

25 January 2015

Mr Robert Marsh  
Valuer General Victoria  
Department of Environment, Land, Water and Planning  
570 Bourke Street  
MELBOURNE VIC 3000

Dear Mr Marsh,

**Re: Review of Section 2(8) & 2(9) of the Valuation of Land Act 1960**

The Property Council welcomes the opportunity to participate in the above review and provide this submission to the Valuer General Victoria in response to the Discussion Paper.

The Property Council of Australia represents the broad interests of the commercial property sector. We are the largest advocacy organisation for the property sector with over 2,000 member companies throughout Australia that represent property assets over \$300 billion. Members of the Property Council are involved in the entire property investment cycle; the financing design, development and maintenance of property, and the services that underpin the industry.

**Our interest in this issue**

The Property Council maintains our support for the principle of heritage protection and conservation. Our members own, manage, lease, protect and conserve hundreds of millions of dollars' worth of heritage assets in Victoria.

The Property Council's concerns regarding the proposed changes in the Discussion Paper can be summarised as follows:

- The proposal will unfairly impact on the amount of tax and rates that owner of heritage properties pay, and will impact on their rights to object to potentially erroneous valuations;
- The policy intention behind the proposed change is in conflict with a central purpose of the *Victorian Heritage Act 1995*, namely 'to provide for the protection and conservation of places and objects of cultural heritage significance and the registration of such places and objects';
- The proposed changes would move away from well-established industry understanding and practices, which will impact on future investment decisions;
- The Property Council is concerned that the proposed changes will have a number of implications that will impact on Victoria's competitiveness as an investment and development destination;

- The proposed changes are directed towards revenue raising, rather than refining an intellectually coherent approach to determining the Site Value of heritage properties; and,
- There are other options to address the concerns expressed in the Discussion Paper which are not considered in that document and the analysis supporting proposed change is simply not persuasive.

### **The basis for reform**

The Discussion Paper cites assessment of heritage impacted properties as problematic due to varying interpretations of provisions contained within Sections 2(8) and (9) of the *Valuation of Land Act 1960* (VLA). Specifically, the Discussion Paper summarises the basis for reform as the application of inconsistent adjustments on valuing heritage listed buildings, unrealistic and low site values for a number of properties and litigation costs for VGV. With respect to these, we make the following comments:

- While there remains disagreement within the broader industry on some aspects of the assessment of heritage impacted properties, these inconsistencies are simply reflective of the unique nature of the properties being assessed and the impact of individual heritage controls affecting the improvements and features. Therefore, it is entirely appropriate that valuers when assessing SV for statutory purposes will arrive at an assessment that is reflective of the unique circumstances affecting individual properties.
- In relation to 'historically unrealistic and previously low site value', we are aware of only two situations where a \$1 SV has been achieved against an impacted property. Both properties were subject to court appeal with the assessment of \$1 upheld by the Court of Appeal.
- The Discussion Paper fails to identify that there is sound legal authority dealing with the interpretation of Section 2(8) and (9) with respect to the GPO building (*Australian Postal Commission V Melbourne City Council* [2005] VSCA295). The GPO case remains the most current and comprehensive decision with respect to the assessment of heritage impacted site values.

### **Response to proposed changes**

The Property Council strongly objects to the proposal to amend the VLA so that the site value (SV) of heritage registered buildings and buildings where a permit to demolish has been refused, is based on a pre-determined multiple of the net annual value (NAV). We object for the following reasons:

Firstly, neither the Discussion Paper or Options Paper address the context of the current legislative framework for calculating SV for heritage registered properties, and whether its fundamental objectives are being met. We consider this to be a serious omission, as the existing provisions seek to facilitate a nuanced response to the assessment of heritage buildings under the VLA.

Changing these provisions and introducing the proposed formula would see the SV derived on the basis of land use (the NAV), which can change from time to time, rather than the impact of the heritage listing on the value of the site. Use changes over time, but there remains in perpetuity a requirement to preserve and retain the heritage asset that occupies the site. The costs expended to meet this

requirement will be incurred by any prospective purchaser or development of the property in the future. The SV of a heritage registered building should reflect the importance of the building, not its use.

For this reason we consider a formula driven basis for calculating SV which is based on the NAV to be inappropriate, as it neglects the unique properties of every heritage registered building.

Secondly, the Options Paper adopts a conceptual approach by focusing exclusively on 'valuation principles' behind determining SV as a technical issue, without accounting for the greater financial implications (namely, the impact on land tax payable on a site). The Property Council does not believe that changes to valuation methodologies for heritage sites can be viewed in isolation; any change to the land tax system should be accompanied by a review of land tax rates on the properties affected.

Thirdly, the Discussion Paper and Options Paper cite fewer opportunities for disputes and a greater level of consistency as benefits for reform. It claims that a formula based SV valuation methodology is preferable to the status quo, but does not explain the basis for this position. On the contrary, by introducing a methodology of this type the VGV is in fact diminishing the owners' right to directly dispute SV assessments, a right afforded to every other land owner subject to assessment under the VLA.

Finally, the Options Paper has been introduced without considering wider policy objectives of preserving and encouraging investment in Victoria's heritage buildings. A more appropriate approach would be to consider the proposed changes within the context of a Victorian Heritage Strategy. Such a strategy could outline what we want to achieve from the preservation and celebration of Victoria's heritage, why the guiding principles to be followed in identifying and protecting heritage assets (of all types) and policies and actions to be pursued by regulators and other stakeholders (such as entities who are responsible for the preservation and management of heritage assets).

The property industry is gravely concerned about the consequences of the proposals outlined by the VGV. We have received advice on one building with 90 unit holders (comprising business owners, investors, superannuation funds and residents) which will face land tax increases up to 422 per cent (at three times the NAV) or 765 per cent (at five times the NAV), once the SV on the building were increased as a result of the proposed changes. On average, this impact translates to a 300 per cent increase in land tax payable for each unit holder.

A cost impact of this scale can impact on asset values and investment fundamentals which, in turn will detrimentally affect investment feasibilities and the future potential of heritage listed properties in Victoria.

### **Wider impacts**

In order for Victoria to achieve its growth potential, existing heritage sites must be considered for adaptation. It is critical that the legislative system is supportive of adaptive reuse of heritage buildings to ensure they continue to activate our streets and cities.

On the other hand, blanket approaches to heritage can have potent and immediate impact on the development capacity of our city. For many owners of heritage registered properties, the proposed change will mean substantial increases in the land tax payable on their site. Importantly, this is not

acknowledged in either the Discussion Paper or Options Paper, which opts to address SV as a technical issue in isolation from its wider impacts. However, we foresee the proposed formula will place Victoria on a precarious competitive situation, as a result of:

- Development investment flowing away from Victoria and causing economic stagnation
- The degradation of heritage buildings as a result of building owners struggling to meet the budgets required for their adaptive reuse, and,
- Innovative approaches to new developments being stymied.

### **Incentivising investment in heritage properties**

The Review of Section 2(8) & 2(9) of the *Valuation of Land Act*, as well the Review of the *Heritage Act* provides a unique opportunity to build on the strengths of the current system and develop new approaches and incentives to make investment in heritage buildings more attractive.

A key weakness of the current heritage conservation system is where the public good of heritage listing results in a net cost to the private owner. The costs of restoration and maintenance can often be prohibitive for building owners, and the end market may not be prepared to meet the rental levels required. At the same time, there are many direct and indirect benefits which accrue from the successful restoration and adaptive reuse of heritage properties. Encouraging major property investment in heritage registered buildings can have employment, investment and economic multiplier effects which include the inflow of overseas and interstate capital that add to the prosperity of the state as a whole.

According to a report prepared in 2004 by a joint Taskforce of Commonwealth, State and Territory heritage officials...

*"Heritage listing and heritage protection is ultimately a 'public good' driven by the broader community. As such there is a strong expectation in the community that all levels of government should accept a significant part of the responsibility to ensure that places of heritage value are conserved. That expectation extends not only to the regulatory side of listing and protection, but also to financial aid and assistance.*

*In an environment with limited resources, regulation may appear attractive because it appears relatively 'cost free'. Governments can simply 'require someone to do something'. That may be the reason that regulation has traditionally been the predominant conservation tool in some countries, including Australia. However, an effective heritage system is founded on a balance of 'sticks and carrots'. The lack of a meaningful level of 'carrots' undermines support from property owners for the system, makes regulation more difficult, and misses opportunities for garnering private investment.*

*Specifically, the purposes of heritage incentives are to:*

- *ensure that owners are not unduly disadvantaged by the constraints or extra expense that the regulatory system may impose;*

- *leverage private capital investment in conservation;*
- *generate additional conservation activity than would otherwise occur;*
- *counteract land use policies or other government programs that threaten heritage places; and*
- *ensure that as far as possible a 'level playing field' exists between restoration work and new construction."*

Source: Making Heritage Happen – Incentive and Policy Tools for Conserving our Historic Heritage

This extract recognises that state heritage listing is in the public benefit, but the costs that are imposed as a consequence of listing decisions fall on owners. Where there is a public benefit a contribution toward reasonable costs or actions that remove the cost burden incurred in sustaining the building for public benefit should similarly be met from public resources.

The legislative framework for such public assistance is provided in both the *Heritage Act* where Section 144 provides for Special Assistance by way of potential remission or deferment of Council Rates and Land Tax relief and in the *Local Government Act*. Section 154 of the *Local Government Act* provides for rate exemptions for (1) all property vested in public ownership and (2) where land is used for the relief of poverty, the advancement of education and religion or other purposes beneficial to the community not falling within these categories.

Under the provisions of Section 169 of the *Local Government Act* a Council **may** grant a rebate or concession in relation to any rate of charge

*"(b) to preserve buildings or places in the municipal district which are of historical or environmental interest; or (c) to restore or maintain buildings or places of historical, environmental, architectural or scientific importance in the municipal district"*

In accord with the recognition of a public good reflected in the *Local Government Act*, we believe the outcome of this review should reflect the fact that state heritage registration for a building is 'beneficial to the community'. For this reason the Property Council proposes that owners of heritage properties should be entitled to the non-discretionary rate exemption authorised under Section 154 of the *Local Government Act* to assist them in preserving the heritage for all Victorians.

To ensure that the benefit of the exemption is used to preserve, restore or maintain such buildings it would be a requirement that applicants seeking an exemption demonstrate that an amount at least equal to the value of exemption is used for these purposes and that the subject building is maintained to an appropriate standard. The expenses for maintaining or refurbishing the heritage features of a property should be additional to the normal costs that would be incurred through property ownership.

### **Next steps**

The proposals outlined in the Discussion Paper are significant and require serious consideration, as there will be major implementation issues and policy impacts. Given the small number of stakeholders consulted, the Property Council requests that the options paper be withdrawn and that the VGV enter into a broader process of consultation with other public and private heritage stakeholders.

Should you have any questions regarding the issues in this submission, please contact Sandra Qian, Senior Policy Advisor on 9664 4220 or [sqian@propertycouncil.com.au](mailto:sqian@propertycouncil.com.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Jennifer Cunich', with a stylized flourish at the end.

Jennifer Cunich  
Victorian Executive Director  
Property Council of Australia