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Dear Ms Bidwell,

### Re: Sun-setting of the *Building Regulations 2006*

On behalf of the Victorian property sector, I would like to thank you for the opportunity to provide input into the Government's review of the *Building Regulations (2006)*.

The Property Council of Australia is the largest and most influential advocacy organisation for the property industry. It has 2200 member companies throughout Australia that represent property assets worth over \$600 billion.

Approximately 500 of these members are part of the Victorian Division. Members of the Property Council represent the entire property investment cycle: finance, design, development, property maintenance, and the services that underpin the industry.

The Property Council is actively involved in public policy development. We are particularly keen to ensure that the laws and regulation which affect property at state and federal levels are practical, efficient and encourage economic growth.

As previously raised in our discussions with the Victorian Building Authority (VBA), the Property Council has a number of concerns about the effectiveness of the current Regulations, their implementation and enforcement.

Our concerns are listed below:

### Effective compliance and enforcement

The Property Council is concerned that across Melbourne's commercial building stock, there is a growing disparity in the uniform application of existing Regulations.

## *Enforcement*

Currently a major impediment to the administration of the Regulations results from uneven enforcement by local government. In the absence of robust mechanisms to ensure compliance, there are few ways for safety issues in a non-compliant building to come to the attention of a municipal building surveyor. Beyond third-party notification (such as a letter of complaint or a request for fire protection clearance from an insurance company), notices and orders will only be issued in the event of an incident. Council resourcing constraints and disincentives for fines issuance due to excessive administrative costs can also undermine enforcement mechanisms, by limiting audits to buildings which are deemed to be high risk.

## *Compliance*

The cause of ineffective compliance arises from inconsistencies concerning interpretations of the Building Regulations. Except in limited circumstances, the application of Building Control legislation to existing buildings is only triggered by an event such as major works (where additions, alterations or repairs to a building exceed more than 50 per cent by volume within three years) or a change of use. However, calculations may vary in the interpretation of the volume or the method of compliance, and there are no clear guidelines on how building surveyors should apply their powers to vary the rules by issuing dispensation. As such, there is a raft of safety issues concerning commercial properties which are not routinely addressed due to the lack of guidance around their application. These issues include fire protection services, energy compliance, structural safety, earthquake code compliance, electrical safety and smoke hazard management.

### **Recommendation 1**

**The Property Council calls for a new body to oversee the citywide compliance with regulation provisions as they relate to commercial buildings across Melbourne. The responsibility to regulate could be held by the Victorian Building Authority or a merged local council authority. This body would:**

- **Clearly demarcate the respective roles and mechanisms of local council building departments and private building surveyors;**
- **Bring buildings into full or partial compliance with the Regulations;**
- **Promote a simpler process for the lodgement of Essential Safety Reports; and,**
- **Derive its funding through a combination of consolidated revenue, a single charge for an essential services report and fines for lack of compliance.**

## **Essential Safety Measures (ESM) maintenance**

### *Occupancy Permits, Maintenance Determinations, Maintenance Schedule System*

Under the existing Regulations, building maintenance must be undertaken in accordance with the standards noted on an Occupancy Permit (OP), Certificate of Final Inspection (CFI) or maintenance schedule. However, there are many instances where buildings have multiple applicable OPs and CFIs

which call up different maintenance standards (i.e. AS1851 pre 2005, AS1851-2005, and AS1851-2012), making it practically impossible to meet maintenance requirements.

This is an issue for buildings that:

- Have been refurbished since original construction;
- Are developed over years with different stages having different OPs all calling up different maintenance standards and frequencies, such as aged care facilities and shopping centres;
- Have different maintenance regimes applying to different buildings, an example being campus style developments such as hospitals and universities; and,
- Have different sections of service infrastructure such as hydrants.

The Regulations state that only municipal building surveyors or the original relevant building surveyor currently has the power to alter OPs or CFIs.

In our view, the way to resolve this problem is to require the relevant building surveyor to amend the OPs or CFIs to call up a single standard for the entire development.

## **Recommendation 2**

**The Property Council recommends that building surveyors should be required and enabled by the Regulations to review the maintenance provisions of a building (including Maintenance Determinations attached to OPs and CFIs) each time it is altered beyond an industry agreed standard and the alteration affects the design assumption basis of the building. In doing so, the building surveyor should summarise the entire maintenance provisions for the building with each new permit. This would enable them to amend existing maintenance determinations, and call up the latest maintenance standards for an entire building without affecting any other condition on the OP or CFIs.**

## **Pre and post-1994 Regulatory Divide**

Another area of concern to industry is the regulatory divide that exists for pre-1994 and post-1994 buildings in the Regulations. For instance, the current Regulations require Maintenance Schedules for post 1994 buildings to be prepared by a building surveyor where the OP or CFI cannot be found. However in the case of pre-1994 buildings, the Maintenance Schedule can be prepared by 'suitably qualified persons'.

Under the Regulations, it is unclear whether performance standards need to be prepared for Maintenance Schedules of pre-1994 buildings. Due to difficulties around ascertaining what the performance standards would have been for older buildings, building surveyors are only confirming that the systems can fulfil their purpose. For post 1994 buildings, whose Maintenance Schedules require an assurance that the systems have met performance standards, there is also the issue of performance standards not being checked by maintenance contractors.

### Recommendation 3

**The Property Council calls for extra guidance on performance standards for pre 1994 buildings from the VBA, and for more emphasis on the performance standard part of ESM regimes in post 1994 buildings.**

### Cross jurisdictional alignment and consistency

The Property Council supports uniformity of national and state laws and regulations, where this can assist in reducing confusion and improve compliance with the National Construction Code.

In Victoria, building owners must meet the requirements under a raft of regulations which may conflict and overlap with regulations from other states or federal jurisdictions. As such, industry currently bears the burden of duplication and compliance costs.

Disability access provisions are an example where building owners must comply with multiple state and federal regulations, including: the *Disability (Access to Premises – Buildings) Standards 2010*; *Building Code of Australia 2011*; *Building Regulations 2006*, *Building Amendment Regulations 2011*; *Heritage Act 1995*; and *the Victorian Equal Opportunity Act 2010*.

### Recommendation 4

**The Property Council calls recommends the VBA to initiate a taskforce to identify areas of duplication and present its findings in a report to the Victorian Red Tape Commissioner, with the intention of reducing cross-jurisdictional duplications.**

### Skills and training

The Property Council understands that the provisions of the Building Code of Australia (BCA) are both performance based and alternately prescriptive. While the basic intent of the Building Code is to ensure that buildings can provide a level of amenity commensurate with public expectations, the performance based provisions of the Regulations are not clearly measurable, making them open to interpretation. One example is the lack of prescriptivity around slip resistance requirements for ramps, landings and stair treads in indoor areas that are reasonably likely to receive either rain when doors are open, or those areas reasonably likely to receive rain water from transmission of either people's shoes or umbrellas. Moreover, the changing regulatory landscape can present difficulties for building surveyors to keep up to date with current standards and practices.

To date, there are few mechanisms in place to ensure that a building surveyor is competent in terms of training or experience. For instance, a building surveyor who is only experienced in issuing permits for domestic properties is also qualified to provide permits for a high rise tower. As there are no specific qualifications for building surveyors required in the Regulations, parties who do not understand the intricacies of buildings can carry out passive assessments, which results in poor quality and inaccurate reporting. For instance, lack of understanding of complex fire engineered designs and fire compartmentalisation arrangements can compromise the quality of ESMs and the preparation of Annual Essential Services Measures Reports. Mistakes made by a building surveyor when prescribing ESM maintenance for mechanical systems on an OP or maintenance determination

can lead to difficulties later, when assessing whether a satisfactory level of maintenance has been met. Such mistakes can also lead to higher capital expenditure in the long run from incorrect defects being identified and unnecessary rectifications carried out.

### **Recommendation 5**

**The Property Council recommends that a stronger emphasis be placed on the skills and training of building surveyors to ensure greater probity and professionalism in their administration of the Regulations. To minimise conflicts of interest we also recommend that assessments of ESMs and preparation of AESMRs should be limited to building surveyors who are not involved with rectifying defects.**

### **Recommendation 6**

**The Property Council calls on the VBA to examine the benefits of introducing compulsory CPD points and audits for building surveyors. To ensure the building surveyor's knowledge is up to date with current industry practice, we recommend that:**

- **CPD compliance is conditional for the renewal of a Building Practitioner's registration; and,**
- **That the VBA provide more insight into industry best practice through its Practice Notes.**

Thank you once again for the opportunity to provide input into the Government's review of *Victoria's Building Regulations* (2006).

If you have any queries regarding any of the matters raised above, please contact Sandra Qian, Policy Advisor on 9650 8300 or [sqian@propertyoz.com.au](mailto:sqian@propertyoz.com.au)

Yours sincerely,



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