

**Submission
No 15**

**INQUIRY INTO FURTHER INQUIRY INTO THE
REGULATION OF BUILDING STANDARDS**

Organisation: Property Council of Australia

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Australia's property industry

Creating for Generations

23 August 2021

Mr David Shoebridge MLC
Chair
Public Accountability Committee
Legislative Council
Parliament House
Macquarie St
SYDNEY NSW 2000

Dear Mr Shoebridge,

FURTHER INQUIRY INTO THE REGULATION OF BUILDING STANDARDS

The Property Council of Australia welcomes the opportunity to provide a submission to the Public Accountability Committee regarding the further Inquiry into the Regulation of Building Standards.

The Property Council has been heavily engaged in the building reform work happening across NSW and commends the work of the NSW Government and the Building Commissioner in their achievements to date in ensuring the integrity and quality of built form in Class 2 buildings.

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers across all property assets.

Property is the nation's biggest industry, representing one-ninth of Australia's GDP and employing more than 1.4 million Australians, as well as being the largest employer in Australia. In NSW, the industry creates more than \$581.4 billion in flow on activity, generates around 387,000 jobs and provides around \$61.7 billion in wages and salaries to workers and their families.

Our members are the nation's major investors, owners, managers, and developers of properties of all asset classes. They create landmark projects, environments, and communities where people can live, work, shop, and play. The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive and sustainable places.

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We are pleased to provide the attached comments for the Committee's consideration.

Lodgement of design and compliance declarations aligned with construction certificates (staged lodgement)

The property and design industry would benefit from changes to the lodgement of regulated designs and compliance declarations under clause 16 of *Design and Building Practitioners Regulation 2021 (DBP Regulation)*.

The implementation of high-quality, considered, and appropriate design would be promoted if lodgement of regulated design and compliance declarations was aligned with a staged construction certificate application process. Apart from being consistent with clause 29 of the DBP Regulation, the allowance of well thought through staged construction certificates on a project, which includes the lodgement of regulated designs specific to a particular construction certificate, will result in a more normalised workflow for the design and construction industry and we believe better overall outcomes.

Should regulated designs not be able to be submitted in accordance with the associated staged construction certificate, we believe that many designs are at risk of being rushed or finalised prematurely. This will create an environment of increased variations being submitted through the construction phase of a project, which will result in time delays and increased costs ultimately to the detriment of the consumer. In addition, projects will be delayed, impacting feasibility and the ability to meet stimulus demand by the construction and development industry which will only further worsen affordability issues for buyers and overall housing market.

A complex example might help illustrate why this change is important. Consider a metro station box which supports residential towers above. Allowing staged lodgment means:

- work will commence on the rail infrastructure and station boxes (covered by separate construction certificates) only if all interfaces with the residential towers above (e.g. structural loads and services locations) are considered in the design and declarations for the rail infrastructure and station boxes;
- the significant infrastructure works for the rail infrastructure and the station boxes will proceed, whilst design for the residential tower is properly resolved, without the residential design being rushed to enable the commencement of the rail infrastructure and station boxes; and
- any variations to the rail infrastructure and station box design (e.g. if there is a change in a residential tower) must be prepared, re-declared and lodged.

Overall, the intention of the DBP Act is to foster quality outcomes for the consumer through integrated design processes across the design, construction and development professions. The extension of Schedule 6 of the Act to allow regulated designs to be submitted in accordance with the associated staged construction certificate would enable this to occur effectively.

Recommendation:

In order to allow the alignment of the lodgement of design and declarations with construction certificates, the Property Council urges the Committee to recommend that the transitional arrangements set out in clause 4A of Schedule 6 of the *Design and Building Practitioners Regulations* apply on an ongoing basis.

Building Codes and Construction Certificates

The Property Council is strongly encouraging the Government to provide clarity on the application of the *Building Code of Australia (the Code)* on existing and approved development applications and construction certificates. We believe that these requirements are currently unclear, with obligations under the Code being too stringent for developers to adhere to, who have already secured construction certificates for approved projects and developments.

The Property Council appreciates the purpose of the current *Building Code of Australia* requirements, compliance with which is further enhanced through declarations required under the *Design and Building Practitioners Act 2020 (the DBP Act)* and the DBP Regulations in New South Wales. However, the stringent and ever-changing requirements under the code are posing significant and costly impacts on the development and housing industry, particularly between marketing representations relating to the pre-sale of units and retail premises. The unpredictable variations that have stemmed from the building codes' changes over the life cycle of a staged development can cause significant cost implications for approved projects, which have already secured prior approval and certifications under existing specifications and regulations.

Impacts from changes to the Building Code surrounding approved projects are being felt across the integrated design and building life cycle, from design and architecture through to building fit out and occupancy. Furthermore, impacts being experienced by developers, owners and builders alike are now spreading to the structural requirements surrounding concrete codes, architectural and service requirements as well as design and administrative obligations. Structural increases in code requirements trigger greater cost but also increase sizing which triggers a loss in lettable floor area and height from slab to slab, or alternatively triggers an increase to overall building plans to maintain the same amount of floors approved in existing development applications and construction certificates.

The industry has highlighted the need for the Government to provide clarity between projects in transition and developments which are proposed for the future. Further, there are practical programming issues which need to be addressed regarding the Building Code. It is also sometimes unachievable to construct a building utilising one version of the Code and then switching to another version. For example, if footings have been constructed to serve the overall structural building design and then the code changes to increase the requirements for structural columns and slabs, then the footings that are built under an early works

constructions certificate may now not be suitable to carry the load of the main works construction certificate structure, even though this would be compliant under the DBP Act.

Recommendation:

The Property Council urges that the new Building Code on approved developments are not applied where at least one construction certificate has been issued and construction work has commenced. If this were not to occur, there will be significant time delays, cost increases and potentially abortive works on projects which will ultimately result in adverse impacts to housing supply and affordability.

Application of the DBP Scheme to Commercial and Retail Tenancy Premises

The Design and Building Practitioners scheme applies to retail and commercial fit out works undertaken in buildings that have a class 2 component, regardless of the degree of interconnection with the class 2 component of the development. This is creating difficulties for those involved in designing and building retail and commercial premises, who although experienced, are not able to be registered under the DBP Act, as they lack class 2 experience. These practitioners are however caught up in a regulatory scheme targeted at class 2 developments and therefore face substantial issues with carrying out necessary requirements as outlined under the DBP Act. These schemes are placing some retail and commercial premises at a disadvantage to others. The same disadvantage applies not just to fit out works, but also when developing retail and commercial premises.

The nature of leasing often requires changes to services, which are nominated as category 1 works. These categorised works often trigger the variations lodgement to regulated design. The variations are faced on a tenant-by-tenant basis, requiring significant design and administrative works to be undertaken, in order to meet the DBP Act requirements.

Recommendation:

The Property Council is urging the Committee to recommend retail and commercial sections of class 2 developments, which do not interfere with the occupation, operation, egress or functionality of a building be exempt from requirements to provide upfront regulated designs.

Easements and Ground Anchors

Easements for ground anchors (both temporary and permanent) on neighbouring land are required with regulated design under clause 3 of Schedule 2 of the *Particulars for Regulated Designs Order 2021*. This means that no building work can commence until evidence of a registered easement for even a temporary ground anchor has been lodged. There are timing implications as a result of this requirement, which will ultimately impact affordability.

Recommendation:

In order to address the rights and concerns of neighbours, the Property Council is requesting the Committee recommend that rights to access neighbouring land to install ground anchors are required prior to access being permitted (but not as part of regulated design), and that registered easements only be required for permanent ground anchors (so that permanent rights run with the land). For temporary ground anchors, contractual access rights should be required (which unlike easements, are not registered), and in time an Australian Standard form licence be developed for temporary ground anchors.

The building reform work across New South Wales continues to improve the confidence in Class 2 buildings and the work of the Building Commissioner in this space is commendable. The Property Council remains committed to working with the Building Commissioner and the NSW Government to ensure the integrity and quality of apartments and buildings in NSW.

We thank the Committee for the opportunity to provide comment on this inquiry. Should you wish to take further evidence in this inquiry, the Property Council stands ready to assist and respond.

Should you have any questions regarding the content of this submission, please contact Charles Kekovich, NSW Senior Policy Adviser

Yours sincerely,

Luke Achterstraat

NSW Executive Director
Property Council of Australia