

CORRECTED VERSION ONLY

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

Subcommittee

Inquiry into the State Taxation Acts Amendment Bill 2015

Melbourne — 15 June 2015

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Mr Nick Proud, executive director, Residential Development Council;

Mr Tom Cantwell, partner, property, Mill Oakley Lawyers;

Mr Rob Pradolin, general manager, business development, Australand;

Mr John Casey, policy advisor, and

Mr Peter Vlitras, board member and treasurer, Urban Development Institute of Australia.

The CHAIR — I declare open the Legislative Council economy and infrastructure committee public hearing. This hearing is in relation to the inquiry into the State Taxation Acts Amendment Bill 2015. I welcome all the members of both the property council and UDIA who are present here this afternoon.

All evidence taken at this hearing is protected by parliamentary privilege as provided by the Constitution Act 1975 and further subject to the provisions of the Legislative Council standing orders. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, these comments may not be protected by this privilege. All evidence is being recorded, and you will be provided with proof versions of the transcripts in the next couple of days.

We have allowed 45 minutes for the session. To ensure sufficient time for questions, the committee asks that any opening comments are kept to around 10 minutes or so. Finally, I remind you that this inquiry is only obtaining evidence in relation to how the measures in this bill will impact on housing affordability and housing supply in Victoria, so please consider your evidence to ensure that it addresses the committee's terms of reference. I am happy to hand over to whoever would like to begin with the opening statement.

Ms CUNICH — I can do that. I will give you a bit of an overview. I am Jennifer Cunich, and I am the executive director of the Victorian division of the property council. To give you a bit of a background on building approvals, residential building approvals are at record levels, with the ABS reporting around 214 000 approvals for the year to April, 60 000 of these approvals were recorded in Victoria alone. Australia on average builds about 153 000 homes per year, so, in simple terms, we are actually building enough supply to meet pent-up demand. Foreign investment has underpinned this result, and with recent housing finance remaining strong it is looking like domestic building activity will remain strong for at least the next 12 to 18 months to aid supply.

In a development one foreign investor can assist the four other domestic buyers to allow the development to proceed, and it is for this reason that strong approvals activity is now being experienced to aid that supply. This supply is the fundamental panacea to challenge the housing affordability issue, we believe, that Australia is facing. The Foreign Investment Review Board, which enforces foreign investment rules, previously lacked the resources to undertake the work. The federal government has undertaken to properly resource the board to operate the rules and to collect more accurate data on foreign investment approvals to buy and actual purchases. This is a responsible step taken to ensure greater adherence to the rules but also to ensure that the flow of investment continues.

In terms of the non-resident surcharge, just prior to the 5 May Victorian state budget the government announced a non-resident surcharge and an additional land tax fee on absentee owners. The proposed surcharge applied an additional 3 per cent tax on non-residents — these are purchases of property and that is foreign investors — and an additional 0.05 per cent land tax. The government's intention was to apply the surcharge at the point of sale of houses and apartments. The property council, together with the UDIA, immediately raised concerns with the government, particularly around the unintended consequences of this tax. Over a period of three weeks we held high-level meetings with the Treasurer's office seeking changes to their non-resident duty and the absentee owner surcharges. We believe the Australian homeowners in the growth areas were facing an additional indirect tax bill of between \$2000 and \$6000 per property. This is because a surcharge would have applied at the very beginning of the process, and that is at the purchase of land prior to subdivision. Companies such as Australand, who are represented here today, and AV Jennings — Australand has been in the market in Australia for around 90 years, AV Jennings, in excess of 50?

Mr VLITAS — Eighty-odd years.

Ms CUNICH — Eighty-odd years, so long-term suppliers of housing into the Australian market. They are either wholly or partly foreign owned but produce housing stock for the domestic Australian market. This cost would have been carried through the duration of the development and passed on to the home purchaser, and these purchasers are predominantly first home buyers and Australian residents. As I said, together with industry, we negotiated exemptions to ensure that the Australian homebuyers with full or partial international ownership will not be forced to pass on the new taxes to future homebuyers. We believe this will save aspiring homeowners thousands of dollars by exempting the homebuilders from the government's investment tax. That is just setting the scene of what led up to the preparation of the guidelines.

The CHAIR — Excellent, thank you. Does anyone from the UDIA — Mr Casey or Mr Vlitras, do you want to make an opening statement?

Mr CASEY — I think Jennifer covered a lot of what was discussed leading up to the discussions with the Treasurer, but I would like to add that before the introduction of these surcharges there had already been a report on foreign investment in residential real estate and its impact, and there were already a number of findings there that identified that foreign investment has a positive impact on housing supply. So I think it is good to add that there had already been some discussions leading up to the introduction of these surcharges which identified the positive impact of foreign investment. We wanted to make sure that when we addressed a lot of the issues in our discussions with the Treasurer and the department that, with the supply of new housing, corporations that are wholly or partly owned by foreign investors are not impacted by the surcharge.

The CHAIR — We might just go along the panel in terms of some questions now. In terms of the guidelines coming out and the formulation of the guidelines, can you talk me through the steps that both the property council and the UDIA took insofar as how you were involved in the production of the guidelines?

Ms CUNICH — I might jump in there, because John came on board during this process. The government made the announcement on the Saturday prior to the state budget being handed down. We were in touch with the government, with the Treasurer's office, over that weekend, and we secured a meeting on the Monday. The UDIA and other industry representatives were at that meeting, including Nick Proud. Nick Proud is the executive director of the Residential Development Council, and he has been doing a lot of work at the national level on FIRB. So we secured a meeting and we discussed what we believed were the unintended consequences. We then followed up with a meeting the following Friday, I think it was, where we were asked to come back and look at what the options could be in a set of guidelines.

As I said in my opening statement, over that three-week period there were a number of meetings held to really go through line by line what the implications were and to be able to provide some evidence to the Treasurer's office about how this would impact on housing affordability.

The CHAIR — You spoke about the unintended consequences of the legislation. Were there changes to the legislation as a result of discussions between yourselves and the Treasurer, or did the legislation remain unchanged?

Ms CUNICH — The legislation remained unchanged, but it is dealt with through the guidelines. The guidelines provided that certainty around what was the intention of the legislation. As I said, we do not believe, and the government has said it was not their intention to have the tax applied at the very beginning of the process where it would flow on to Australian residents purchasing property.

Mr PROUD — The same thing was the case federally, so we had months of discussions with Kelly O'Dwyer, very positive, constructive discussions about when there is a set of guidelines — or, sorry, when there is a committee that reports on this — that this is a totally new phenomenon in Australian residential activity, having this amount of foreign investment. The context that is provided, Australia is experiencing around 200 000 — 214 000 building approvals per annum. They are significant numbers. We normally build 153,000 homes — so it is 50 000 more than we normally build.

Mr DALIDAKIS — Chair, can I reflect that you sent a copy of this Hansard transcript to Ms O'Dwyer, because I am not sure many other people have said something so nice about her before, and on the record. I think she should get that.

Mr PROUD — Certainly we have been very positive about the response from the federal government. As soon as we looked at new foreign investment fees and said, 'There is an annual program here, and one of our members is going to pay \$1 million for what they purchased, just straight out' — and this is a well-known Australian brand; it is not one of the ones in this room, but it was the example we used — there was an, 'Oh, okay'; there was a realisation that these businesses would be hit with new fees.

Coming back to the original position, we have not seen this kind of activity. We have 60 000 homes approvals above the average number built every year. When you look at, 'Okay, now we need to enforce the rules; how do we do this?', that is primarily where there has been on a big, long journey that we have gone on for nearly 12 months with the federal government, and we have had significant consultation. The local experience has

been guided by that, and that has been quite compelling. The work with the minister locally and the department has had the benefit of that hindsight, so we were very quickly able to explain there are issues, obviously, for primarily Australian businesses and developers, and the sorts of ramifications. That is the reality: that we have never dealt with foreign investment like this before.

Mr DALIDAKIS — Chair, if I may, on that point. On a more serious note, would you relate your dealings with the federal and the state bureaucrats and/or ministers' representatives as being on a par in terms of their responsiveness to the issues you have raised? Would you say that the federals have been better or the state has been better? How would you characterise the discussions you have had in relation to the concerns you have raised?

Mr PROUD — I would say that we have been able to leverage the federal discussions, which have been over a period of time, and we have been able to very quickly pinpoint what the issues were at the local level. I think the response from the state government here has been exceptional — to recognise very quickly that obviously there are new things that come into play when you look to raise new fees, new charges, and the complexity of this matter. When we have a federal regime which had not enforced the rules, and when you asked for details, statistics, and understanding from that, there was not enough detail. There is a learning process undertaken here, and the end result is getting it right.

The CHAIR — That is good to hear. In effect, the state governments have been the benefactors of the good work of the federal government. That is very good to hear.

Mr PROUD — And so it should be.

The CHAIR — And Ms O'Dwyer — absolutely.

Mr PROUD — Back and forth, there should be a good, positive, constructive engagement of state and federal government in these matters.

The CHAIR — I am always very pleased to hear that. Thanks for raising that, Mr Dalidakis — it was a very good point.

Mr DALIDAKIS — The exceptional response from the state.

Mr PROUD — Even though she is on maternity leave, we have had some great correspondence in recent days from Kelly. It is very positive engagement.

The CHAIR — Very good work of the member for Higgins indeed. In terms of the meetings that occurred in the development of the guidelines and the like, how many meetings were there that occurred?

Ms CUNICH — Three? Four? There were round tables — the group of the developers and owners in the room — and then there was daily dialogue with the Treasurer's office within the staff of the UDIA and the property council. It was daily.

The CHAIR — In terms of the meetings, who was present? Was the Treasurer himself present?

Ms CUNICH — Yes. The Treasurer and his advisers and departmental and SRO.

The CHAIR — Okay, very good. Did either yourselves, the property council or the UDIA draft any of the guidelines?

Ms CUNICH — No.

The CHAIR — So those guidelines were just provided to you for comment?

Ms CUNICH — A set of draft guidelines — —

Mr CASEY — Yes, there was a set of draft guidelines provided to us for comment, and we provided those comments according to what we thought would provide the intended outcome.

Ms CUNICH — And some clarity around it.

The CHAIR — Could you expand on what sort of commentary there was that was provided around the guidelines?

Ms CUNICH — When we had the very first meeting, and as I said AV Jennings, Australand, Mirvac —

Mr VLITAS — Lend Lease and Stockland.

Ms CUNICH — We actually ran through the whole process: what happens from the point of purchasing a site, and how the impact of this tax adds to the holding costs, in the whole development. You can have a seven-year program before you get to market, so the impact of a 3 per cent additional surcharge is carried through for that seven years. Seven years could be a good outcome — it could be a lot longer than that. You have got a lot of charges. We ran through some modelling with them. We provided modelling to the government. Nick Proud provided some that had been used for the federal government.

Mr PROUD — Yes, there is a good example here. The annual programs, which is the way the federal government looked at for developments, who buys the land now and how we deal with it. They go through an annual program. They buy up to a certain dollar value, and they do not have to go through the FIRB approval process for every single purchase. That has become the pre-qualifier federally, where if you are in the annual program, then you will be exempted from the process — you will not have the 1 per cent charge, which effectively it is federally. So they have actually referenced the annual programs in these guidelines, which is a good step. It is referring to the federal structure of: how do you acknowledge someone is exempted? There are positive inclusions that sense of Annual Program detail from the federal experience.

The CHAIR — From there as well — indeed. In terms of the guidelines themselves, what perspective does the property council or UDIA have on their legal enforceability, should we say, in terms of — we have guidelines that are provided to legislation. What is it that provided that certainty for yourselves in terms of the concern at the initial raising of the tax and then further becoming more pleased with the outcome that has occurred as a result of the guidelines?

Ms CUNICH — The guidelines clearly outline the government's intention, and if they are tabled in Parliament, that provides a reasonable amount of certainty around the intention. There was also an agreement that they would appear on the State Revenue Office's website so it was very clear to both the consumer and the industry what the intention of that legislation was.

Mr CANTWELL — The structure of the act was that the Treasurer can take into account any other relevant circumstance. I think the key issue with the guidelines was that they set out some of those relevant circumstances to provide more certainty to industry. On the face of it, that was really just a statement at large as to what might be a relevant circumstance, and by having a dialogue with industry it was able to actually get down to some more detail around what would be a relevant circumstance in terms of impacting the cost of housing to Australian residents and the like. That was then built into the guidelines, because you could see the direct relationship as to why that would be a relevant circumstance.

Mr CASEY — I think it provides a certain level of certainty for the industry, knowing that there are exemptions for those other circumstances which assist partly and fully foreign-owned corporations to be able to continue conducting that work as they have been over the past 60 or 70 years. I guess the guidelines are still something that will be developed further as we implement it, and if any implementation issues occur. We have been very cooperative with the Treasury, and they have been cooperative with us, so I think the continued open dialogue will ensure that those guidelines are implemented effectively to provide the outcomes that we are looking for.

The CHAIR — In terms of disclosure of who it is that is going to be exempt from these new taxes, do the Property Council or the UDIA have concerns about whether or not those exemption should or will not be made public? Does either organisation have a view on whether or not it is preferable that exemptions are made public or are not make public? The basis of the question really is around transparency and whether or not property developers would rather that all the cards were laid out on the table so that everybody is aware of what is happening — who is paying this tax and who is not paying this tax, rather than having questions about where exemptions are applied or not.

Ms CUNICH — We have not discussed that, but the property council's view on many other issues — and I cannot imagine it would change — is that there should be very clear transparency around the application of a tax. How is it dealt with at a federal level — or the intention at a federal level?

Mr PROUD — In terms of the annual programs, it is clear. Foreign corporations will actually have to pay a \$25 000 fee. That is what the annual program will be in the future. So there is an administration fee that is being paid, and everyone will be listed — everyone is visible, and that is clear. This does, in the guidelines, reference the annual programs for added transparency. Those annual programs are an indicator of who should be exempted. That is a very good way of detailing who is exempted and who is not. Looking at the federal sphere is again a good reference.

Mr PRADOLIN — Full transparency is the only way to go.

Mr CASEY — In the comments that were provided when the guidelines were developed we did say that there needs to be a certain level of transparency in the application and implementation of those guidelines so that the industry can be given a greater level of certainty on how it will be applied and how it will continue to be applied in the future.

The CHAIR — Just by way of context to that, this has been a subject of discussion today amongst a number of witnesses and there has not been any certainty provided about whether or not these will be disclosed. That was really the reason behind my question — to get your view on whether or not these exemptions should be made public, and I am pleased to hear your response.

Mr EIDEH — What will be the impact on housing prices when investors sell, if they have been charged higher fees?

Ms CUNICH — When a non-Australian resident has purchased a property and they then sell?

Mr EIDEH — Yes. What is the impact?

Ms CUNICH — The market will determine what price will be paid. That would just depend on how many properties are on the market at that time and where is that property located, I would imagine. You might be better — —

Mr PRADOLIN — The much more fundamental issue is that overseas investors can only sell to domestic buyers. They cannot sell to someone overseas, so I think the fee is irrelevant to the resale. It is irrelevant.

The CHAIR — Can you provide some clarification on that?

Mr PRADOLIN — Yes, sure. When an overseas buyer buys a property, they can only buy new. When they sell, they can only sell to locals. So from a supply point of view, it should put a downward pressure on pricing, which is positive for affordability.

Mr EIDEH — What other measures could be implemented to improve housing supply and affordability?

Mr PROUD — Build more homes.

Ms CUNICH — A lot more supply into the market.

The CHAIR — The opening of further residential land for development is — —

Ms CUNICH — Fixing the planning system. It is long, it is complex. Fixing the land. More land supply. The planning system. This is just one tax on property. There are a plethora of — —

Mr PROUD — I will table the solution to the issue of supply, which is developing a system —

Ms CUNICH — Yes, there is a 5-point plan there.

Mr PROUD — which is the development assessment report card, and from that respect we see that federally working with the states there are supply inefficiencies around planning and development assessment, and that is across the country. We see that there is a window of about 18 months of strong activity, which is the

development outlook we have, and we see that there is an opportunity for state governments, working with some efficiencies around rezonings, around independence of planning decisions, and we see that consistency across the states is where there is some work to be done.

We also see that there is a federal issue of housing affordability. Obviously building more homes is very important, but we need to not just rely on foreign investment, which currently is strengthening the market. We need to look at multifactor productivity, which comes from improving the development assessment pipeline. Getting rid of stamp duty, which is very topical today and something that we are strongly positioning as being an impediment to supply.

The CHAIR — Just to follow on from Mr Eideh's question, you spoke about land supply. What would have the greater net effect on housing affordability? Would it be fixing the land supply issues or the introduction of this new tax?

Mr CASEY — Fixing the supply issues would be a significant step forward. There are still some questions of what the true impact of foreign buyers is to buying out from Victorian families. There is not enough information there. Even the report from the federal government showed that there is a lack of consistent and adequate information out there. But most definitely I think the supply of land would be the most significant impact that you could have on housing affordability.

Ms CUNICH — I think you have to, not being flippant — but the assessment here across Australia — and there is at the beginning of this book a five-pronged approach to it — it is not one thing. Land supply is probably the most important, but it is fixing property taxes, it is fixing the planning system so that there is more and more property coming into the market and a diversity of property. It is not just about building on the outer fringe, it is about getting that diversity of product in that middle ring as well where there is an enormous amount of pressure on housing in that middle ring.

Mr CASEY — When I talk about supply, taxes and charges come into that. Being able to provide a new supply of housing can depend highly on how much the developer is being taxed and charged. We have been undertaking some greenfields research on the impact of tax and charges, and we saw that basically, of the total overall development costs, the taxes and charges can amount to a little more than a third of the overall costs.

The CHAIR — Mr Dalidakis?

Mr DALIDAKIS — No.

The CHAIR — No further questions?

Mr DALIDAKIS — I think that they have made it abundantly clear that they support the guidelines in the legislation as it currently is.

The CHAIR — Thanks, Mr Dalidakis,

Mr DALIDAKIS — No, actually I will have one; thank you for prompting me. In the testimony, Mr Proud, you noted that the response from the Treasurer's office was exceptional, which is always nice to hear. I am keen to understand, in respect to your dealings with the current government vis-a-vis a previous state government — you do not need to name which state government it may be — how have you found the interaction with this government in terms of this particular issue? Has it been more responsive, less responsive, as responsive? As I said, feel comfortable not to mention which state government previously you have had dealings with that you can compare.

Mr PROUD — On this issue, we have not had previous discussions with a previous government, or I have not had, personally, so it is hard for me to put any relative scorecard. But I will give you a scorecard on the development assessment systems of the country, as I have said, and we can look at those sorts of areas of where we have worked with the previous governments. That is not just a segue; it is the honest truth.

State governments do change and agendas change over a three to four-year period, and what we need to get behind is what was the previous government's ability and effect on an issue to get to longer term structural issues. That is what our federal government is trying to focus on. We need our federal government focused with the state government.

In terms of working with state governments, each government comes through and they do a bit. Our previous planning minister in this jurisdiction helped to create a lot of supply, which is vital to the housing affordability issue we face nationally. But what we need to do is make that supply continue for not just one or two years and not just have 200 000-homes start for one year, but to have 185 000 every year for the next 5 to 10 years.

Mr DALIDAKIS — Do you see this legislation as impacting on supply?

Mr PROUD — It is too early to really know how it is going to impact on the supply. What we need to do is ensure that investment continues to come in, and that is not just foreign investment, it is domestic investment as well. We need to ensure that we do not have impacts on investments through things such as negative gearing. And looking at the middle ring around Melbourne, if they quarantine negative gearing to new stock, that will inflate the price of rentals in that middle ring. There is a range of decisions that need to be made in the next year or two that will impact affordability for decades, and this is the opportunity maybe, with the strong activity at the moment.

Mr DALIDAKIS — I am sure you will get to lobby our federal parliamentary colleagues on that issue of negative gearing coming soon. Let me ask that question of you, Mr Pradolin, given that you come from effectively a property developer. In terms of your views about the impact to supply, is a 3 per cent surcharge on non-residents going to affect your supply curve going forward.

Mr PRADOLIN — As Nick said, it is too early to really tell, but our initial investigation with China is that demand will not stop.

Mr DALIDAKIS — So it will not hurt at this point.

Mr PRADOLIN — That is our initial, and again it is very early.

Mr DALIDAKIS — Sure, I appreciate that. Circumstances will change and you will be able to reflect, forecast with what is actual in time to come, and we will be able to look at it. The other question I want to gain some clarity about — I think all of you have expressed a degree of transparency in relation to Mr Morris's question about the exemptions provided, but I just want to ask each of you very clearly: are you comfortable with automatic exemptions being provided in terms of being publicly made available, because that was what Mr Morris's question was, in relation to your tax affairs? Because as best as I understand it, none of you are required to have your details provided for taxation affairs otherwise. I just want to make sure that you are all very clear about the question that Mr Morris asks.

The CHAIR — My question was directly about the exemptions under this new tax, not about any other.

Mr DALIDAKIS — Correct, I understand that, but they are not required to be listed for any other measure so I just want to make sure that we are very clear in terms of the testimony provided to the committee.

Mr PRADOLIN — From our behalf, there is no issue at all about transparency.

Mr VLITAS — AV Jennings, as a publicly listed company, would not have any concerns about that knowledge or information being in the general domain because basically the buyer would then have confidence that that company is exempt.

Mr PROUD — And again we would use the federal structure around the annual programs as the vehicle for visibility.

Mr PRADOLIN — Given that you have touched on affordability, I cannot lose the opportunity to make a point with regard to bipartisanship in planning. It is such an important issue that we need to put politics aside and get a strategy for this system irrespective of politics.

Mr DALIDAKIS — That is what Ms Cunich is for, to represent that policy parameter going forward. But on this side of the table I am sure we will continue to play the politics as we do.

The CHAIR — That was a lot of questions for someone who did not have any questions.

Mr DALIDAKIS — You prompted me.

The CHAIR — I should know, shouldn't I? Are there any further questions from the committee? Are there any further statements that anybody else would like to make?

Mr VLITAS — In terms of supply, just remember that like everything in life it is all about the supply that we bring on that reduces the cost. I think what was missed in this opportunity was probably having to look at housing affordability and how it could be impacted if you cut off supply. It was important that when the question was raised about the tax one thing we could point out to the Treasurer was the level playing field. Therefore, the unintended consequence was that you could actually impact on developers such as Australand, the AV Jennings, Mirvac. These major developers that operate in Victoria could have said, 'Let's not invest in Victoria, let's go and invest somewhere else'.

That is where we have to make sure that when we are looking at any tax it is the effect you have, because the unintended consequences could occur very quickly and supply, as happened in New South Wales, it turns off very quickly and it goes to other states. We had the benefit; let us not lose that benefit when we have got it in Victoria.

The CHAIR — I thank you all for attending today. It has been most insightful. Thank you for your openness and frankness. Mr Proud, that document you have there for us to keep.

Mr PROUD — I have more copies of the Development Assessment Report Card if you like.

The CHAIR — You do? I am sure all the members of the committee will be very interested to have a read of that. I will close the session there and thank you very much for your attendance.

Witnesses withdrew.