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Ms Nicole Maloney
EPA Inquiry Secretariat
PO Box 21428, Little Lonsdale Street
VIC 8011

Via: info@epa-inquiry.vic.gov.au

Dear Ms Maloney,

Re: Examining the Future Task of Victoria's Environment Protection Authority

Thank you for the opportunity to provide input on the above inquiry.

The Property Council of Australia is the largest advocacy organisation for the property sector with over 2000 member companies throughout Australia that represent property assets of over \$300 billion. Members of the Property Council are involved in the entire property investment cycle; the financing, design, development and maintenance of property, and the services that underpin the industry.

Please find attached the Property Council's submission, which addresses the questions raised in the discussion paper.

We look forward to working with the MAC to identify how EPA can perform more effectively in delivering a practical strategy that will encourage support from the broader industry. Should you have any queries in relation to our comments, please contact [REDACTED] Policy Advisor at [REDACTED]

Yours Sincerely,

[REDACTED]
Jennifer Cunich
Victorian Executive Director, Property Council of Australia

Response to Discussion Paper (*Examining the Future Task of Victoria's Environment Protection Authority*)

1. What do you think are the key environmental challenges which will impact the EPA in the future?

A critical part of urban consolidation is the remediation and regeneration of soil on infill sites. Given the nature of the construction process, infill sites generally require a significant amount of excavation and soil removal. However, this process is extremely costly as many of Melbourne's infill areas are deemed to be contaminated or potentially contaminated. Some sites can take several years to remediate and may have monitoring requirements, adding significantly to land holding costs for developers which then acts as a disincentive to the clean-up and development of sites.

To overcome this problem, EPA should establish a program where incentives such as streamlined and fast tracked approvals are offered in exchange for remediation by land owners. Subject to site sensitivity, the program could introduce a set of criteria upon which a site is assessed for risk. This would mean that not all developments have to go through a lengthy and complex determination period, leaving EPA to focus on high risk and more complex decisions.

Groundwater risks represent another significant problem for industry with relation to holding costs. Investigations typically involve deep drilling and sample extraction over several months, and will take place offsite which presents additional liability or traffic management issues.

The Property Council recommends that the *State Environment Protection Policy (Groundwaters of Victoria)* is amended so that the premise of groundwater protection in Victoria is based on its potential use, not on salinity (i.e Total Dissolved Solids range). Given the few uses for groundwater in urban areas, this would result in fewer investigations, with little detriment to the environmental risks associated with groundwater quality.

3. How can the EPA effectively work in partnership with other government agencies to meet the environmental challenges of the future?

EPA should minimise discrepancies between its Industrial Waste Resource Guidelines and the National Environment Protection (Assessment of Site Contamination) Measure (NEPM).

The NEPM includes land use related Investigation Levels (IL) which if exceeded, are intended to trigger further investigation of the contamination. For some contaminants, the NEPM has ILs that are higher than some of the Category C waste soil disposal criteria outlined in EPA's *Publication 621, Soil Hazard Categorisation and Management*.

The mismatch results in some categories of waste soil being considered suitable for onsite residential use and development, but subject to strict guidelines for disposal due to its categorisation.

The Property Council recommends that EPA update its Industrial Waste Resource Guidelines to take into account changes in the guidelines for site contamination in the NEPM.

4. How can the EPA's role in safeguarding the community against the health impacts of pollution be clarified or strengthened?

Currently, the amount of effort involved in auditing a potentially contaminated environment is not always representative of the level of risk posed by the contamination.

Community attention that surrounds certain types of contamination, some of which carry unwarranted stigma, can sometimes result in EPA's attention being diverted away from more pressing concerns.

EPA should investigate options for educating stakeholders about contamination risk to help put these issues into perspective. This will ensure that investment in dealing with contaminated sites can be commensurate with risk and not perception. It should also exercise the same consistency with regards to assessment of publicly held sites.

5. How could statutory frameworks more effectively prevent future environmental risks and land use conflicts?

Greater clarity and consistency for industry is needed with regards to the regulatory frameworks governing potentially contaminated land in Victoria.

One example relates to the way local planning authorities are interpreting *Ministerial Direction 1 – Potentially Contaminated Land* which provides that a planning authority must satisfy itself that the land is suitable for its intended use.

Remediation is often a complex process and cannot easily be resolved before the commencement of works. In some cases, the conduct of works is required to perform and access the areas that require remediation.

As the EPA appointed auditor is unable to provide a Statement or Certificate of Audit until such time that the remediation has completed, local planning authorities are requiring an independent review of the proposed remediation strategy. In the majority of cases the developer will pay for both the EPA appointed auditor and planning authority's independent advisor.

This outcome represents a misreading of the Ministerial Direction, which clearly states that the Certificate or the Statement is required prior to use of the land commencing, not prior to development of the land commencing.

The Property Council recognises that land needs to be identified as being potentially contaminated at the planning stage and that an Environmental Audit Overlay may be appropriate in some cases. However, should an Audit be required, there should be no need for the planning authority to satisfy itself that the land is suitable for the proposed development. This requires clarification through an amendment of the Ministerial Direction, or some other mechanism.

We further propose that EPA becomes a central agency for resolving matters with regards to contamination. In situations where there are no audit triggers and the planning authority wishes to satisfy itself that the site is suitable for development, we suggest that EPA has a role in being the referral authority for the decision without the need to undertake an audit. Having one body, indeed one expert body responsible would provide greater consistency, reduced duplication of processes and faster clean-ups enabling development.

7. How can the EPA better identify and, where necessary, address problems that are the result of past activity?

EPA should ensure that action (assessment and remediation) triggers are proportionate to risk and that they are clearly communicated to stakeholders.

Responses to different types of risk should be codified within an overarching framework, to improve regulatory and resource efficiency. This will provide greater certainty to stakeholders and allow more previously contaminated land to be redeveloped.

EPA should also provide clear guidance to ensure that its risk based assessment approach is understood.

12. What can we adopt from other regulators and regulatory models to implement best-practice approaches and ensure that the EPA can rise to key future challenges?

There is an opportunity in Victoria for sites undergoing development to have some form of accountability to EPA on environmental outcomes without the prescription or negative exposure of enforcement.

A legislative framework for voluntary site contamination assessment proposals, could be introduced in the context of property owners and occupiers being responsible for reporting pollution.

EPA should consider adopting the South Australian model for voluntary proposals which allow the regulator and developer or occupier to reach an agreement on the most appropriate remediation strategy. Aside from enabling EPA to be more aware of seriously contaminated sites, it would offer greater a degree of flexibility to developers and occupiers. EPA would retain the capacity to serve traditional notices if it felt risks were significant or that commitments were not being met.

13. Are there any other issues relevant to the Terms of Reference that you would like to raise?

The size of Fishermans Bend as an urban renewal precinct means it offers the Government a unique site with economies of scale for conducting precinct wide assessment and/or remediation. This could be set up with a permanent panel of auditors who specialise in the precinct and its contamination issues full time while development occurs. This would ensure consistency across sites.

The Property Council believes that mandatory reporting should be introduced into the Fishermans Bend precinct, with EPA creating a central repository of contaminated sites reports. By using this repository, multi-title precinct solutions could be implemented, to provide for the adoption of the most efficient and cost effective remediation methods.