

Submission to the 2015 Options Paper – Strengthening Australia’s Foreign Investment Framework

**A foreign investment regime that supports
housing construction and jobs**

20 March 2015

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Introduction

Property: a major contributor to the Australian economy

The property industry creates prosperity, jobs and strong communities.

The industry is a major driver of the Australian economy:

- While Australia is only two per cent of the world economy, it accounts for five per cent of global property investment activity.
- Property and construction employs 1.3 million Australians, more than mining and manufacturing combined.
- It supports the wealth and prosperity of over 11.5 million Australians through direct and indirect property investment and superannuation.
- It accounts for 11.5% of GDP, one ninth of the country's total economic activity and adds about \$148 billion dollars per year to Australia's economic bottom line.
- Property is the nation's largest collective taxpayer, contributing \$34 billion in real estate specific taxes alone (before counting our share of corporate tax and GST).
- The industry also creates about \$219 billion in flow on work to supporting industries each year.
- Each dollar created by property and construction feeds capital to 40 other sectors and recirculates around the economy several times, driving activity related to the initial project.

In the wake of the sharp downturn in mining investment and falling commodity prices, property and construction is a shining light of economic activity. It is critical that this continues.

Property plays a unique role in the lives of everyday Australians. It forms a major part of the household balance sheet, whether through the family home, an investment property, the individual superannuation allocated in commercial investment, or those who invest directly in real estate investment trusts.

The property industry is the vital enabler of Australia's growing population and economic expansion. Australia's fast growing population further highlights the central importance of a strong property and construction sector positioned to meet the nation's needs.

Executive summary

The Property Council of Australia believes the new fees proposed in the Federal Government's Options Paper – Strengthening Australia's Foreign Investment Framework (the Options Paper) – undermine the Government's own policy of encouraging foreign investment into new housing construction, are completely unjustified in relation to commercial property investments, and are set to raise far more revenue than required.

The policy risks undermining Australia's current strong housing construction sector, which is currently a major driver of national economic growth and employment.

The Options Paper proposes a fee structure that:

- will in effect impose a tax or tariff on foreign investment, negatively impacting investor confidence in the Australian market;
- at the minimum rate of \$5000 will be detrimental to foreign investment in new housing construction, the majority of which occurs in the price sensitive \$600,000 to \$800,000 range. The fees should be pared back to between \$500 and \$1500 as proposed by the Parliamentary inquiry;
- will undermine housing affordability by restricting foreign investment that currently provides valuable capital for the development of new housing supply – supply that still lags far behind demand in key markets;
- has no justification in relation to investment in commercial property, where the Government acknowledges there are no compliance concerns;
- will directly impact Foreign Investment Review Board (FIRB) approved off-the-plan projects by increasing the development administration and may result in less developments using this approach, thereby hindering supply;
- could flow through to up to the 97 per cent of Australian homebuyers in greenfields as developers are charged fees on applications to purchase land for development; and
- will raise revenues of over \$200 million – way beyond what is required for the stated purpose – more than the budget of the ACCC (\$180m) and half of ASIO's budget (\$435 million) and cannot be justified by the costs of administration, enforcement or compliance activities.

The Property Council fully supports a properly regulated market that polices illegal foreign investment in residential real estate. However, it is critical that investment which facilitates new housing supply is not compromised, and that a key focus of Government is resourcing better collection of data on foreign investment into Australia.

It is imperative that the Federal Government strike the right balance between a data compilation, monitoring and compliance regime that penalises non-compliance with

Australia's foreign investment laws but does not act as a disincentive to the flow of legitimate foreign capital into the market.

We submit that a Residential Investment Data Repository needs to be established to provide far more effective insight into housing investment and supply issues. It could be funded by an administrative fee on foreign investment applications, set at more modest levels (by way of comparison, the former Housing Supply Council cost \$2 million and provided valuable unique national data on actual and forecast housing supply). This would provide the Government, RBA, regulators and the community with a broader set of housing related information at a time when this is critical to the economy.

An analysis of key data and market trends show that even the lowest proposed fee of \$5,000 will have an impact on the market due to:

- the reliance of multi-residential apartment projects on offshore capital, particularly through pre-sales of up to 20-25 per cent, without which developments may not proceed;
- reducing the growing market share of multi-unit development, particularly in the larger cities, which has grown as a proportion from around 20-30 per cent to as much as 50 per cent¹; and
- slowing the efficiency of growth in multi-residential in infill areas, which maximise the use of existing infrastructure and proximity to jobs, to the benefit of generations to come.

The Property Council supports the principle of a modest fee regime to fund better data collection and monitoring. Subsequent compliance and enforcement activities should be targeted to allow the effective policing of any illegal foreign purchases of existing residential properties.

However it is important that any fees reflect the true cost of administration, as recommended by the Parliamentary Inquiry into these issues, rather than the proposed seemingly arbitrary levels.

We strongly urge the Government to abandon the proposed fee and compliance structure in favour of sound, evidence-based policy. Failing to do so will, we believe, have significant negative impacts on a sector that is delivering crucial economic growth, employment and housing affordability.

Sydney is already on track to have 190,000 less homes than will be needed in the next 10 years². The policy proposal, as it currently stands, will see that figure climb and more Australians locked out of the housing market.

¹ HIA Economics, The Changing Composition of Australia's New Housing Mix, March 2015 - <http://hia.com.au/~media/HIA%20Website/Files/IndustryBusiness/Economic/discussion%20papers/ChangingCompositionAustraliasNewHousingMix.ashx>

² Missing the Mark: An audit of Housing Targets by MacroPlanDimasi commissioned by the Property Council of Australia February 2015, http://www.propertyoz.com.au/nsw/library/NSWHOUSINGTARGETREPORT_0.pdf

It is critical that we sustain strong levels of construction activity, particularly in the residential sector if we are to have any hope of meeting increasing demand, ensuring affordability and reaping the economic, social and employment benefits this sector provides for the nation.

This submission provides a raft of recommendations designed to:

- enable foreign investment in new residential real estate to continue to underpin record building activity in Australia;
- focus the monitoring, data analysis, compliance and enforcement capabilities of FIRB and the ATO on foreign investment in existing residential real estate;
- establish an appropriate and balanced application fee framework that reflect the cost of funding the monitoring, data analysis, compliance and enforcement capabilities of FIRB and the ATO in existing stock; and
- streamline the efficiency of foreign investment application arrangements.

THE ECONOMIC CASE - FOREIGN INVESTMENT BOOSTS HOUSING SUPPLY

The Treasury Submission to the Foreign Investment Inquiry 23 May, 2014

Treasury noted an absence of data, however provided the following general observations on the overall economic impacts of foreign investment in residential real estate:

- Foreign investment from non-residents increases the demand for, and supply of, housing stock.
- In the short-term, any increase in demand, is likely to put upward pressure on dwelling prices and the cost of services related to the construction sector (including, at the margin, higher wage levels). The extent of the price rise attributable to foreign demand is difficult to isolate from other factors.
- This increased demand for housing stock should encourage higher levels of housing supply, albeit with a lag, with benefits for the construction industry, employment and growth. As dwelling completions catch up to demand, the addition of new supply would be expected to have a moderating influence on dwelling prices.
- In the medium-term, there is a likelihood of downward pressure on housing rental costs from the increase in properties available for rent, which may help address tightness in the rental market (the rental vacancy rate is very low and has averaged 2.3 per cent over the last decade).
- Foreign purchases also increase government revenues, in the form of stamp duties and other taxes, and from the overall higher economic growth that flows from the additional investment.

Treasury Analysis –

"While Australia has recently experienced rising real estate prices due to strong demand, this follows a period where real house prices in Australia did not experience significant increases, notwithstanding strong population growth. Some of the longer-term benefits of this increased demand are beginning to become apparent with the translation of higher building approvals into increasing building commencements."

ABS Building Approvals release - March 3 2015

ABS Building Approvals set a new record for the year ending January 2015 with total national approvals climbing to 203,182 in seasonally adjusted terms, up 30,000 approvals on recent years.

Property Council analysis-

"Outside of the ACT and NT, there was a positive upswing across the states in trend terms. NSW and Victoria continue to be the stand out performers for new approvals, however there has been across the board improvements in most regions. We are witnessing record activity in terms of approvals, and this points to 2015 being a year of high activity in residential construction. This translates into more jobs and increased economic activity."

Reserve Bank of Australia Statement - 3 March 2015.

The RBA provides an update and support to the Treasury submissions in its most recent statement:

"The current strength of housing construction and the increase in housing prices were expected to provide a measure of support for consumption. Housing price growth remained strongest in Sydney and to a lesser extent Melbourne, while price rises in other parts of the country had been more modest and prices had even declined in some cities recently. A range of indicators, including residential building approvals, suggested further strong growth of dwelling investment in the near term."

Connecting this effort to a broader residential supply monitor and data repository will help understand the trends, improve housing affordability and to grow the economy. It will also help support decisions that continue to see supply at required levels into the future.

1. Impact of fees on housing construction

Longstanding government policy is to encourage foreign investment in new housing construction to support Australian jobs and economic activity and to facilitate the supply of new housing for all Australians.

Residential building activity now sits at record levels, with actual 2014 housing starts at 193,000 (source: ABS cat. no.8452.0). This is around 40,000 homes above average yearly build levels and at least 30,000 homes above previous residential forecasts for 2014.

Foreign investment plays an important role in providing capital for the development of new housing, particularly in markets where demand still outstrips supply. Foreign investment into new residential development allows thousands of new homes to be delivered, going some way to reducing the increasing prices pressures and ensuring housing affordability for Australians.

Evidence tendered by Residential Development Council members, some of Australia's biggest developers, shows that on average, 20-25 per cent of new multi-residential dwellings are sold to offshore purchasers. This investment underpins new developments, and allows Australian purchasers access to housing supply that would otherwise not exist.

Research by Investorist recently found that the majority of Chinese investors are seeking to purchase high yield properties for under \$500,000³. Evidence from Residential Development Council members suggests that the majority of foreign investor purchases fall between \$400,000 and \$800,000.

This data shows that:

- this customer base is likely to be sensitive to an additional fee of \$5000 per application;
- any deterrent effect will most adversely be felt in this mid-price point range where new supply is most urgently needed;
- any fall of in supply in this price range, due to a drop off in the foreign capital required to get new projects off the ground, will adversely affect availability and therefore affordability for the first home buyer market in particular.

³ Investorist.com, China 2015 International Property Outlook, <http://info.investorist.com/china-2015-outlook-report/>
A foreign investment regime that supports housing construction and jobs

As outlined in our submission to the House Standing Committee on Economics Inquiry into foreign investment in residential real estate, foreign investment plays a critical role in leveraging additional housing into the domestic residential market with every new home that a foreign investor purchases actually enabling up to four other homes to be built for Australians.

Foreign capital provides the “critical mass” to get new developments of the ground and bring new supply to the market for all Australians.

The pre-commitment from foreign buyers shores up developments that potentially would not proceed if reliant on the domestic pre-commitment alone.

A major driver of new build investment by foreign persons is demand for housing from international students.

International education is Australia’s third largest export. Unbeknownst to many, Australia sits alongside the UK and Germany as a top three player in the Vocational Education and Training area. In cities such as Melbourne, international students are helping to redefine the reputations of Australian universities, and reposition this country as a destination for education excellence.

But each student needs a place to live and the increase in demand places increasing pressure on the existing stock.

Foreign purchases of new stock not only provide capital for development, but add to the rental stock, particularly in our major cities, which helps to keep downward pressure on rents and meet demand.

The construction boost provided by foreign investment is a substantial driver of economic activity and supports considerable employment across the construction and manufacturing sectors. It is also a source of significant additional tax revenue at federal and state levels.

At this level of activity there are Australian manufacturing plants that have to consider running additional shifts and firing up a second line or plant in order to meet demand. Scale activity provides the opportunity to increase profitability by maximising returns from fixed assets or even better, to upgrade to more efficient new plant, and provides considerable benefits to employment and economic activity.

Foreign investment boosts new housing construction, which in turn creates local jobs.

Every new home, especially in a subdivision project, provides work for up to 40 other trades and subcontractors, and is the lifeblood of small communities.

As outlined in our submissions to the Senate Inquiry, foreign investment plays a critical role in leveraging additional housing into the domestic residential market with every new home that a foreign investor purchases actually enabling up to four other homes to be built for Australians. The pre-commitment from foreign buyers shores up developments that potentially would not proceed if reliant on the domestic pre-commitment alone.

Foreign investment, be it from the UK, Canada or China, underpins new residential housing supply in Australia.

The proposed introduction of excessive new fees on foreign investment in new residential housing will jeopardise housing supply, thereby exacerbating existing shortages and driving up house prices. The proposed new tax will act as a deterrent to foreign investment and send the wrong signal to potential investors.

1.1 Fees for purchases of newly constructed housing

Recommendation Implement a single, transparent, administration-only fee on foreign investment applications. Fees should not exceed \$1000 per application for new residential stock, however can be higher for purchases of existing housing stock.

Why is this necessary?

The Government's Options Paper states that the introduction of fees for foreign investment applications is to be in line with a "user pays system". However the fees proposed are excessive, and will dissuade some foreign investment in new residential construction.

Similar fees, particularly at the levels currently proposed, have only been introduced in situations where Government has sought to limit the number of applications. These are not the actions of a government that is open to foreign investment.

The Property Council agrees with the need for better data collection regarding foreign investment to allow policy positions to be formed based on clear evidence (see section 5). We accept that there is a cost associated with this, and that given the Federal budget constraints, there may be a modest application fee required to ensure that this can be done in a sustainable way. We do not accept that the fees proposed in the Options Paper are appropriate and we are concerned with the impact of fees on new housing construction.

Equally, we have consistently stated that compliance with the FIRB rules is critically important and we support proper enforcement. However, compliance costs should not be used as a stalking horse for the introduction of large new fees that mirror our most inefficient taxes.

1.2 Exemptions – annual program applications and vacant land purchases

Recommendation Exempt annual program applications and the purchase of vacant land from the requirement to apply for FIRB approval or pay FIRB application fees.

Why is this necessary?

The Government's stated policy is that foreign investment into residential real estate should increase Australia's housing stock. The Property Council unequivocally supports this policy. Increasing housing supply is the most effective way to reduce the pressure on housing affordability, and creates benefits for the entire community through employment generation, taxation revenues and greater access to housing for Australians.

Under the proposed fees and current FIRB rule definitions, a situation is created whereby companies that are considered Australian for all other purposes could be liable to pay significant application fees when they purchase land for development of housing. These include the major developers of housing in Australia.

These developers purchase large land holdings, particularly in greenfield growth areas, and are currently required to submit applications to FIRB on the basis that they are considered 'foreign persons' under the FIRB definitions. The majority of these entities are able to access FIRB 'annual programs' which arguably streamline the process and reduce the administrative burden for both parties. There is no detail in the Options Paper of costs for applications made through 'annual programs', however the Property Council recommends the system be exempt from increased fees, and continue to operate as it currently does.

By doing so, the potential risk that Australian home buyers will be in effect paying foreign investment fees can be avoided.

Although greenfields developments that are delivered at the scale contemplated by annual program applications tend to have less than three per cent foreign investment component, the Options Paper fee proposal would result in an additional costs added to the project for the purchase of vacant land. These will ultimately be borne by the approximately 97 per cent of Australian purchases of greenfield housing stock, many of whom are first homebuyers, and could be as high as \$750 per home.

Instead of increasing affordability, these fees, if implemented, will directly add to the costs for Australians purchasing a home.

The focus of these charges should be on the ultimate ownership of residential property, and should therefore not be levied on vacant land that is purchased by developers, developed, and ultimately on-sold to purchasers.

By exempting vacant land purchases from the application process and fee requirements, the government will not be further taxing Australian homebuyers, developers will be able to continue to add to the housing stock and reduce affordability pressures, and the government will remain able to monitor foreign investment by requiring applications at the point at which genuinely foreign persons seek to purchase properties.

1.3 Refund of fees

Recommendation Establish a framework whereby a full or partial refund of any application fee is provided to foreign investors when the purchase requiring the application does not go ahead.

Why is this necessary?

The issue of refunds on applications fees is particularly pertinent for developers applying for advanced off-the-plan certificates. The Options Paper proposes that the fee for such certificates be calculated by multiplying the unreasonably high rates for individual residential real estate properties by the number of units sold to foreign purchasers. Not only is the upfront cost of such a proposal excessive and likely to dissuade developers from using the scheme entirely, as proposed it is unworkable for situations where the volume of pre-sale contracts requiring approval (and subject to fees) do not reflect final settlements.

Ostensibly, the purpose of advanced off-the-plan certificates is to streamline the process for developers and foreign purchasers, however it has the added effect of reducing the administrative burden on FIRB of processing individual applications from purchasers. This means that the collection of a fee, for administration, compliance and enforcement on an application for a purchase which is never made is unjustified – there would, in effect, be nothing to administer, monitor or ensure is compliant.

Additionally, in many instances entities which are currently deemed ‘foreign persons’ under the FIRB rules make applications to FIRB for real estate which is ultimately then not purchased. For example, large development and urban renewal sites or commercial real estate will be of interest to many developers, most of whom will require FIRB approval for purchase and therefore will have lodged applications. However, ultimately, only one prospective purchaser will be successful, which renders the other applications void.

Similar to the situation outlined above regarding advanced off-the-plan certificates, those applicants who did not purchase real estate would not be adding to FIRB's administration, monitoring or enforcement workload. Proof of purchase can easily be demonstrated, and therefore the application fees can be fully or partially refunded for those applications where purchases did not take place.

1.4 Advanced off-the-plan certificates

Recommendation	Do not impose fees on advanced off-the-plan certificate applications beyond a clear administration-only fee.
Why is this necessary?	<p>Advanced off-the-plan certificates allow developers to access a critical source of funding for developments through pre-sales to foreign investors. Without this, it is possible that some projects may not be able to proceed, and many certainly would not proceed as quickly.</p> <p>Importantly, the advanced off-the-plan certificate process also reduces the administrative burden on FIRB and streamlines processes for developers and foreign purchasers alike.</p> <p>The proposal to charge what are excessive, up-front fees for developers is unjustified, and, in combination with the increased risk of penalties for non-compliance, will see developers be less likely to use this process.</p> <p>However, developers will continue to market and sell a proportion of new stock to foreign purchasers. This will result in a significant increase in the number of applications made to FIRB by foreign purchasers, as each foreign purchase will require a separate application. It will also increase the delays faced by developers in concluding sales.</p> <p>It may also alter the feasibility of projects and in some circumstances projects that otherwise would go ahead, may not – an outcome entirely at odds with the government's desire to improve housing supply and affordability.</p> <p>For example, in an average development of 500 apartments, approximately 100 – 125 will be marketed and potentially sold to foreign purchasers. On average these apartments would be sold between \$500,000 and \$800,000.</p> <p>Under the proposed fee regime, the developer would be required to pay a fee of \$625,000 for the advanced off-the-plan certificates.</p> <p>This is an excessively large fee, and as per the Options Paper would be required to be paid by the developer, in</p>

full, prior to them having commenced any sales.

The implications of such requirements for financing and feasibility of project may cause developers to no longer use the advanced off-the-plan certificate application process.

In 2012-13 there were 50 FIRB approved off the plan developments, and an expectation of around 75 for the 2013-14 year. With each 100 dwelling plus development having around 35 per cent of the development coming from streamlined FIRB approval and the sale of the dwelling, it would make sense to support rather than disincentivise this approach.

This approach has enabled many new dwellings to be built for Australians.

A more appropriate approach would be to charge developers a nominal application fee that is directly linked to the costs associated with processing the advanced off-the-plan certificate application. This would also ensure that the benefits to industry and government of a simplified and streamlined process are not lost.

2. No rationale for fees on commercial property purchases

Australia is in a prime position to capitalise on the opportunities open to us from the rapid growth and development in our region.

Surveys indicate that over the next three years Asian capital will increasingly look to developed economies in the region for long term property investment. This means that Australia is in direct competition with Singapore, Hong Kong, and Japan for capital to drive growth and prosperity.

Since the Global Financial Crisis, Australia's property industry has increasingly relied on international capital to support projects and infrastructure that domestic investors do not or cannot fund.

Australia's property market currently relies heavily on patient, long-term global capital to finance major investments, including world-class office buildings and regional shopping centres.

While Australia is only two per cent of the world economy, it accounts for five per cent of global property investment activity.

Australia has been an attractive destination for global capital because of our relatively solid and stable economic growth since the Global Financial Crisis and the transparency of our markets and legal system.

Australia has a \$670 billion property investment industry that relies on international capital that is highly sensitive to Government sentiment.

Without global capital, Australia will be unable to realise its infrastructure and city building ambitions.

Government has previously stated that it is open for business and welcomes international capital, however, unjustifiably high fees send a conflicting message.

The proposed fee is without justification. In many economies around the world, similar tariffs, fees and taxes on foreign investment is used as a pricing signal that the government of the day wants to discourage international investment.

However, the official Australia Government policy remains to welcome such foreign investment with open arms. Indeed, the Government has made tremendous progress in negotiating vital new trade agreements to further open Australia to the world, and the world to Australia.

Given the Government has acknowledged that there is no material evidence of non-compliance or concerns around foreign investment in commercial real estate, the proposed fee of \$25,000 per application is unjustifiable. It is in no way reflective of the costs required for administration. More importantly, it can also unfortunately be misconstrued by investors as a signal their money is not welcome.

The impact of such a charge will be to simply encourage investors to put an increased "risk premium" on Australian transactions. In effect, this erodes the value of commercial property investments across the economy.

Any administrative fee must be an actual administrative fee, transparent in its application, with a clear nexus to the cost of the services provided.

2.1 Quantum of fees for applications – commercial real estate

Recommendation Exempt commercial real estate purchases from the requirement to pay FIRB application fees beyond clearly justified administrative cost recovery charges.

Why is this necessary? In a highly competitive global market for foreign investment, it is important that the Government take an evidence-based approach to policy making in this area in order to maintain investor confidence in the Australian market, and to ensure that foreign trade obligations are met.

It is important that any fee structure is transparent and reflective of the cost of administering an application process. If not, it can be construed as a tax on foreign investment, and will serve to inadvertently discourage foreign investment

There is no justification for the quantum of fees proposed in the Options Paper, and there is also an acknowledgement from the Government that there is no material evidence of non-compliance regarding foreign investment in commercial real estate. The excessively high fees are therefore unjustifiable, and will limit Australia's competitiveness in the market for international capital investment.

3. Residential investment data repository

The House of Representatives Standing Committee on Economics inquiry into foreign investment in residential real estate found significant gaps in the data available to policy makers on the levels of foreign residential property investment in Australia.

The Options Paper likewise acknowledges that there are limitations to the information currently recorded on foreign investment in Australia.

The Property Council supports these information gaps being addressed. We also believe this presents an opportunity to provide a broader array of housing related information to the Government, RBA, regulators and the community by broadening the ambit of this initiative. The lack of quality data, particularly in relation to housing supply, has been widely recognised. This information is of increasing importance as housing related issues feature increasingly prominently in the economy.

The Property Council recommends that these information gaps be addressed through a new residential investment and supply data repository. This repository would:

- track foreign investment if they come off record levels and the impact on supply alongside other variables such as international education;
- analyse the established housing market and the impact it has on the performance and development of new house and land product;
- analyse renter, first homebuyer, owner-occupier, senior and domestic activity in the residential market;
- encourage both private sector and government land activation to support residential development pipelines into the future;
- track Local Government land release strategic planning;
- support appropriate provision of urban infrastructure which grows the economy; and
- assist decision makers to understand market conditions for national greenfield corridors and the sub markets in which they operate.

The Residential investment data repository would work closely with existing bodies such as ABS, APRA, RBA, Productivity Commission, Australian Housing and Urban Research Institute (AHURI), State and Territory land registry offices, and any relevant private sector firms.

This additional information objective would come at a modest cost in the context of the revenues generated from FIRB application fees. By way of reference, the well-credentialed Housing Supply Council operated on a \$2 million budget.

4. Compliance and enforcement

The Property Council supports strengthening enforcement of the existing FIRB regulatory system and backs the concept of bolstering FIRB resources for more effective data collection, compliance and enforcement activities.

However, it is important to keep these matters in perspective. On available FIRB data, the Residential Development Council forecasts that foreign investment will make up only a small proportion of all purchases of new Australian residential real estate, less than 10 per cent of all sales in the 2013-14 financial year.

Purchases by temporary residents are even smaller.

Only 5,091 applications to purchase a property by a temporary resident were made in 2012-13. The forecasts expect purchases of existing stock by temporary residents to be around 7,200 for the 2013-14 period, which is still low. This represents less than 1.5 per cent of all property sales.

Greater monitoring of the sales of existing stock is where community concern is centred and resources are needed to monitor and enforce the rules.

There has been much criticism of FIRB's history of compliance and enforcement activities. Almost all such criticism has been based on the purchase of existing homes by foreign persons, and this is where the majority of future monitoring, compliance and enforcement activity should be focussed, with the subsequent additional costs to FIRB and the ATO.

Indisputably, additional resources for FIRB and the ATO are needed to ensure complete and accurate data is collected, and to shed light on the temporary resident purchase volumes, (see section 4). If foreign purchasing of existing stock has been occurring in breach of FIRB rules, then these rules and their penalties need to be applied vigorously.

Property Council would submit that any issue with non-compliance of rules on the sale on existing residential real estate should not impact on investment in new residential real estate.

The investment in urgently needed new supply and new housing development should not be penalised.

Similarly, the Options Paper states that there is limited evidence to suggest non-compliance in the area of commercial real estate, and yet there is a proposal to expand the penalties and enforcement activities in this area too.

As it stands, the task of monitoring transactions and the enforcement of the FIRB rules is made that much harder and more expensive by the fact that the current rules are not sufficiently targeted to specific areas of concern.

Many commercial investments have no 'national interest' component and are valuable to Australia precisely because they are investments traded on the widest possible market. Similarly Government is clear in its desire to encourage investment in developments that increase new residential supply without adding to demand.

Both of these are examples where an alternative approach could be considered by Government, one that establishes a streamlined processes to 'register' a foreign investment transaction rather than the delays and costs associated with an essentially unnecessary 'approval' process.

There are also investors who are frequent FIRB applicants that represent a lower compliance risk for FIRB such as widely held listed trusts based in Australia that invest and develop for return and create supply.

Applications can be further streamlined by identifying these applicants and allowing an expedited application process for commercial and specific residential asset types that reduces administration and compliance for the FIRB.

Any reforms that strip out unnecessary red tape will shorten delays, help investors make timely investment decisions and help more efficiently target FIRB's monitoring and enforcement initiatives.

Importantly, Government can enhance compliance by creating clear, codified guidelines regarding the nature of investments that are and are not considered to be in the 'national interest'. Simple, transparent rules improve compliance, simplify monitoring and also diffuse potential criticism of Government that the rules are applied arbitrarily.

A simple solution that will aid compliance is an education campaign to ensure that potential applicants and their advisors know and understand the rules and implications of non-compliance.

4.1 Streamline and better target FIRB processes

- Recommendations**
- 1) Enforce the rules as they currently stand;
 - 2) Implement a higher fee for applications by foreign persons to purchase existing housing stock compared to purchases of new stock, given the additional administrative and enforcement requirements posed;
 - 3) Implement an automatic approval process for commercial investment applications that have no national interest component;
 - 4) Codify the type of investments that are contrary to the national interest to make sure there is a clear and

transparent decision process;

- 5) In addition to existing annual approval limits, implement a streamlined “VIP” process for regular, low risk FIRB applicants that expedites the process.
- 6) Develop and deliver an education campaign to boost knowledge and understanding of the rules within advisor and agent circles.

5. Penalty regimes

The Property industry acknowledges that strong rules that are respected require consistent and equitable enforcement of those rules.

It is critical that the penalty regime:

- 1) is simple to apply and proportionate;
- 2) relates only to issues within the control of the applicant, rather than possible breaches caused by inadvertent errors; and
- 3) has a meaningful penalty that materially impacts applicants and any persons deliberately engaging in or aiding in activity that breaches FIRB rules.

The Property Council remains concerned that there is a lack of clarity regarding the requirements that will be placed on applicants to prove compliance, which will impact on annual program applications. However, there is a potential that in combination with the extremely high fees, the increased penalty regime will be a deterrent to developers utilising the advanced off-the-plan certificate application process. This will result in an increase in the number of individual purchaser applications that FIRB will be required to process, thereby increasing its administrative burden.

Government must have a better understanding about how the proposed penalties will apply in practical terms to residential and commercial property. It is crucial that demonstrating compliance does not become an onerous and costly process.

5.1 Residential real estate, including advanced off-the-plan certificates

Recommendation Ensure compliance requirements do not place additional administrative or time delay burdens on developers beyond those currently in place.

Why is this necessary? There is insufficient detail provided to enable industry to provide comment on the practical implications of increased penalties and compliance requirements. However, as a principle, any additional burden of demonstrating compliance should not be borne by developers.

5.2 Commercial real estate

Recommendation Consultation workshop with industry on the practical operation of the penalty regime.

Why is this necessary? The Options Paper states clearly that there is limited evidence of non-compliance in the commercial real estate sector.

Additional requirements for foreign persons will amount to nothing more than red tape, and will act as a deterrent to investment.

6. Modernising and simplifying the foreign investment framework

The Property Council congratulates Government for having the foresight to open up this consultation to broad reforms that will streamline and enhance the operation of the FIRB.

Australia's investment and regulatory environment has changed significantly since the FIRB rules were introduced in 1975, and there are numerous reforms that represent "low hanging fruit" that will immediately improve Australia's foreign investment framework.

As noted earlier in this document, it makes perfect sense to ensure Government targets areas of investment concern and only those areas, to improve compliance and make the rules easier to monitor and enforce.

Our recommendations thus far have included better targeting of the FIRB rules, identification of types of investments in the national interest and a streamlined VIP process for regular non-risky applicants.

This section focusses on other red tape and operational impracticalities that should be addressed as part of Treasury's review of the overall foreign investment framework.

Each of these reforms strip out unnecessary red tape which shortens delays, helps investors make timely investment decisions and removes the need for unnecessary monitoring and enforcement initiatives.

6.1 Remove approval requirement where no increase in shareholding percentage

Recommendation FIRB approval should not be required where a foreign person acquires additional shares (or securities convertible into shares) in a company which does not result in a material increase in the person's shareholding percentage (or shareholding percentage assuming conversion of securities convertible into shares).

Why is this necessary? Currently, approval is required for acquisitions of additional shares by a foreign person who already holds a substantial interest in a company, even if the acquisition does not result in an increase in the foreign person's shareholding percentage (see FATA ss26(6)(b)(ii) and (iii)).

It is burdensome with no apparent benefit – they don't impact overall holdings.

6.2 Remove approval requirement for pro rata offers

Recommendation FIRB approval should not be required for any acquisitions of shares or units that arise under a pro rata offer (e.g. rights issue or dividend reinvestment plan). A pro rata offer should include any offer where there is a separation between the institutional and retail offer and the offer is not made in certain jurisdictions due to illegality or cost.

Why is this necessary?

Currently, approval is required for acquisitions pursuant to pro rata offers of shares in companies and units in trusts, such as through rights issues or dividend/distribution reinvestment plans

There is no practical concern as acquisitions under pro rata offers are uncontroversial transactions. It is burdensome with no apparent benefit – they don't impact overall holdings significantly as there are additional units issued at the same time.

6.3 Remove approval requirement for acquisitions of less than 15% of a regulated managed investment scheme

Recommendation Lift the interim exemption thresholds for passive investment. FIRB approval should not be required for acquisition of interests of less than 15% in managed investment schemes regulated by Chapter 5C of the Corporations Act (or alternatively listed or other widely held managed investment schemes).

Why is this necessary?

This exemption currently refers to the Corporate Affairs Commission of a State or Territory, which no longer exists.

As an interim measure, FIRB has announced that no action will be taken when a foreign person does not notify and seek prior approval in relation to an acquisition of a passive interest in a listed or unlisted Australian urban land trust estate, by acquiring an interest in units that result in a holding (alone or with associates) of less than:

- 10% in a listed trust, with a predominantly non-residential property portfolio of office, retail, industrial or specialised properties, or a mix of these; or
- 5% in other public trusts with at least 100 unit holders and whose developed residential real estate assets that have been acquired from non-associates are less than 10% of the target trust's real estate assets.

These interim exemptions should be lifted to 15% to be consistent with the “substantial interest” threshold in the regime.

6.4 Align the land valuation rules for companies with those provided for trusts

<i>Recommendation</i>	<p>Confirm that a company can rely on an independent valuation when determining whether it is an Australian urban land corporation.</p> <p>The valuation must be carried out by a suitably qualified valuer acting at arm’s length in relation to the valuation, not more than 12 months before the particular time, where the value of the assets had not increased significantly between the time of the valuation and the particular time.</p>
<i>Why is this necessary?</i>	<p>Currently, in determining whether a company is an Australian urban land corporation, FATA s 13C(2) provides that if a reasonable value of a company’s land assets is not shown in its last audited balance sheet, the reasonable value shown in the company’s accounting records is used. However, the provision does not specify how “reasonable value” is to be determined.</p> <p>In contrast, in determining whether a trust estate is an Australian urban land trust estate, FATA s13D(2) provides for the use of a valuation by a suitably qualified valuer not more than 12 months before the particular time.</p>

6.5 Update the moneylending rules to conform with the Corporations Act

<i>Recommendation</i>	<p>Update the definition of moneylending agreement to conform to section 609(1) of the Corporations Act as modified by ASIC class order 13/520.</p>
<i>Why is this necessary?</i>	<p>The definition of moneylending agreement does not adequately deal with different kinds of lenders/arrangements that have proliferated since the FIRB rules were introduced.</p>

6.6 Update the heritage rules to remove references to obsolete legislation

Recommendation Amend the Regulations (Reg 3(p)(B)) to clarify that the reference to “Register of National Estate” is to all heritage listings.

Why is this necessary? The exemption at FATR 3(p) refers to an acquisition of land which is entered in the Register of the National Estate. This register no longer exists.

6.7 Regular Red Tape Reduction review processes

Recommendation Schedule regular red tape reduction review processes every 2 years.

Why is this necessary? Many of the current red tape issues relate to outdated references to defunct institutions and processes. This can and should be avoided to ensure the legislation remains relevant to Australian interests.

Over time the process can become fragmented, misaligned and impractical to use.

Given the enhanced monitoring and enforcement rules, Government will open itself up to criticism or challenge if the rules are not kept current.

Regular review will ensure consistency of practice and minimise excuses for non-compliance.

6.8 Streamline current review processes

Recommendation Remove gazettement of interim orders to eliminate an unnecessary process.

Reduce time taken to review, by targeting only those transaction types of concern and shifting the rest to a register process.

Monitor review periods for approval and assess whether further changes are needed to ensure review timetables are met.

Why is this necessary? International Investment is a commercial decision that has to be made in a timely manner. Australia competes with a number of other jurisdictions for long term capital to fund infrastructure and projects domestic investors won't or can't finance.

A streamlined approval process reduces risk for investors and ultimately ensures investors do not factor in additional

cost that erodes value from the investments.

In its most extreme, lengthy delays would encourage investors to move investment to rival nations.

FIRB could reduce time for review by removing unnecessary steps in the process and focusing only on those transactions and investors of national interest.

This all helps to reduce review times by cutting the load on the FIRB.

Where reviews fail to complete within the review timetable it may be necessary to introduce further changes

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