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11 September 2015

The Hon. Gordon Rich-Phillips MLC
Chair
Port of Melbourne Select Committee
Parliament House
MELBOURNE VIC 3001

By email: csc@parliament.vic.gov.au

Dear Mr Rich-Phillips,

Re: Inquiry into proposed lease of Port of Melbourne

Thank you for the opportunity to provide a submission on the above inquiry.

The Property Council of Australia is the largest and most active advocacy organisation in the property industry. The Victorian Division's ports policy is informed by the Industrial, Infrastructure and Logistics Committee, comprising industry experts in ports, freight and industrial development.

The Property Council is committed to the long term economic prosperity of Victoria, which in turn creates jobs and strong, liveable communities. The presence of world class port facilities is vital to securing Victoria's investment, employment, manufacturing, export and growth into the future. Consequently, the final lease arrangements pertaining to the Port of Melbourne are directly tied to Victoria's economic success.

Please find attached the Property Council's submission, which addresses the terms of the Inquiry. Please contact Linda Allison, Policy and Business Development Executive on 9650 8300 or lallison@propertycouncil.com.au if you require further information.

Yours sincerely

Jennifer Cunich
Victorian Executive Director

Inquiry into Proposed Lease of Port of Melbourne

The Property Council of Australia is the largest and most active advocacy organisation in the property industry. We have 2,200 member companies 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 sector.

The industry is the State's greatest taxpayer and employer. It is the third biggest generator of economic output. Yearly, it generates 24 per cent of Victoria's total tax revenue and is responsible for $37.5 billion of direct and indirect economic output.

Through our advocacy the Property Council is committed to the long term economic prosperity of Victoria, which in turn creates jobs and strong, liveable communities.

Position Summary

As a threshold point, we query the Parliament's intention behind the inquiry given that the proposed Bill has now completed three readings in the lower house and is completing its passage through the upper house. An inquiry at this stage into the proposed regulatory framework does not present as a request for a genuine conversation.

Regardless of the timing of the Inquiry, the Property Council supports the Government's intention to lease the Port of Melbourne (the Port) to generate much needed capital for infrastructure investment across Victoria.

While we support the State Government entering into a long term lease arrangement for the Port, the Property Council holds concerns regarding the proposed arrangements currently before Parliament. The concerns primarily relate to ensuring the best port and freight infrastructure is available to Victorians both during, and beyond the terms of the proposed lease.

Our position stems from the long term question of port capacity and adaptability. As acknowledged by the State Government, capacity at the port is expected to peak prior to the conclusion of the 50 year lease. Over the past decade successive governments have produced numerous reports stating that capacity would be reached between 2020-2030. Moreover, rapid technological advances combined with an increasing population places the long term future of the port at its current CBD site in question. Irrespective of the structure and arrangements of the lease, the overarching issue which remains unanswered by successive state governments is that of the most suitable site for Melbourne's port.

While there is bipartisan support for a second port, there appears to be a policy vacuum on long term strategic planning for Melbourne's port, freight and logistics. The trend of moving ports away from central business districts, as evidenced in Sydney and Brisbane does not appear to have been taken into consideration in the proposed lease arrangements.

It is the Property Council's position that it is inevitable that a second port will need to commence development, potentially in the next decade. Our response to the Inquiry is therefore delivered with this broader issue in mind.

Our response to issues examined by the Inquiry

(a) The structure and duration of the proposed lease

Compensation:

The Property Council does not the support the provision of compensation to a future leaseholder if a second port is developed during the time of the lease. We oppose compensation on the grounds that it will:

a. act as a financial disincentive to future governments to build a second port;
b. consume future infrastructure capital in the event that a second port is required;
c. stifle the development of future port capacity even if it is necessary;
d. hamstring future government's ability to provide assistance to related infrastructure projects; and
e. discourage the development of competition by reducing the total amount of operators able to enter the market.

Leaseholder Protection:

The Property Council does not support a policy which guarantees a monopoly operating environment for the future leaseholder. While we recognise the current proposal will improve the likely lease bid, it is not in the State's long term economic interest to create such an operating environment. The Property Council believes the lease bidder should assume the risk of facing competition in the future, just like Melbourne Airport.

In our view, it is the bidder's responsibility to take on the risk of a rival competitor winning market share. If anything, that is in the State's and the industry's long term interest. In short, we believe that the State has no role to play in guaranteeing a private monopoly for a future leaseholder.

The 15 year CPI price cap is too short and it should be extended to the duration of the lease.
The current rent controls are also inadequate during the period of the monopoly lease. We question whether Victoria can retain its competitive edge in maritime trade under the proposed arrangements. We foresee stevedore rentals increasing unreasonably due to a combination of limited competition (no competitor port being developed) and rising urban land prices in central Melbourne. More certainty is also required in regard to limiting arbitrary rent increases whilst a monopoly situation is in place.

(b) The potential impacts of the proposed lease on the development of a second container port in Victoria

Victoria should remain Australia's premier freight destination. Its proximity to the eastern seaboard, South Australia, Tasmania, the Riverina and New Zealand uniquely positions the state to efficiently move goods around the country and overseas. The development of a second port would enable our state to benefit from the fastest growing industries in Australia. Indeed, without a second port, Victoria may well lose its status as the biggest port in the country.

The Property Council believes the State Government should have an unrestricted ability to build a second port in the future. The current proposal prevents this. The Property Council does not support the proposition that a second container port won't be required until mid-century. This is contrary to industry advice and all public commentary on the matter. If capacity limits are reached within the next 15-20 years as anticipated, the proposed 50 year lease for the Port of Melbourne is problematic on three fronts:

- The Swanson terminals will require significant investment in channels and infrastructure to glean additional capacity;
- The greenfield sites with access to the channel are located around Webb dock, which is road and rail restricted; and
- The port capacity projections significantly underestimate future growth and do not adequately take into consideration the rapid growth over the past five years.

We advocate starting preparations for a second port in the near future to be "project ready" for future requirements.

The development of a second port would not be to complement existing port infrastructure as suggested by the Government. Rather, the second port would in time become the new main facility; maximising technological advances and (presumably) benefitting from newly developed, customised infrastructure. The Property Council asserts strategic planning for the second port needs to commence now. This should be undertaken by the newly formed Infrastructure Victoria.

Moreover, to ensure Melbourne is the preferred port destination over interstate competitors, we believe government should be encouraging competition between the Port of Melbourne and any secondary port, as well as the stevedoring practices operating at those ports.

The Property Council supports allowing the lessee a 'first option' to develop a second port, but this would require strict oversight to ensure this right was not abused by the existing monopoly.

(c) The potential impacts on the environment of the further expansion of the Port of Melbourne

The Property Council is concerned not only with environmental impacts of further expansion of the Port, but also the strategic use of site in the long term. The port lease terms do not appear to pay any regard to the growth management vision outlined in *Plan Melbourne*.

The Property Council does not believe the Port of Melbourne will be in existence in central Melbourne in 2085 and if it is, *Plan Melbourne* has outlined no strategy for coping with a fully operational port in the heart of central Melbourne. Thus, these two major infrastructure policies are potentially in conflict. There is also the key constraint of road congestion already evident, which is only going to worsen as population increases. These issues will greatly impact on amenity in the immediate port area, and on arterial roads used to move freight around the city and beyond.

In the long term, the Property Council expects port operations at the Port of Melbourne site to be relocated, and the land to be remediated to accommodate Melbourne's increasing population, much like Fisherman's Bend. This follows a trend towards moving port operations out of inner city congested areas (for example Brisbane and Sydney) to provide the right infrastructure for modern port operations and to minimise the impact of amenity on surrounding area. Greater consideration needs to be given to these issues, both in a long term planning context and in the short term, current inner Melbourne congestion and urban amenity issues at and around the current port site.

(d) *The potential impacts of the proposed arrangements on the competitiveness of the Port of Melbourne, the supply chains that depend upon it, and cost effects on goods passing through the Port of Melbourne.*

The Property Council believes there are two pressing matters relating to the future competitiveness of the Port of Melbourne. One is capacity which is addressed under item *(b)* in terms of requiring a second port in the short term. The second is the role of technology at the Port of Melbourne.

There are significant advances already becoming largely operational in respect to the type of vessels in international trades which provide compelling cost efficiencies rendering existing vessel tonnage as obsolete. This relates primarily to significant increased fuel efficiency and savings from operating larger vessels.

Coupled to this, advances in automated handling systems for containers are substantially increasing the efficiency of vessel turnaround. However, this requires substantial new investment in large scale equipment. A stevedore faced with this investment to stay competitive in a port with medium term capacity constraints is not likely to proceed where capacity is constrained and the need to relocate is foreseen. Compromised decision making in relation to implementing improved stevedoring operations ultimately disadvantages exporters competing globally.

This issue is more likely to trigger the need for a second, preferably greenfield-sited port as opposed to the ability to handle greater capacity at the existing port facilities. The Port of Melbourne is also impacted by encroaching urban densification activity and poor land transport systems, see item *(b)*.

(e) *The effectiveness of the proposed regulatory framework in dealing with the transfer of a monopoly asset from the public sector to the private sector*

Port Growth Regime

The proposed framework provides that the private port operator will receive compensation under the Port Growth Regime. This regime potentially diverts future earnings from a second port to compensate the Port of Melbourne operator if a second port is brought online during the term of the lease.

The Port Growth Regime may (although not necessarily) increase the premium to be paid by a private operator for the lease in the short term. However, in the long term it raises the question of how future governments would fund a second port if the projected earnings from the second port would be diverted to compensation under the Port Growth Regime. Without more detailed consideration of the location and proposed funding models for a second port at this stage, future governments are potentially left exposed.

Leasing

We note that the Government does not propose to bring leasing by the private port operator to third parties under the new Pricing Order regime to be overseen by the Essential Services Commissioner. The Government's submission to the inquiry notes that the justification for this approach is that such matters should be left to a commercial negotiation between willing parties (paragraph 1.6.5 of the Government's submission paper). We question this reasoning.

Whilst we do not support overregulation of port leasing, by removing a State Government agency (subject to inherent probity oversight and the interests of the State) from the leasing process and introducing a third party landlord, the commercial dynamics will undoubtedly change. The negotiation process over rental and outgoings will be between a private operator seeking to maximise revenue, not concerned by any wider impact on the State, and incumbent operators left to potentially pay a premium to continue operating or face an expensive decision to vacate.

We propose that the Essential Services Commissioner be included in the rental review process as a referral authority, able to provide its view and comment if required. Whilst we do not propose that the views of the Essential Services Commissioner would be binding, the Government's view would be on the table for the landlord and tenant, and their respective valuers, to consider during negotiations.

We also raise the question of the extent of the land and assets of the Port of Melbourne to be leased to a private operator. The proposed Bill provides the Government with a right to lease port land and assets, but the extent of the land and assets to be leased has not been presented. The Government should table more details over the land and assets that are proposed to be leased.

Victorian Transport Fund

By enshrining a requirement that the funds must be paid into the Victorian Transport Fund, and be predominantly used for the Level Crossing Programme, the Government is removing flexibility to apply the funds to other infrastructure projects. The Property Council believes the capital raised should be used for infrastructure projects which are of community-wide benefit. The Government should ideally have flexibility to direct any surplus funds not required for the level crossing removal projects to broader infrastructure projects, not just those of a transport nature. Requiring funds to be paid into the Victorian Transport Fund, the Government will lose this flexibility. We recommend amending the proposed arrangements to grant the Government greater flexibility in this regard.

(f) How the proposed lease balances the short-term objective of maximising the proceeds of the lease with the longer-term objective of maximising the economic benefits to Victoria of container trade

The Property Council believes reform in this area cannot be solely driven by securing the best price for the lease. The policy should primarily be about the best logistics and trade outcome for Victoria, with capital generation the secondary consideration.

The current proposal clearly states on numerous occasions that it has been prepared to be weighted towards maximising income today; the Property Council is concerned this is at the expense of an unacceptable trade risk to the Victorian economy in the future. We advocate for appropriate flexibility in the lease to ensure the long term viability of Victoria's freight and logistics industry.

(g) Any other relevant matters

The Property Council reiterates the importance of strategically planning Melbourne's port and freight infrastructure. A decision on the location of a second port must be reached to secure Melbourne's position as the premier port destination of Australia. This must be a priority of the newly formed Infrastructure Victoria.