

Mr Bruce Roberts
General Manager
Operations
Landgate
1 Midland Square
Midland 6056

Via email: Bruce.roberts@landgate.wa.gov.au

19th June 2015

Dear Mr Roberts,

Sale of Land Act Consultation Response

The Property Council of Australia appreciates the opportunity to provide feedback on the proposals for changes to Section 13 of the *Sale of Land Act* ("Act").

The Property Council of Australia is the peak industry group for the WA property sector and champions a strong industry to create prosperity, jobs and strong communities. Our members include those businesses that are currently constrained by Section 13 of the Act.

Advantages of Non-Owner Sale off the Plan

The Property Council supports changes to Section 13 of the Act to allow for Non-owner Sale off the Plan as the risks to the consumer, developer and community are minimal, but the benefits would be significant. This has been demonstrated in Victoria where the equivalent section has been repealed without any adverse consequence.

The Property Council supports Landgate's view that the advantages in allowing Non-Owner Sale off the plan would outweigh any disadvantages that the section currently attempts to address. The Property Council notes the identified advantages should Non-Owner Sale off the Plan contracts were to be permitted under the Act including:

- Facilitate project financing,
- Creates more project opportunities,
- Mitigate project risks through pre-sales, and
- Save project development time and costs.

The Property Council would also suggest that changes to Section 13 of the Act may lead to better outcomes; for both the purchaser and the broader community, as a result of increased industry competition.

The consultation paper noted that purchasing off the plan, regardless of title, introduces additional matters to be considered by the purchaser. The Property Council supports Landgate's view that professional advice should be sought by the purchaser before entering into any contract.



Proposal: Contract Conditional

Proposal 1:

The prohibition against a Non-Owner Sale off the Plan of a lot in a Large Subdivision not apply if the sale contract is conditional on the vendor becoming the registered proprietor, or becoming entitled to become the proprietor, of the lot within 6 months, or such other date provided in the contract (which could be varied by the agreement).

The Property Council agrees with Proposal 1 that the sales contract for Non-Owner off the Plan must be conditional on the vendor becoming the registered proprietor, or becoming the entitled proprietor, by such date provided in the contract (which could be varied by agreement).

The Property Council believes that is constraining, and ultimately arbitrary, to include a set timeframe in Proposal 1. However, if it is considered necessary, the Property Council recommends 12 months.

Proposal 2:

A contract not conditional on the vendor becoming the registered owner within 6 months, or within another time provided in the contract, would be void. Any deposit paid would be returned.

The Property Council recommends that Proposal 2 is amended so that the contract is not automatically voided, but rather terminable as referred to in the Property Council's response to proposal 4.

Proposal 3:

The Act set out the consequence of the condition in Proposal 1 not being met within time, including requiring the return to the purchaser of any deposit paid.

If the vendor does not become the entitled proprietor by the date provided in the contact then the deposit is returned when the contract is terminated in a manner consistent with the Property Council's understanding of Proposal 4.5.

Proposal 4:

The consequence for the condition in Proposal 1 not being met within time could be, in addition to the return of any deposit paid, that:

- 4.1 The sale contract automatically terminates with no need for notice by either party. **OR***
- 4.2 The vendor can terminate by giving notice within a set time. **OR***
- 4.3 The purchaser can terminate by giving notice within a set time. **OR***
- 4.4 Either the purchaser or the vendor can terminate by giving notice within a set time. **OR***
- 4.5 Either the purchaser or the vendor can terminate by giving notice within a set time, up until the time the condition is satisfied.*

The Property Council supports Proposal 4.5 that either the purchaser or the vendor can terminate by giving notice within a set time, up until the time the condition is satisfied.

The Property Council supports this proposal on the understanding that:



- Neither purchaser nor vendor can terminate the contract prior to the contractual date, to become the registered/ entitled proprietor, being reached.
- The vendor must use reasonable endeavors to satisfy the condition within the required time.
- Once the contractual date has passed, either party can terminate the contract by giving notice.
- If neither party terminates the contract after the contractual date has passed and the condition is subsequently satisfied, then the contract continues to be binding and the deposit is not returned.

Proposal: Pre-Contractual Statutory Warning

Proposal 5:

If any of Proposals 4.2 – 4.5 above are implemented, that the Act require a pre-contractual statutory warning to be included in a Non-Owner Sale off the Plan contract for a lot in a Large Subdivision. A pre-contractual statutory warning would not be required if Proposal 4.1 was implemented.

The Property Council supports the use of the pre-contractual statutory warning within the contract if proposal 4.5 is adopted (consistent with the Property Council's interpretation).

Proposal 6:

That the statutory warning include, as a minimum, a statement:

*6.1 That the vendor is not currently the registered owner of the lot. **OR***

*6.2 An explanation of the purchaser's rights if the vendor does not become the registered owner of the land. **OR***

6.3 A combination of 6.1 and 6.2 above: a warning that the vendor is not currently the registered owner of the lot and an explanation of the purchaser's rights if the vendor does not become the registered owner of the land.

The Property Council supports proposal 6.2 that an explanation of the purchaser's rights. The Property Council maintains that proposal 6.2 should also include an explanation of the purchaser's obligations should they wish to terminate the contract, consistent with proposal 4.5.

Proposal: Deposit to be Held by Stakeholder

Proposal 7:

A Non-Owner Sale off the Plan contract for a lot in a Large Subdivision should require the purchaser's deposit to be paid to a solicitor, settlement agent or real estate agent as stakeholder.

The Property Council agrees with Proposal 7.



Proposal 8:

The deposit should be retained until the earlier of:

*8.1: The vendor becoming the registered owner of the land. **OR***

*8.2: The settlement and the registration of the transfer to the purchaser. **OR***

8.3 If Proposal 1 is adopted, satisfaction of the condition.

The Property Council agrees with Proposal 8.3, but measures must be taken to ensure that it is consistent with any other requirements regarding the treatment of deposits under existing legislation.

Additional Comments

The Property Council recommends that any changes to Section 13 of the Act must apply to both large sub divisions and strata/ survey-strata sub divisions.

The Property Council recommends that any changes made to Section 13 of the Act are complementary to existing legislation and do not introduce any inconsistencies or adverse impacts.

Conclusion

Thank you for the opportunity to provide feedback on the proposals for changes to Section 13 of the Sale of Land Act. The Property Council supports changes to Section 13 of the Act to allow for Non-owner Sale off the Plan as the risks to the consumer, developer and community are minimal, but the benefits would be significant.

If you require any additional information, please feel free to contact Rebecca Douthwaite on 94261203 or rdouthwaite@propertycouncil.com.au

Yours Sincerely,

Lino Iacomella

Western Australia Deputy Executive Director
Property Council of Australia