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Mr Andrew McKeegan  
Deputy Secretary Planning and Land Services  
Department of Transport and Planning  
Level 13, 1 Spring Street  
MELBOURNE VIC 3000

13 March 2024

Dear Mr McKeegan

## **REGULATORY IMPACT STATEMENT FOR BUILDING AMENDMENT (FEES AND OTHER MATTERS) REGULATIONS 2024**

I would like to thank your staff at the Department of Transport and Planning (the Department) for working with the team at Better Regulation Victoria to prepare the Regulatory Impact Statement (RIS) for the Building Amendment (Fees and Other Matters) Regulation 2024 (the proposed Regulations).

As you know, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 7 March 2024 meets the adequacy requirements set out in the *Subordinate Legislation Act 1994*.

### **Background and Problems**

In Victoria, the Building Regulations 2018 (the Regulations) work alongside the *Building Act 1993* (the Act) and the National Construction Code (NCC) to form the legal and regulatory framework for the building construction sector in Victoria. The Regulations include fees charged by the following entities, which each play a role in regulating building in Victoria:

- the Victorian Building Authority (VBA) – responsible for monitoring and enforcing compliance with the Act, the Regulations, and the NCC;

- the Building Appeals Board (BAB) – a specialist expert tribunal that makes determinations in proceedings relating to the Act and the Regulations;
- the Building Regulations Advisory Committee (BRAC) – advises the Minister for Planning on legislative and regulatory matters, along with assessing applications for accreditation of building products, construction methods or designs, components or systems connected with building work; and
- local councils – responsible for the administration and enforcement of some building activities in their municipality.

The Department explains that at the time the Regulations were made in 2018, insufficient data was collected to estimate regulatory costs and set appropriate fee levels. As a result, a revocation regulation (Regulation 286) was inserted to prompt a review of certain building-related fees. Regulation 286 will revoke these fees on 1 July 2024.

The Department explains that consistent with the pricing principles set out in the Victorian Government's *Pricing for Value* guide, it is appropriate that builders and their customers bear the direct costs associated with the regulatory activity. While effective building regulation broadly benefits the community at large, regulatory activity also provides private benefits to builders and their clients.

The Department explains that if no action is taken and Regulation 286 revokes building-related fees, the VBA, BAB, BRAC and councils will have fewer resources to fulfill their statutory requirements. These entities would need to seek alternative sources of funding and/or conduct their regulatory activities with fewer resources, which could compromise the effectiveness of building regulation, and the safety and amenity of buildings and their occupants.

The fees prescribed by the Regulations under Regulation 286 are:

- Regulation 18 (VBA) - fee for an application for owner-builder certificate of consent;
- Regulation 36 (Council) - maximum fees for report and consent;
- Regulation 45 (Council) - fee for lodgement of building documents with council;
- Regulation 52 (Council) – fees for requests for information from council;
- Regulation 244 (BRAC) - building product accreditation fees;
- Regulation 266 (VBA) - duplicate building practitioner certificate fee;
- Regulation 272 (BAB) - fees for making an appeal, referral or application to the BAB; and
- Regulation 273 – (BAB) - fees for fast-track appeals.

### **Options and Analysis**

The Department considers three broad options to remake the fees for the VBA, BAB, BRAC and local councils:

- Option 1: the status quo. The existing fees are remade in the same structure and at the same fee levels;
- Option 2: increase fee levels to achieve higher cost recovery than the status quo. The existing fees are remade in the same structure with higher fee levels; and
- Option 3: some variation to the fee structure and higher levels of cost recovery than the status quo. The structure and levels of the fees under Option 3 varies according to each entity's specific considerations.

These options are assessed against the base case – a counterfactual scenario in which the fees listed under Regulation 286 are revoked on 1 July 2024. In the RIS, the Department assesses options for fees administered by the VBA, BAB and BRAC through a summative, qualitative analysis. The Department considers this approach to be proportionate to the relatively low revenues that these entities accrue from their in-scope fees. The Department explains that as the total annual revenue collected by councils in relation to these fees is much higher, a more detailed analysis in the form of a multi-criteria analysis (MCA) is undertaken to assess the council fee options. The Department equally weights three criteria in the MCA – cost recovery, reflective of users' benefit (whether the fees reflect benefits to users) as well as simplicity (33 per cent per criterion).

#### BAB fees

The Department assesses that Option 3 is the preferred option to remake BAB fees, as it best balances the level of cost recovery with the objective of maintaining users' access to justice (particularly those with a lower ability to pay). Under Option 3, BAB fees will increase cost recovery from 9 per cent to 29 per cent of the BAB's costs. Under Option 3, higher fees will be charged for appeals, referrals and applications related to Class 2 to 9 buildings. The Department considers this appropriate as Class 2 to 9 buildings are more complex to regulate, and owners of these buildings would generally have a greater ability to pay without impacting their access to justice. The Department anticipates that these changes will have no major impact on the BAB's ability to administer the fees or for applicants understanding of the fees. The Department estimates that the BAB will raise \$3.4 million in fee revenue from these fee changes between FY 2025 and FY 2028.

#### BRAC fees

The Department assesses that Option 2 is the preferred option to remake BRAC fees, as it is most representative of BRAC's total costs (current cost recovery is only 2 per cent). The Department also assesses that Option 2 best ensures that costs are fully recovered from product developers who benefit from having their products accredited by BRAC. Under Option 2, the BRAC application fees for accreditation or renewal of accreditation are proposed to be increased 1,077 per cent to achieve full cost recovery for the BRAC. The Department expects that the fee increase will not affect the competitiveness of BRAC's accreditation scheme against similar schemes such as CodeMark, the national

accreditation scheme. The Department explains there will be no change in the fee to vary an accreditation of a building product under Option 2. The Department estimates that BRAC will raise \$0.4 million in fee revenue from these fee changes between FY 2025 and FY 2028.

### VBA fees

The Department assesses that Option 3 is the preferred option to remake VBA fees, as it is most reflective of the VBA's current and future regulatory costs. Under Option 3, the fee for the owner-builder certificate of consent will increase by 109 per cent to fully recover current and future costs. The Department explains that this fee increase will provide the VBA with sufficient resources over the next four years to review and upgrade its online materials. These reviews and upgrades include regular and periodic changes to align with the NCC and other regulatory requirements that owner-builder applicants are expected to meet. The Department expects that the proposed fee increase will not materially impact compliance, given the fee is only 1 per cent of the minimum cost of the relevant building work. The Department explains there is no change to the duplicate certificate fee under Option 3. The Department estimates that the VBA will raise \$4.7 million in revenue from these fee changes between financial years (FY) 2025 and 2028.

### Council fees

The Department assesses that Option 3 is the preferred option to remake council fees, as it achieves an acceptable level of cost recovery and is most reflective of the benefits to users. Option 3 involves targeted fee increases for report and consent fees relating to siting matters and stormwater legal point of discharge works while keeping other report and consent fees at the same level. The Department explains that this is preferred to a broad increase of all fees (under Option 2) as the proposed fee better reflects the complexity (and associated assessment effort) of siting matters and stormwater legal points of discharge.

Option 3 is expected to recover, on average, approximately 112 per cent of total costs per council. The Department explains in the RIS that over-recovery (on average) is warranted given the highly variable costs faced by councils across Victoria. It is likely that the proposed fees will still leave a number of councils at levels of under-recovery. As an example, the Department notes that Option 3 will increase cost recovery in the lowest recovering council from 37 per cent to 41 per cent.

### **Implementation and Evaluation**

The proposed fees will take effect on 1 July 2024. Fees will be set in fee units and increase each financial year in line with the Treasurer's annual rate set under the *Monetary Units Act 2004*.

The Department explains that it will be responsible for overseeing implementation of the proposed Regulations once they are made and that the fee collecting entities will be

responsible for applying and collecting the new fee rates. The Department, in collaboration with fee collecting entities, will develop measures to monitor the effectiveness of the new fees in achieving cost recovery while maintaining an appropriate level of service in line with statutory requirements. It will also determine the frequency of reporting requirements on these measures.

As the total impact of the proposed fees is above the annual \$8 million threshold for a high impact proposal, the Department would ordinarily be required to undertake a mid-term evaluation three to five years following implementation of the Regulations. However, the proposed fees will amend the Building Regulations 2018, which are due to sunset in 2028. Therefore, the Department explains that the proposed fees will be reviewed as part of the broader sunset review, which will be completed by 2028. The Department also notes that it will engage with fee collecting entities to collect data to inform this review.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 7005 9772.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cressida Wall', with a stylized, cursive script.

**Cressida Wall**

Commissioner for Economic Growth and Better Regulation