

1 September 2010

Ms Kye Tran
Legal Services Division
Land and Property Management Authority
GPO Box 15
Sydney NSW 2001

email: kye.tran@lpma.nsw.gov.au

Dear Ms Tran,

Re: Review of vendor disclosure requirements for real property sales in NSW

The Urban Taskforce is a non-profit organisation representing Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environment to engage in constructive dialogue with both government and the community.

The Urban Taskforce appreciates the opportunity to provide comments on the proposal to require the inclusion of pre-purchase reports with the contract of sale for property in NSW. We make no comment on whether or not these vendor disclosure requirements should be in place for established 'second hand' homes. Our interest relates to new and re-developed (refurbished) housing only. Whether or not such a policy change is required for the purchase of new housing does not turn on any policy change related to established housing. Your discussion paper does not distinguish between the two.

1. New residences, and newly refurbished residences, should not require vendor disclosure where an occupation certificate has or will be issued

Pre-purchase reports will be largely useless for the purchaser of a newly built residence.

Recently constructed buildings have been subject to critical stage building inspections during construction and recently treated for protection against pest attack. Properly constructed new buildings are also unlikely to be affected by conditions such as rising damp or be suffering significant wall or roof movement. Additionally, new buildings are covered by statutory warranties under the *Home Building Act* that ensures purchasers are provided with adequate protection against faulty workmanship. Such warranties are unknown to purchasers of established homes.

Furthermore, planning legislation already provides a regulatory system to ensure that newly built, and newly refurbished, homes meet standards and are safe and appropriate to live in. Under the *Environmental Planning and Assessment Act* it is an offence for any person to commence occupation or use of the whole or any part of a new building (unless an occupation certificate has been issued in relation to the building or part).¹ When warehouses or offices are re-developed as residences, the law also requires that an occupation certificate has been issued in relation to the relevant part of the building.²

¹ s 109M.

² s 109N.

An occupation certificate

verifies that the ... the building is suitable to occupy or use in terms of the requirements of the Building Code of Australia (BCA). That Code sets required standards for the design and construction of various classes of building to protect health, safety and amenity.³

It is also worth noting that the established (second hand) housing stock does not need to meet modern Building Code of Australia requirements. Normally such housing only meets the requirements that were in existence at the time of construction (which in many instances was between 50 and 80 years ago). As a result, pre-purchase reports evaluate the condition of buildings against a very low standard, while occupation certificates are only issued after an examination against a very high modern standard. The rigour involved in the issue of an occupation certificate is far greater than that involved in the release of a pre-purchase building report. Additionally the issue of an occupation certificate does not come with the disclaimers that are now commonplace for pre-purchase reports.

An occupation certificate gives greater assurance as the quality of a housing product than any pre-purchase report. Normally contract settlement does not occur until an occupation certificate is issued.

2. The typical cost of pre-purchase reports has been underestimated

The content of a pre-purchase report has not been defined, yet it has been suggested that such reports should "typically" cost \$500 per property. The quality and content of a report priced at this level required is so limited that their usefulness must be questioned.

A conservative estimate of cost for a useful pre-purchase building inspection and report for a "typical" dwelling, located in a "typical" suburb within the metropolitan region of Sydney will be in the vicinity of \$850-\$1200, significantly more than the \$500 suggested in your discussion paper.

We do not pass comment on whether this cost is justified in relation to unrenovated second hand properties. However it is clearly not a wise expenditure for new or refurbished properties where the requirement to obtain an occupation certificate applies.

A recently completed or refurbished residence, where an occupation certificate is required, should be exempt from any new vendor requirement to provide pre-purchase reports.

These comments are offered to encourage constructive dialogue between Government and the development industry and we ask that you accept these comments as our contribution to proposed amendments to the review of vendor disclosure requirements for real property sales in NSW.

Yours sincerely

Urban Taskforce Australia



Aaron Gadiel
Chief Executive Officer

³ NSW Department of Infrastructure, Natural Resources and Planning Circular, PS 05-001, "Occupation certificates and conditions of consent", 22 April 2005.