

14 October 2015

NSW Fair Trading & Land and Property Information  
[legalservices@lpi.nsw.gov.au](mailto:legalservices@lpi.nsw.gov.au)

## **Re: Feedback – Buying property off the plan**

The Urban Taskforce thanks NSW Fair Trading and Land and Property Information for giving the Taskforce the opportunity to provide feedback regarding the review of off the plan property sales. We have provided a number of comments for your consideration, primarily relating to the use of 'sunset' clauses. These are outlined below.

### ***The Urban Taskforce does not support the unethical use of sunset clauses***

Recently there have been several instances highlighted in the media claiming certain developers have purposely run over time in the completion of residential development projects in order to invoke the sunset clause and therefore nullify off-the-plan sale contracts. They then put the same properties back on the market at a higher price to increase their profit margin. This may be profitable in a 'hot' financial market. The Urban Taskforce does not support the unethical use of the sunset clause and believes this kind of opportunistic behaviour should be prevented where possible.

### ***The extent of the misuse of sunset clauses should be identified***

Currently, it is unclear just how common this practice is, however the Urban Taskforce does not believe that the improper use of the sunset clause by developers is widespread and that this review should establish the full extent of this problem prior to considering changes to the use of sunset clauses. The sunset clause provides benefits for both developers and buyers. Buyers have a firm date to occupy and settle the property. Developers benefit as buyers feel safer buying a property off the plan, as they know that should the property not be completed in a certain amount of time, the sunset clause will rescind the contract and they can obtain their deposit back. This confidence ensures developers can achieve the level of pre-sales necessary to obtain financing for the development.

### ***Any proposed reforms should not unfairly disadvantage property developers***

Any proposed reform regarding the use of sunset clauses should be fair, and must not disadvantage developers who have their projects delayed for legitimate reasons. Delays can happen with construction and property development, for example weather holding up construction and delays in council approval. Finalising an approval and conditions of consent for a development application is sometimes a very lengthy and onerous process.

Changes to the use of sunset clauses could have significant implications upon the financing and security of proposed property development and these issues should be examined in detail before any changes are considered. Sunset clauses are vital for minimising financial risk as they prevent the buyer from backing out of a settlement at completion of the project, if the project is completed before the sunset date. Construction funding can only be sourced from banks once there is an acceptable approval for the development, a certain number of presales and a construction certificate granted for the development.

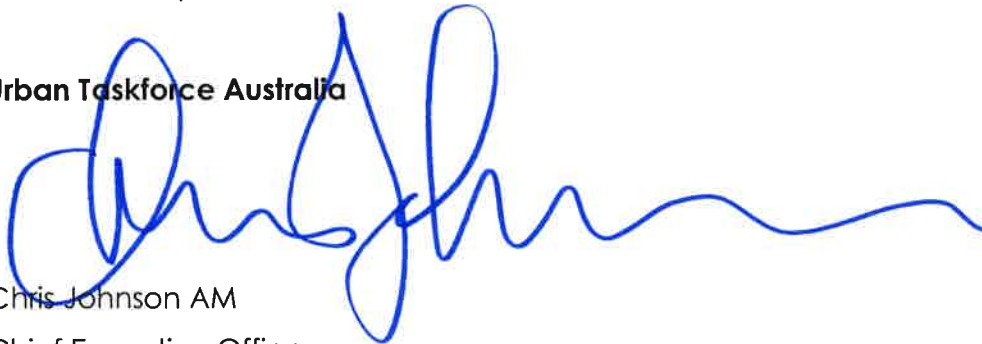
The sunset clause can be at times be used inappropriately by buyers. Should the market change and the property decrease in value, developers are substantially worse off as buyers can use the sunset clause to rescind the contract and recoup their deposit if the project is not delivered by the date specified in the sunset clause. This allows the buyer to avoid the obligation to buy a property worth less than what they initially agreed to pay for it.

The information on the review provided on the NSW Fair Trading website indicates that there will be future opportunities for engagement and consultation and look forward to collaborating with NSW Fair Trading and Land and Property Information in this regards.

We are always willing to provide a development industry perspective on planning and property development issues and we would welcome the opportunity to meet and discuss these issues in more detail. Please feel free to contact me on telephone number 9238 3927 to discuss this further.

Yours sincerely

**Urban Taskforce Australia**

A handwritten signature in blue ink, appearing to read 'Chris Johnson', with a long, wavy horizontal line extending to the right.

Chris Johnson AM  
Chief Executive Officer