

27 February 2009

Commercial Building Energy Efficiency Team,
Energy Efficiency Branch,
Department of the Environment, Water, Heritage and the Arts,
GPO Box 787,
CANBERRA, ACT 2601

By email: commercialbuildings@environment.gov.au

Dear Sir or Madam,

Re: Mandatory Disclosure of Commercial Office Building Energy Efficiency

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 has reviewed the *Consultation Regulation Document 18 December 2008* and *Consultation Regulation Impact Statement 18 December 2008* and identified some issues of concern. Our concerns are generally outlined below for your consideration.

1. Mandatory disclosure will just lower the energy efficiency bar

Whenever Government brings in a new rule or standard, industry's primary response is just compliance. That is, there is no incentive to exceed requirements or go the extra step to seek market leadership or superiority. There is no reason to do anything more than meet government's base standard. When government sets a development or building standard, industry will meet that standard. For instance, prescribed building standards such as fire ratings, building separation or development standards such as building setback, height and floor space ratio do not encourage innovative solutions nor guarantee the best outcome for the environment. However, when prescription is replaced with desired outcome and performance, the opportunity for industry originality results in better innovative solutions.

Given the opportunity, industry will respond to market forces. This can be clearly demonstrated by the development and voluntary adoption of the green star energy rating system. The property industry has embraced this approach and has successfully used this system to improve energy efficiency of buildings. In fact, there is healthy competition in the market place because there is a market driven imperative for some to seek higher standards. This pursuit of energy efficiency has nothing to do with government regulation, but everything to do with market forces.

To their credit, some areas of government have already recognised that incentive is more effective than regulation. Instead of relying only on the Building Code of Australia requirements for energy efficiency, some have looked at voluntary schemes and incentives to encourage industry to exceed minimum standards. The Green Business Program of NSW or the Commonwealth Green Building fund are prime examples.

In the end, where the market demands energy efficiency and/or energy efficiency ratings, building owners are quick to respond.

2. Mandatory disclosure simply means more government

The fact that there is a perceived lack or imbalance in energy efficiency information does not automatically justify government intervention. Everyday transactions occur where the buyer does not have the benefit of all the possible information to assist in the decision making process. The Productivity Commission found that:

The need for Government regulatory intervention does not immediately follow from the identification of information deficiencies: information deficiencies are pervasive yet most markets continue to function reasonably efficiently. ... it is not generally efficient to eliminate all negative externalities or promote infinitely large quantities of positive externalities. In many cases, externalities do not create significant problems (Productivity Commission 2000).¹

In this context one cannot justify the creation of additional bureaucracy. We understand that this scheme will require that the NSW Department of Environment and Climate Change take on additional functions and that a new national administrative unit at the Commonwealth level will need to be created. Furthermore there will be a need for new regulation, enforcement and monitoring systems to be established and staffed, all at significant cost to the government and community. Alarmingly, it is noted that not only will property owners need to carry the cost of energy efficiency assessments and certification, they will also be slugged with additional application fees.

Furthermore, the long-term business model of the national administrative unit will be based on full cost recovery as the scheme is broadened to other building types. This not only means that the property owner will bear all the cost of a growing administration, which is alarming in its own right. It also signals the possibility of rolling this scheme out to other classes of building, which is clearly unreasonable, and of little benefit. For instance, energy usage of industrial premises is governed mostly by the activity, plant and equipment used and installed on the premises. Energy rating of such buildings would be of limited value to a potential occupier. In the case of retail premises the nature of and use of space is so variable that comparisons between buildings would be virtually meaningless.

Additionally, concern is raised with the suggestion that two tiers of government will be involved in the administration and operation of the scheme. This introduces an added level of complexity and potential for conflicting philosophy, interpretation and advice. There already exists problems with dual planning approval systems without adding yet another dual administrative regime to frustrate business and the community.

3. Money spent on compliance could be spent on upgrading

If we accept the cost estimates suggested, this scheme will cost industry and Government close to \$15 million dollars. A large portion of this cost relates to spending on more bureaucracy, the balance is an estimate of compliance cost to industry. The funds required for administration and compliance would be better spent if directed towards real incentive schemes that encourage voluntary premises upgrading and not used to pay for more Government and consultants.

The property market is already moving towards improved energy efficiency. Even without regulation, the property industry has successfully introduced the Green Star rating and the Office Quality Grade Matrix. These are important assessment tools that incorporate energy efficiency. The property market's desire to achieve a rating better than their competitors has driven energy efficiencies, not government regulation.

4. There are already systems in place that address energy efficiency

The Building Code of Australia comprehensively regulates energy efficiency and it must be noted that these requirements do not only apply to new commercial buildings. These provisions

¹ Department of the Environment, Water, Heritage and the Arts (2008) *Consultation Regulation Impact Statement- Mandatory Disclosure of Commercial Office Building Energy Efficiency* p. 12

apply to all buildings being refurbished, altered or extended where a development application is required. This means that existing buildings will be progressively upgraded and when this requirement is added to incentive and voluntary industry schemes the case has not been made for the introduction of a new and costly mandatory disclosure scheme.

5. Mandatory disclosure will not necessarily influence purchase and/or lease decisions

Owning and operating a successful business is a challenge. It takes courage, determination and importantly business acumen. Potential owners and tenants of business premises must consider those matters that will influence their business profitability. Because business is acutely aware of those matters that may impact on profitability, the Government is not giving business due credit by underestimating their ability to recognise the factors that will impact on their bottom line. Business is very good at demanding further information when required and does not rely on Government intervention to make this information available.

Business understands that when selecting a premises there are things that must be taken into consideration to be profitable and remain in business. Matters such as business exposure, the image to be conveyed, location, access to services and transport, quality of fit-out and price are the key considerations. Building owners are governed by their potential to attract retail tenants and if a tenant demands energy ratings and efficiency reports when considering a business premises the building owner will generally provide it if it is practicable to do so.

Despite the above, even when people have access to information, they often make decisions that are suboptimal. Garnaut notes that:

Mandatory disclosure may not always be able to address information asymmetries, if bounded rationality prevents one or more parties from usefully applying the information, or if one of the parties is not the actual decision maker².

Mandatory energy efficiency disclosure in no way guarantees that purchase and/or lease decisions will be influenced by this information. Furthermore, the desire for this information cannot be established. In fact, the Government's own regulation impact statement states that:

[t]here is no comprehensive data from Australia that establishes the level of demand for energy efficiency information from tenants or owners of commercial buildings.³

The Urban Taskforce is of the view that mandatory disclosure will not significantly influence decisions on building selection and will become yet another costly compliance requirement for Government and industry.

6. Now is not the time for a new cost imposition on the commercial property sector

The global financial crisis has directly hit income, profits and jobs in the finance and property sectors. The commercial property sector has been hit harder and quicker than any other sector of our economy.

The first impact of the financial crisis and associated credit squeeze has been to stop the next round of investment projects dead in their tracks. Once the set of projects is completed, there will be a major drop in private sector construction jobs. BIS Shrapnel are forecasting a massive fall in non-residential building construction.

The situation has become so dire that the Federal Government itself has seen the need to intervene and provide extra support to commercial property developments through the Australian Business Investment Partnership. Nonetheless, even with this scheme, reduced demand and higher yields (i.e. lower sale prices for the finished product) mean that financial feasibilities for many new projects do not stack up. This is making it very difficult to get commercial property development off the ground.

² Commonwealth of Australia (2008) *Carnaut Climate Change Review: Draft Report* June 2008 p. 454. Cited in Department of the Environment, Water, Heritage and the Arts (2008) *Consultation Regulation Document- Mandatory Disclosure of Commercial Office Building Energy Efficiency* p. 23

³ Department of the Environment, Water, Heritage and the Arts (2008) *Consultation Regulation Impact Statement- Mandatory Disclosure of Commercial Office Building Energy Efficiency* p. 16

At this time, does the Federal Government really think it is necessary to burden the commercial property sector with extra regulation? In any event, generally speaking, the only projects that are likely to proceed are those with a pre-commitment from an end-investor. In those cases the facility is essentially being purpose built for the end-investor and they are likely to specify their requirements, including energy performance, up front as part of the pre-commitment exercise. Imposing a mandatory disclosure regime will have little benefit.

7. Regime will disproportionately impact on existing buildings

Any regime that applies retrospectively to buildings that have already been constructed will have a disproportionate cost impact. It is more expensive to establish the energy performance of a pre-existing asset that you did not build, than to establish the performance of an asset that you yourself have commissioned.

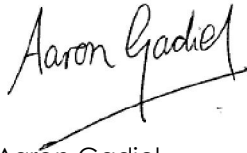
These comments are offered to encourage constructive dialogue between government and the development industry and we ask that you accept these comments as our contribution to this debate.

We are always able to provide a development industry perspective on policy and we would request the opportunity to meet with the senior policy officials handling this matter to discuss these issues in more detail.

I would be grateful if your office could please contact Rebecca Deal in our office on (02) 9238 3955 to set-up a meeting.

Yours sincerely

Urban Taskforce Australia

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is written in a cursive style with a long horizontal stroke at the end.

Aaron Gadiel
Chief Executive Officer