a disproportionately higher share of the tax reform burden – similar to the situation that has occurred in the ACT in the first 8 years of their reform plan. This makes it all the more critical that the 'choice' principle is maintained.
3. Recoverability of property tax for commercial property owners	We welcome the Government's decision to allow commercial property owners to recover property tax where they have leases that permit pass through of outgoings. The Progress Paper notes that the amount of property tax passed through cannot exceed the amount of land tax that would otherwise be payable, subject to any written agreement between landlord and tenant. It will be important to work through the detail of this restriction to ensure it does not impose undue financial or compliance burdens on either landlords or tenants.
4. No increase in cost of housing development	We note that the Progress Paper is proposing to give developers the choice to pay property tax or stamp duty, with the commercial rates of property tax applying during the development phase. Once a development is opted into the property tax regime, the resulting dwellings will remain in the regime

	even if the development site is subdivided. Residential rates would only apply once the property is capable of being used as a dwelling. We are concerned that the combination of the 2.6% commercial property rate, plus the new 0.3% surcharge, could be significant costs to be borne by developers. This makes it even more critical to maintain the 'choice' principle. It is also not clear how foreign-owned Australian based developers will be treated – see further comments below.
5. An 'open to all' reform model – no transition thresholds	The Progress Paper notes that, due to fiscal constraints of the reform, price thresholds will be introduced that will restrict the number of properties initially eligible to opt in to the regime. However, no details are provided on the level at which these thresholds will be set for either residential or commercial properties. This is a critical feature of the regime, and details should be provided to allow the market to understand the impact of the proposal.
6. Tailored approach for property types that do not fit clearly within the residential or commercial categories	We welcome the additional clarity provided for various asset types (including commercial residential properties and mixed use properties) and the confirmation that persons currently exempt from stamp duty and land tax will also be exempt from property tax. We are keen to continue engaging on the treatment of critical sectors such as retirement villages and Build-to-Rent housing, to ensure the tax settings are appropriate to support the development of much needed housing supply for our growing and ageing population.
7. Underpinned by a robust valuation framework based on unimproved land value	We welcome the Government's commitment to using unimproved land value as the base for the property tax. The Progress Paper notes the lack of familiarity and knowledge of what unimproved land value is and the importance of producing targeted information and education resources. However, there is no discussion in the Progress Paper on the current complexities with land valuation methodologies. We refer to our March submission and our recommendation to instigate a stream of work to develop a principles-based framework that would underpin the annual valuation process and provide certainty to taxpayers and integrity to the system. This would seek to address existing complexities and reduce the need for costly and lengthy disputes and legal challenges. We have provided below further feedback on the current dispute resolution processes.

Additional issues to resolve

In addition to the critical points noted above, we note the following issues for further consideration:

- ***Impact on housing affordability*** – the Progress Paper notes that over the long run, the reforms will result in a 3-4 per cent reduction in house prices and a 6 per cent increase in owner-occupied dwellings.

  A recent report from the National Housing Finance and Investment Corporation[1] found that removing transfer duty in favour of a broad-based land tax will likely lift dwelling prices in the short-term as the removal of transfer duty is capitalised into prices.

  Addressing housing affordability over both the short-term and long-term horizons is a difficult but important challenge that industry and government will need to work towards.

- ***Treatment of foreign developers*** – the Progress Paper states that land acquired by residential developers is to be treated at the commercial rate if it is opted into the new regime. The Progress Paper also states that foreign purchasers will not be eligible to opt-in a residential property to property tax.

  The Progress Paper is not clear whether foreign-owned Australian based developers have a choice to opt-into the new property tax regime, in the same way that Australia-owned developers are able to elect in.

  In our view, foreign-owned Australian based developers should also have the choice of staying out of or opting into the new regime. Foreign-owned Australian based developers are as critical to the supply of housing as local developers, and in a state of housing supply crisis decisions should not be taken that create hurdles for housing development from any willing party. Developers should not be disadvantaged or penalised for the mere fact that they are defined as 'foreign', especially when many of these developers have well established companies on Australian shores, employ significant numbers of local workers and actively contribute to positive development across the state.

- ***Valuation dispute mechanisms*** – in addition to the current complexity around land valuations, we have also received member feedback about the slow and costly nature of appealing Valuer-General unimproved land valuations through the NSW Land and Environment Court.

  A more efficient and cheaper system for review of Valuer-General unimproved land valuations should be instituted, in place of existing arrangements. In Victoria, for example, reviews of Valuer-General land valuations are within the jurisdiction of the Victorian Civil and Administrative Tribunal.

  We would recommend that a similar regime be implemented in NSW, for review of NSW Valuer-General land valuations by the NSW Civil and Administrative Tribunal.

Given the challenging headwinds the NSW economy is currently facing, we acknowledge the difficulty and enormity of both the policy decisions to be made by the Government, but also the challenges in drafting the technical details of the proposed property tax. Important decisions will need to be made with regard to the final policy design, impacts on the commercial property sector and broader economy, and to what extent the proposal would tackle the housing supply and affordability challenge.

[1] Stamp Duty Reform: Benefits and Challenges, 20 July 2021

The Property Council remains committed to actively engaging in the consultation process and providing feedback as and when required. We would appreciate the opportunity to discuss this submission further with Treasury representatives.

Yours sincerely

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