INFLUENCERS IN PROPERTY DEVELOPMENT

REPORT FOR THE AUSTRALIAN TAX OFFICE

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Report authors:

Venkat Narayanan, Ashton de Silva, and Judith Callanan

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Executive Summary

The aim of our project was to investigate the persons or entities that influence tax related decisions made by property developers. Property development and construction is an important sector of the economy and has far reaching effects on many aspects including taxation. This report was commissioned by the Australian Taxation Office due to concerns around who may be influencing tax decisions in property transactions other than the professional advisor/s.

There is very little attention given in the academic and grey literature on the question of property development influencers. Nevertheless, our review of internet sources found that there are entities that promote themselves as property development advisors and purport to help new-entrant developers get into property development. This we argue should been seen in the context of property having become a vehicle for wealth creation and the potential tax compliance and administration issue that may arise. These issues are covered in section 2 of the report.

The approach taken to examine the issue of property development influencers included a review of the academic and grey literature, websites, as well as fieldwork which involved interviews with property developers to gain an understanding of both the process of property development and the role of various influencers at each stage. The methodology of this study is covered in section 3 of the report.

The interviews with developers provided in-depth, rich data about the various influencers involved at each stage of the development lifecycle. We categorised the various influencers into property related advisors (such as architects, town planners, real estate agents, conveyancers, etc) and non-property related advisors (tax advisors, accountants, lawyers, banks, etc). The empirical research revealed that the tax decisions were primarily, if not exclusively influenced by the non-property related advisors and more specifically the tax advisor/accountant. Through understanding the process of development, we also found that the networks that make property development happen are complex. If the number of developers increases, particularly at the smaller end of spectrum, a great need for regulatory oversight may emerge. These issues are covered in section 4 of the report.

Our findings have implication for tax compliance and administration going forward and these are covered in section 5 of the report. We did not find that the property related advisors such as real estate agents and conveyancers have much of a role of play from the developer's perspective when it comes to tax matters. We also had some interesting incidental findings which may not have direct GST consequences but are nevertheless important from an overall compliance and administration perspective.

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1. Introduction

The property, construction and development sectors are very important parts of the Australian economy and have a significant impact on many aspects including taxation. This project was commissioned by the Australian Taxation Office (ATO) to examine the entities or persons who influence tax decisions made by developers at various stages of the development lifecycle. The particular concerns were around whether developers were being influenced in relation to tax decisions by entities other than their tax advisor/accountant. While there is significant oversight of tax advisors/accountants by the Tax Practitioners Board and the ATO, the same cannot be said for other potential influencers within the property development lifecycle. The aims of this project were therefore twofold. Firstly, to understand in broad terms the property development life cycle, and secondly, to identify the various influencers across the lifecycle and the extent to which they provided advice in relation to tax matters[1]. To this end we carried out qualitative research involving property developers of various sizes across various subsectors. It is also important to note that this point that the term "influencer" is the context of this project takes it normal meaning of "someone who affects or changes the way that other people behave[2]" and is not a reference to the use of this term in popular parlance, especially in relation to social media.

The significance of the property and construction sectors to the Australian economy, and society more broadly, cannot be understated. Most recent Australian Bureau of Statistics (ABS) figures indicate that this sector is a leading employer and the third largest contributor to GDP ($130,795m value add)[3]. Leading up to the pandemic it was growing steadily across most, if not all segments. This trend however has reversed most recently, according to (Kelley, 2023) negative growth is expected across several dimensions including employment numbers and revenue. This suggests profit margins are being squeezed. This observation is consistent with the latest release of ASIC data[4] indicating that as of 16 April 2023, 1672 companies had entered external administration or had a controller appointed - this contrasts with 911 in the same period last year[5]. Whilst property construction does not make up most of the sector it does represent 25% of it (Kelley, 2023).

Looking ahead it is difficult to determine the trajectory of property development activity into the near future. We suggest that cost pressures including credit, supply chain as well as labour costs

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[1] The focus of this report in relation to tax matters is limited to GST and income taxes. Where other taxes such as land tax are covered, these were raised by our participants.

[2] Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/influencer Accessed 7th May

[3] https://www.abs.gov.au/statistics/industry/industry-overview/australian-industry/latest-release Accessed 2 May 2023.

[4] Caution should be exercised when interpreting ASIC insolvency data in isolation as 1) The data is aggregated across the entire construction sector, 2) data on the number of new property developers is not readily available and 3) Profit margins are likely to differ by location and build form.

[5] Australian insolvency statistics https://asic.gov.au/regulatory-resources/find-a-document/statistics/insolvency-statistics/insolvency-statistics-current/ Accessed 2 May 2023 (Chart 1.2).

will continue to put pressure on the sector in coming years. This will be partially offset by increases in demand, however, how this manifest (rent v purchase); where it appears geographically, and in what segment is difficult to confidently forecast. Irrespective, we believe that the pressure on profit margins will not significantly abate for some time. This means that actors will be looking to save when, and where they can, and this could include a more aggressive approach to tax planning. In this context the findings of this report are an important contribution to understanding the role that various influencers play in relation to tax matters as the sector looks to recover.

In the broader context of the research into the property and construction sector very little attention has been given, in either the academic literature or the grey literature, to the various influences that come to play upon the decisions that are made by developers. This is particularly surprising considering the importance of the sector to the economy as a whole as well as the significant impacts of the sector from a taxation perspective. However, in recent times the role of various “influencers” has come into focus. For instance, the Queensland Government has commissioned a review into the role of developers in the property and construction sector in that state. This review is specifically looking into financial as well as operational matters relating to developers and aspects relating to ethical behaviour and work practises[6]. In 2022 the Victorian Government also initiated a review into the property market looking at the laws and regulations that regulate the property market in relation to real estate agents and issues around disclosure requirements during the sale of properties[7]. While these reviews are much broader in nature and cover various aspects of the role of the developer in the property and construction sector, the present report is focused on those that influence the developer in relation to tax matters. In relation to this network of influence we acknowledge that there are visible/formal elements, as well as less visible, informal elements and where possible our report has sought to examine both.

In relation to the influencers that we have sought to gain information on, we have classified them as property related advisors: such as architects, town planners, real estate agents, conveyances, etc; and non-property related advisors: such as tax agents, accountants, lawyers, financiers, banks etc. Our focus has been on understanding which of these advisors are involved in providing advice that can have tax related consequences. Our findings indicate that for the most part tax advice is primarily provided by tax advisors/accountants. Property related advisors, especially real estate agents and conveyances, appeared to have very little influence over the tax related decisions made by developers. Even in cases where a developer may come across a tax related matter through their informal networks, operationalizing the tax outcomes still requires advice and work from the tax advisor/accountant.

[6] https://www.epw.qld.gov.au/about/initiatives/review-developers-building Accessed 3rd May 2023.
[7] https://engage.vic.gov.au/property-market-review Accessed 25th November 2022.

The remainder of this report is set out as follows. Section 2 examines the process of development, with a view to identifying the relevant influencers at each stage. This section also covers broader, although relevant issues around property being seen as a vehicle for wealth creation, as well as the broader economic conditions within which the property development sector is currently situated. Section 3 outlines our methodology and how we operationalized this study. Section 4 presents our empirical findings from the interviews we carried out with developers. In that section we outline the various stages of development and the role played by both property related advisors and non-property related advisors in relation to tax advice. Section 5 presents the implications for tax compliance and administration arising from the empirical work carried out for this study, while section 6 presents our conclusions.

2. Property development – the process and influencers

2.1. Property development definition

Property development is a complex process involving multiple steps and stage and various stakeholders. Various authors use definitions that covers aspects of property development. For instance: Wilkinson and Reed (2008) define property development as

> *"a process that involves changing or intensifying the use of land to produce buildings for occupation. It is not the buying and selling of land for a profit; land is only one of the raw materials used."*[8]

Isaac (1996) defines property development as:

> *"… the process by which buildings are erected for occupation or for sale/investment. Owners may build premises for their own occupation, for example major retailers may erect supermarkets; alternatively, property developers may construct the same type of buildings for lease or sale."*

Note that these authors do not see the mere buying and selling of land as property development, nor do they explicitly include redevelopment of existing property/buildings. From a taxation perspective however, the sale of land, especially where substantial business-like activity has been undertaken to increase the value of the land can be seen as development, and the sale of vacant land can attract the GST. The case of *FCT v St Hubert's Island Pty Ltd (1978) 8 ATR 452*, shows that where land development, or buying and selling of land forms the primary business of the entity, the profits generated constitute ordinary income. Similarly, in *Stevenson v FCT (1991) 22 ATR 56*, the Federal Court held that the extent of development and involvement in the business process that was undertaken by Stevenson (who was until the development of the land, a farmer by profession), meant that the land sales constituted ordinary income. Even in case where land sales do not give rise to ordinary income, capital gains consequences may apply, as well as GST considerations is some cases.

Hence, for the purposes of this project, it was necessary to adopt a definition of property development that was broad enough to capture the entirety of the process as well as the nuances of the various stages and steps. Hence, for the purpose of the project we define property development more broadly as:

> Any process or set of processes carried out by any entity that involves, purchase and subsequent development of land and/or buildings for the purpose of generating a profit.

[8] Some authors who write about property development do not formally define it! See for example Forlee (2012), and Dawson (2009). Both authors have gone into the depths of the "how to" of property development, but neither provide a conceptual definition.

> This includes properties that are intended for sale after development as well as those that are leased or otherwise operated by the initial developer or another entity.

This broad definition helped us design the interview questions and to orient the project aims overall towards a wider view of property development.

2.2. Property development process

The property development process is outlined in textbooks (Reed, 2021; Wilkinson & Reed 2008) as having eight stages. These stages include:

1. initiation,
2. evaluation,
3. acquisition,
4. design and costing,
5. permissions,
6. commitment,
7. implementation, and
8. disposal

Other sources also refer to these stages but may label them differently, but with the same meaning. The stages may also be combined for simplicity; however, they are still all followed in one way or another across different development projects.

Initiation is typically the first stage as that is where the idea is formed. The developer will hold either the land, the money or the use of the property, and be looking to turn this into a development. If they hold land, then they will be looking for a use to be put on the land. If they hold the use (this is more typical when you have a shopping centre, hospital, school etc) that is looking for a piece of land to build that use on. Lastly, they may have money that they are looking to invest in development. This last approach is typical for large private equity providers or superannuation funds.

The second stage is evaluation, which is also referred to as market analysis, and financial analysis/evaluation. In this stage the developer will carry out an evaluation of the project to determine if there is a need and whether it is likely to meets their required investment returns. A market analysis is carried out to determine the supply and demand of that property subset, along with demographics of the area under evaluation. They will also look at the local district planning requirements to see what is a permissible activity and any restrictions that may be on the site. They then turn to the income side and look at rents, leases and sales to determine the potential for income from the proposed development. An estimate of costs for construction is calculated along with any other potential development costs. Following the market analysis, they will develop a draft feasibility analysis to determine whether there will be profitable returns from the proposed development. This stage of the process normally has many iterations before the developer decides to either abandon the idea or to proceed. If they proceed, then the costings and income will be verified by advisors such as a property valuer, planning consultant and/or quantity surveyors.

The third stage is acquisition which is also referred to as the purchase. In this stage the developer will carry out investigations in the legal title and any legal restrictions on the site. They will also investigate any geotechnical issues, soil tests, ground load bearing tests, water run-off, and contamination of site. The findings of these investigations may also then influence the feasibility analysis as to what can be put on the site. The site will then be secured as a purchase or another appropriate mechanism to secure the land. The acquisition stage as set out by Wilkinson & Reed (2008) also includes obtaining the required finances for the development, whereas other authors have this as a separate stage. Wherever it is included or not, it remains a circular activity that is captured throughout the whole process.

The fourth stage is the design and costing of the proposed development. In this stage the developer already has a reasonable idea of what the development may look like, but they engage experts such as architects, planners, engineers in order to draw up the plans for the development and determine infrastructure requirements and site layouts. As with the third stage, the findings in this stage will also impact the feasibility analysis and subsequently the decision to proceed or modify plans.

The fifth stage is referred to as permissions which relates to obtaining the appropriate planning permissions. A planning advisor is usually engaged to help with this stage in determining what can be constructed on the site, maximum site coverages, setbacks, etc. A planning permit (if required) and a building permit are obtained at this stage.

The sixth stage is commitment. In this stage the developer would have gathered all the required information and confirmed the details of the proposed development. Stages two to five will undergo many iterations before commitment is reached. At this stage finances are confirmed. It is important to note that in so far as the core business of a developer is concerned, it is up to this point that their work can be considered 'pure development'. The stages that follow are in effect nothing more than the playing out of the decisions made to this point. From a tax perspective this means that most of the tax consequences of the development are locked-in by this stage. While there are situations where the decision to hold the development may happen at the end of construction, most developers will not want to change their plans due to the time and effort that goes into the feasibility stages. Any changed made at this stage are likely to be driven by market forces/conditions rather than a planned event. For instance, a developer may choose to hold some or all properties in a market where prices are falling.

The seventh stage is the implementation, which is the construction phase. A construction contract is issued based on the plans and the building is commenced. At this stage it is normally no longer possible for the developer to make changes without now incurring unnecessary additional costs. This stage continues until the building is completed and handed over to the developer.

The last stage involves sale or operation (including leasing) of the building. Although this is named at the end of the development process, it in fact occurs throughout the process as the developer needs to know from the outset what the goal of the project is, in order to carry out the feasibility analysis and to obtain finance. Pre-sales or leases are conducted before the construction begins and are then handed over on completion, along with any additional sales or leases required.

An important point to note is that the stages of the development process are not sequential, except for the first stage (the idea) and the last stage (the completion). All of the other stages are a circular process where information is gathered and feeds the final analysis. For example, the finances stage may come at the beginning where the developer gets an initial idea, then goes to financier to see if, and how much money, can be obtained. The estimated amounts are generally not known until the costings are obtained, which are also reliant upon the planning permissions and design. The final amount required for finance is not known until the construction tender is received but is still required to be estimated throughout.

While what has been described above is a theoretical understanding of the development process, we asked our participants about how that process look like their day-to-day business and our findings in regard to this are presented in section 4. For the purpose of the interviews, we did condense the various stages of property development into three broad stages, these being: initial/feasibility stage; construction; and sale or operation. The interview guide presented in Appendix 3 shows details of the questions that we asked participants under each of these three stages.

2.3. Property and wealth creation- the rise of a new group of influencers

Property has generally been seen for some time as a wealth creation and growth vehicle. From the small investor point of view (i.e., individual taxpayers who may acquire investment properties) the favourable capital gains treatment of assets held longer than 12 months and the opportunities to reduce tax liabilities via negative gearing are still important drivers. Data from the ATO (for 2019 to

2020) reveals that around 20% of Australia's 11.4 million taxpayers owned an investment property in 2019-20: 71.5% of investors holds one (1.59 million) and 18% of investors hold two investment properties. The age range for investors has shifted from older to working age individuals: 81% are in the 25 to 64 years old group and 17.50% are in the 65 plus years old group (Forbes 2022).

As a result of this popularity of property as a wealth creation vehicle, there has been an increased ability for new entrants to the market to take on property development (also see our analysis of broader macro-economic trends presented in the next subsection). This is evidenced by the growth in entities that market themselves as advisors or consultants to would be property developers. As part of our desk research into property development influencers we came across a number of entities that claim to be able to guide would-be or novice developers through the pitfalls of property development. A selected list of such entities and a brief description of their activities is provided in Appendix 2. These entities charge a fee for their service and can provide services across all stages of the development process from site identification to site acquisition, all the way to sale of the property.

The key selling point of this group of influencers, hereafter referred to as property advisors, is their skills, expertise and experience in the property development process. **[REDACTED]**
… an industry of influencers that has emerged in recent times on the back of a cultural belief or view that property investment and/or development is a wealth creation vehicle which is relatively easily accessed by all levels of investors/entrepreneurs. Coupled with the increasing demand in both rental and ownership segments of the market and generally favourable market conditions in recent years (including record low interest rates), this group of influencers is an important entity for tax administrators to be aware of and potentially develop engagement strategies around.

[REDACTED] This also suggests that the increase in the number of these advisors relies on strong networks and connections with the various stakeholders that make up the property development value chain. We have included interviews with this group of influencers in our sample[9] since some of these entities are also property developers in their own right.

2.4. Property Development and Economic Conditions

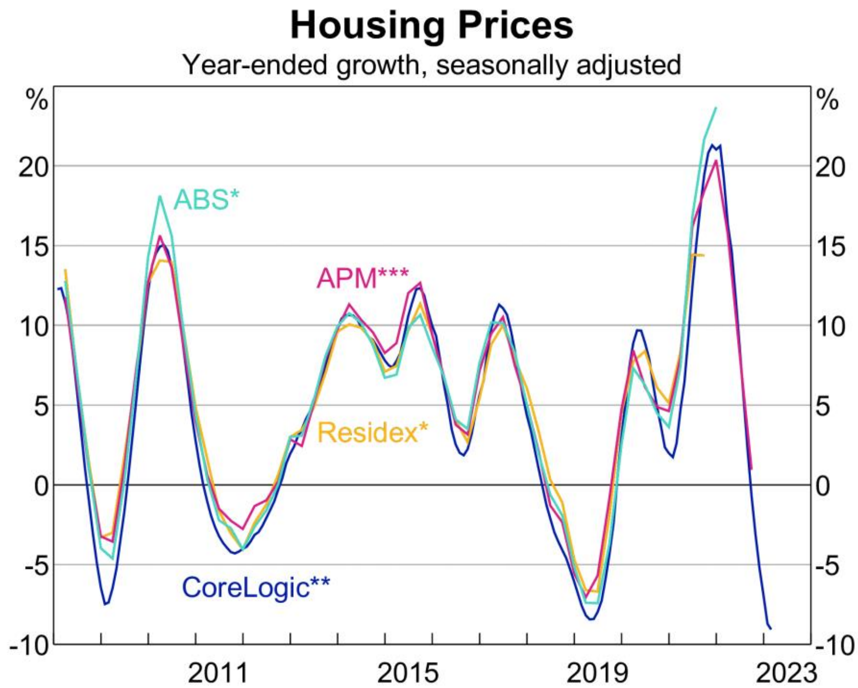
Economic conditions can and do influence property developers. This is because economic conditions determine (in part) the sale prices of finished dwellings as well as the costs of inputs.[10] Sale prices of new properties are determined (in a large way) by the same fundamentals as those

[9] Please note that as per the requirements of the RMIT University Human Research Ethics Committee we cannot disclose whether or not any entities listed in this report have or have not been interviewed.
[10] One guide suggests "16%-20%" is the "sweet spot for residential properties and is more for large sub-divisions and apartment blocks. **[REDACTED]**

that define the established dwelling market (a segment that has a significant indirect effect on the development market). This includes population growth, location factors and costs of financing. Prior to 2020 (pre-COVID-19) these factors combined to provide a market favourable to property developers as both investors and owner occupiers clambered for dwellings – this can be seen by the relatively stable trajectories in new loan commitments (a proxy for demand) portrayed in Figure 1 leading up to January 2020.

Figure 1: Growth and Sharp Decline (https://www.abs.gov.au/statistics/economy/finance/lending-indicators/latest-release) Accessed March 30th, 2023

This story of stable growth is also reflected by the various house price indexes in Figure 2. All indexes (in Figure 2) show that periods of negative growth are an exception demonstrating its favourable and complementary investment features relative to common alternatives households and businesses might have (i.e., share trading). Interestingly, both figures also portray a period of unprecedented growth throughout COVID-19 followed by a sharp decline. Compounding the decreases, new building approvals have also dropped off in recent times (Figure 3).



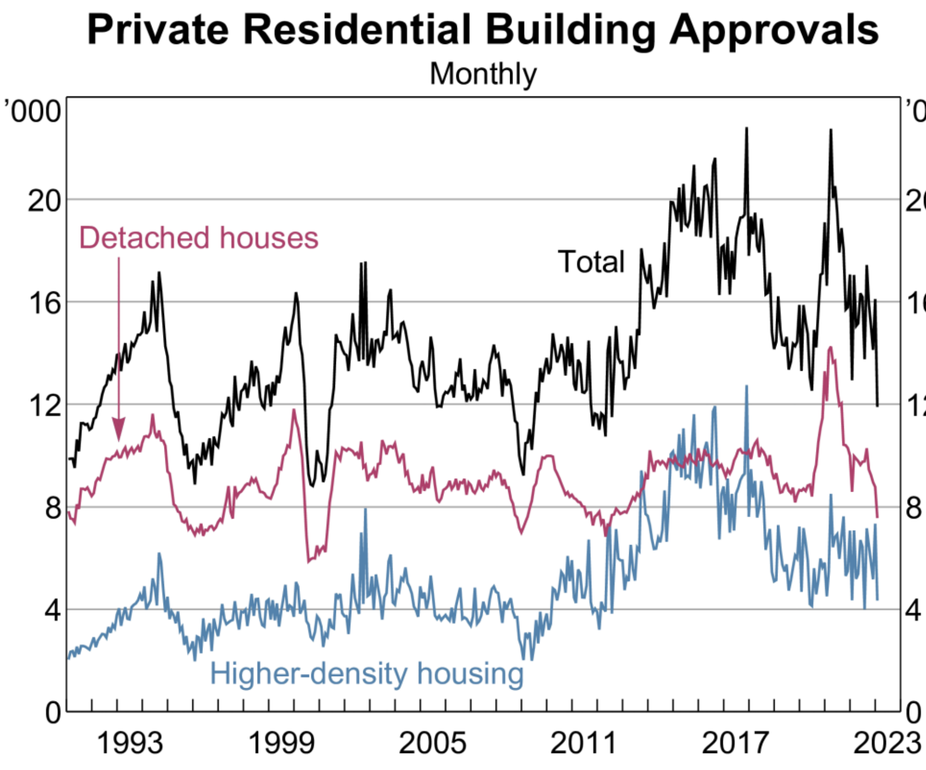
* ABS is a quarterly stratified median price index; Residex is a quarterly repeat sales price index.

** Monthly hedonic price index; non-seasonally adjusted.

*** Quarterly stratified median price index.

Sources: ABS; APM; CoreLogic; RBA; Residex

Figure 2: Source https://www.rba.gov.au/chart-pack/household-sector.html Accessed 31 March 2023



Source: ABS

Figure 3 Source https://www.rba.gov.au/chart-pack/household-sector.html Accessed 31 March 2023

These figures arguably mask the degree of stress the industry is currently experiencing as indicated by the number of recent liquidations:

> *"ASIC figures for the 2021-2022 financial year 'only' record 1284 construction company collapses. But the first quarter of the 2022-23 financial year alone saw almost half that figure taken down in the span of three months, with 605 construction companies going under."*[11]

Several factors have been identified as causing the current squeeze on profit margins, this includes higher supply costs of materials and labour as well as climate factors such as increased rainfall.[3] We suggest that current economic conditions are compelling households, and businesses (including property developers) to scrutinize finances – possibly unlike they ever have in recent decades. It is at such times that each expense will be questioned and ways to minimise costs will be explored. Importantly, we do not believe that the effect of these economic conditions is uniformly distributed across Australia or property segments, specifically, some segments will be feeling the economic distress more acutely.

The relevance of this economic analysis is that it points to an overall environment which may contribute to added pressure on various stakeholders in the property sector including developers. When times get tough, it may be that there are incentives to minimise costs including taxation liabilities. From a GST perspective this may include attempts to delay GST liabilities and/or changes to use of property that allow GST input tax credits to be claimed. This may also include attempt to provide auxiliary services in built-to-rent developments, classify these as commercial residential and claim input credits. The margin scheme could also be similarly manipulated when values are apportioned in the case of subdivided properties. In sum, there may be a number of avenues to reduce/redirect/delay GST consequences of property transactions and the incentive to do so is potentially higher in tougher economic times.

[11] https://www.theurbandeveloper.com/articles/boom-bust-developers-2022-review-probuild Accessed 31st March 2023

3. Our Approach (research methods and sample selection)

The approach we took in this project comprised of two sequential stages:

1. A desk review of the academic literature on property development, as well as the grey literature and relevant web sources. This phase was used to provide background information for this project in general, and to develop the questions for the interviews that were conducted in the next phase of the project. This stage involved looking at academic journals, textbooks, websites of property developers as well as those offering property development as a service. The statistics presented in this report were collected from the Australian Bureau of Statistics and Reserve Bank of Australia and also provided background information for the purposes of the report.
2. Interviews with property developers: qualitative, semi-structured interviews were carried out with 11 participants who were property developers, or employees of property development entities. These interviews were conducted with developers from various subsectors including- small developers, aged care developers[12], medium and large sized entities. We interviewed a wide range of entities so as to get reasonable coverage of types of developers. We nevertheless acknowledge that property development is a vast and diverse activity and the findings of this study, while broadly generalizable, should not be taken as representative of all forms/types of property development.

3.1. Participants and recruitment

The table below provides a list of the participants we interviewed. As per RMIT University Human Research Ethics Committee requirements we have anonymized the participants and the organisations they belong to. The interviews were recorded with permission from the participants. Some interviews were undertaken in-person, while others were done virtually via MS Teams. We were able to interview a range of participants from diverse development backgrounds. We had participants who had only just ventured into development, ones that have been established for 5 to 10 years and ones that are multinationals with several decades of development experience. We are also able to (in almost all cases) interview the developers directly. These participants were either proprietors of the entity or held development manager or equivalent roles.

We have classified the developer's size based on the scale of developments they engage in. Small developers are those engaging is small-scale residential development such as those involving 3-5 townhouses. They may have several projects of this size, but each development is relatively small. Medium developers include those that develop residential apartments of 50 to 100 dwellings. Large developers in this project are those that are involved in large scale developments including

[12] In the context of this project, aged care refers to a developer that is involved in retirement villages and or nursing homes, or one that does both in one location. The aged care developer interviewed for this project works for an entity that had both a nursing home and retirement village within all its developments.

apartments with more than 100 swellings, large scale development of land for residential purposes. Typically, these large developers also cut across commercial and industrial developments.

We also interviewed developers that had varying degrees of experience in the sector. These were classified as follows. High experience: these are developers that have been established in their current form or entity type for over 20 years. Medium experience: These are developers with between 10 and 20 years' experience and, low experience: those with less than 10 years' experience. Note that the experience level relates to the developer entity not the individual interviewed, in some cases these were aligned. The size of the developers we interviewed along with their experience level is shown in Table 1.

Table 1: List of participants interviewed

Participant ID	**Type of developer**	**Size**	**Interview duration in minutes**	**Experience**
P1	Residential	Small. Mainly small-scale townhouses	62	Low
P2	Residential and commercial	Medium	63	High
P3	Residential and not for profit	Medium to large	70	Medium
P4	Residential	Small to medium. Mainly apartments	45	Medium
P5	Aged care	Medium to large. Developer and operator of aged-care properties/facilities	55	High
P6	Residential	Medium to large. Mainly apartments	39	Medium
P7	Residential	Small- also focused on build-to-rent	62	Low
P8	Trainer of developers	Medium	49	Medium
P9	Residential and commercial	Small to medium	48	High
P10	Residential – land only	Small	48	Medium

P11	Residential and commercial	Large multinational	39	High
		Total	***580***	
		Average minutes	***53***	

Sampling in qualitative research is very different to sampling in quantitative research. Typically, in quantitative research samples include several hundred respondents come up with the samples being chosen using what is commonly known as *probability sampling* (Babbie, 2020; Singleton and Straits, 2010). By contrast several different methods of sampling are available when carrying out qualitative research. Qualitative research is focused on gaining rich, in depth information about a subject or phenomena to be able to draw *analytically generalizable* conclusions, as opposed to *statistically generalizable* conclusions which can be drawn from quantitative research. The approach we used in this project can be described as *purposive sampling* (Babbie, 2020; Singleton and Straits, 2010). This method involves choosing participants whom according to the researchers' judgement will yield the most useful information for the purposes of addressing the research questions. These participants are often also representative of the broader population under study. Consequently, the qualitative researcher can gain in-depth information about a subject or phenomenon with a relatively smaller sample size.

Qualitative research of this nature is also particularly suited to this project given that it is largely *exploratory* in nature, i.e., we are looking to gain an understanding of the state of play in terms of the influencers on developers' tax related decisions. An *explanatory* study on the other hand (typically quantitative studies) would look to find association or relationships between specific variables. Hence while we have a sample of 11 participants the information that was gathered is nevertheless valid and reliable for the purposes of drawing the conclusions of this report. It is also worth noting that while a quantitative study involving a survey may contain several hundred respondents, in most cases the respondent may be spending between 3 and 5 minutes completing the survey whereas each of our participants spent on average 53 minutes engaging in a discussion with the researchers. Hence, qualitative research of this nature produces data that is rich and in-depth as opposed to quantitative work which, while being statistically generalizable, does not allow for interesting findings to emerge from the field. Quantitative work certainly has merit, and it is often the case that qualitative work of this nature is followed by quantitative work where the findings could potentially be statistically generalised across the relevant population.

The questions for the interviews were developed based on the requirements of the project and in consultation with the project team at the ATO. The questions were designed to get a general understanding of the property development process from the interviewees' perspective; understand the various influencers that mattered to the property developers at three stages, these being- the development phase, construction phase and sale/operational phase. We asked questions around what we termed the property related advisors (real estate agents, conveyances, town planners, engineers, draftspersons, builders, etc.) and non-property related advisors (accountants, tax advisors, lawyers, banks etc.), at each of these three broad stages of property development. The interview questions are shown in Appendix 3.

Participation recruitment proved to be a very difficult task for this study. In past studies the report's authors have conducted, typically the response rate was well over 85%, and in many cases, above 90%. For this study we contacted 40 potential participants and conducted 11 interviews as shown above. We speculated that this may be because of the difficult times facing the property development and construction industry at present. Anecdotal evidence of informal conversations with our informants suggested that many developers were under pressure to keep their projects running and this may have contributed to the low response rate. An alternative, speculative explanation may be that property developers may not have wanted to participate in a study commissioned by the ATO[13]

3.2. Data analysis

The research team listened to each of the interviews and notes were taken. These notes were then compared and contrasted in team meetings to ensure inter-coder reliability. At these meetings the researchers agreed on what the data was telling us about the property development process and the role of influencers at various stages. The research team then developed themes from the notes and interviews which formed the basis of our empirical findings as reported in section 4.

[13] As per the RMIT Human Research Ethics requirements, we had to make it clear to potential participants that the study was commissioned by the ATO.

4. Evidence from developers – who are the influencers?

In this section we summarize the findings from the interviews conducted with property developers. As indicated by our sample in section 3, we interviewed a wide range of developers across all development types relating to residential property. While the nature of specific developments is varied and comprises various challenges, the fundamental process of property development is more or less the same. Figure 4 below sets out the stages of development and more importantly, in the context of this project identifies the influencers at each stage based on our empirical data. It is important to note that while we have sought to present the various stages and sub-stages of the development process, these phases of development are often not linear and the boundaries between the sub-stages described here are fluid in practice. Additionally, we condensed the various stages of development presented in section 2.2 into three broad stages for simplicity and clarity during the interviews. Hence, this section is structured around these three broad stages.

For the purposes of this project, we have classified influencers and advisors into two broad categories. The first category is termed property related advisors: this group of advisors includes- town planners, architects, various engineers (civil, geothermal, etc.), arborists, real estate agents, conveyances and various other consultants depending on the development. The second category relates to non-property related advisors: this group is mainly accountants, tax accountants or tax lawyers, solicitors/lawyers, and banks or financiers. As part of the interviews, we examined whether informal advisors were influencing developers, and where relevant we discuss this category separately.

4.1. The project initiation stage/feasibility stage

4.1.1. Land acquisition

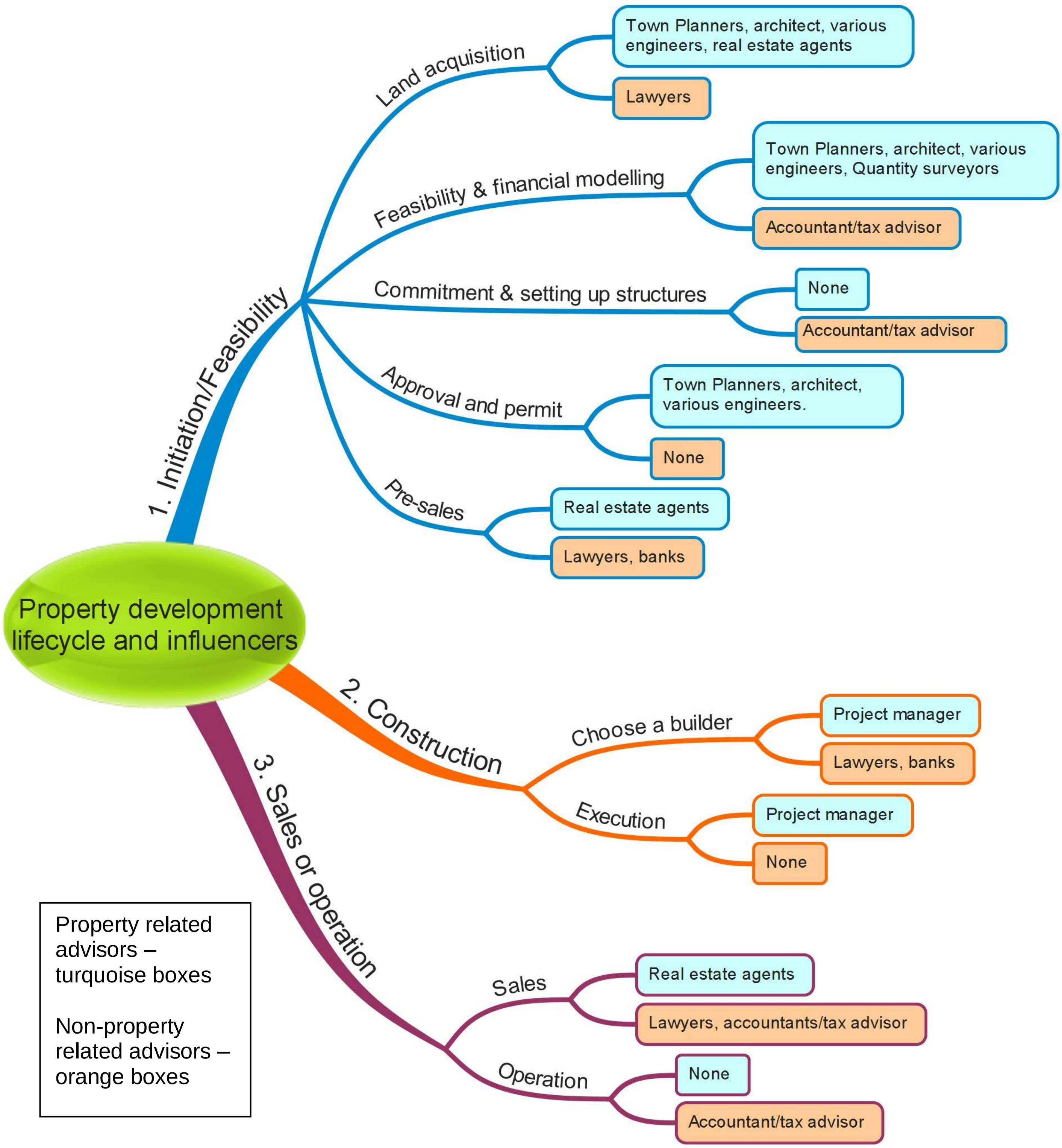
There was unanimous agreement amongst our participants that this was the most important stage of development. The specifics of this stage will vary widely according to the type of development and type of developer. For instance, a smaller scale developer who is looking to build 3 or 4 townhouses will be looking to purchase land in established suburbs, whereas a land-only developer (the type of developer that does not get involved in construction of dwellings) will typically look for opportunities in the outer suburbs/ “greenfield” areas. The process that is followed at this initial stage was similar across our participants. Typically, the developer looks for potential land acquisition opportunities based on the type of development they wish to undertake. Two of our participants (P5 and P9) claimed that they did a significant amount of market research prior to looking at land acquisition and also looked to “fill a gap in the market”. Other developers who were operating in the residential space had less need for market research since the demand for housing is such that these developments are not likely to be difficult to sell. Especially in the context of aged care, choice of site is dictated by many factors such as general age profile of the suburb, how close the area is to transport and health services, etc.

The experience level of the developer did seem to have an influence on the extent to which they involved external property related advisors during this phase. The more experienced developers seemed to be more confident in their ability to gauge whether a site was going to be suitable for the type of development they wished to undertake. In either case, the key advisors that were involved included town planners and architects, and in some cases certain engineers, such as structural and civil. These advisors play a crucial part in determining the number of dwellings, the setbacks from the boundary and many other property-related decisions that ultimately determine the site coverage and financial viability of the site. Our participants clearly indicated the importance of these advisors and that without their input a clear development feasibility could not be computed. The interviews also revealed that these advisors did not provide any advice outside of their area of expertise. Real estate agents also play a very important part in this initial site identification phase, however, and as alluded to by our participants, the advice of real estate agents is taken with caution. One participant even suggested that one would have to lack intellect to get anything other than market advice from real estate agents, or as P6 put it “I would definitely not get tax advice from them”.

One of our participants (P1) is an entity that undertakes development, but also advises/project manages development for clients. This participant (working mainly in the 3-5 townhouse type development space) said that they classified their clients (would be developers) into three groups. These are: a) those that own land (or inherited it) and want to construct multiple dwellings on it; b) dual income families or those with disposable income looking to create wealth through property development and/or ownership, and c) the pure investor – who provides funding but is not involved in any part of the development. This classification while not explicitly mentioned by other participants is of interest as the use of land by the first group may well give rise to new residential property and depending on the scale and nature of development may even constitute business income from development. The third group by contrast is perhaps likely to have very little by way of tax complications, since they are investing money and earning a return, they are unlikely to be seen as being in the business of development, nor would they bear any GST consequences of the sale of the properties.

In relation to the non-property related advisors, the interviews revealed that this group was not involved in any significant way. Accountants and tax advisors in particular were not involved at the land/site acquisition stage. In the case of aged care developers, it is likely that accountants will inform the developer of land tax implications, especially since in the context of aged care and larger residential development, the time from acquisition to planning permit maybe several years.

Figure 4: the process of development and relevant influencers[14]



[14] Note that conveyancers have not been shown as an influencer in Figure 4. This is because the participants we interviewed dealt directly with their lawyers/solicitors who in-turn dealt with the conveyancer (who may or may not have been external to the lawyer/solicitor). We did not find that the conveyancers were directly in contact with developers and vice-versa. Additionally, the developers we interviewed did not mentioned that the conveyancer was in any way and important part of the development life cycle.

Lawyers were naturally involved in contractual matters that pertain to land acquisition, but their role was also limited to necessary compliance work.

One of our participants also noted that information about potential land sales can come from various informal sources as well. These include social media pages, existing clients, previous clients, and acquaintances. We do not see these as sources of influence per se, however, this highlights the need to see the networks of influence on property developers as being much broader than the formal advisors that they engage.

Land acquisition is not an important step for certain entities. For example, some not-for profit entities (predominantly religious institutions) are already significant landowners and for them development often has a very different desired outcome. Most of the gains from property development are channeled into their not-for-profit activities. As one of our participants pointed out, the key concern for not-for-profits engaging in development is to ensure that they do not risk their tax-free status. This can be particularly problematic where they engage in a joint venture with a for-profit entity.

We also came across situations where the developer enters into development agreements with the landowner. In these cases, there isn't a straight land acquisition up-front, however the landowner is then compensated in stages, in-kind or through a proportional ownership or revenue sharing arrangement. This form of development may also involve government owned land. it is not clear whether such arrangements would involve any GST issues, however, section 38N of the *A New Tax System (Goods and Services Tax) Act 1999* probably sufficiently deals with the relevant issues. One participant (P6) who we spoke to regarding such arrangements mentioned that such decisions are made as part of the feasibility stage and the organisations internal advisors including the CFO would have been involved.

[REDACTED]

4.1.2. Feasibility and financial modelling[15]

Once the land has been acquired or just prior to this stage the developer will typically engage in extensive financial modelling to judge the feasibility of the development. Most of the costs relating to the project are forecast at this stage. The non-property related advisors may be involved in some cases here as the accountant/tax advisor feeds into the process tax consequences of the project.

[15] Many developers also referred to this stage as 'due diligence'.

The bulk of the input into this feasibility study stage however comes from the property related advisors, especially the town planner, architect, property valuers, various engineers and quantity surveyors. The interviews revealed that this part of the process is very much in-line with the steps outlined in section 2 where we discuss the feasibility stage. Some participants (P2 and P9) who have been in business for several decades rely less on formal advice from the property related advisor, but rather engage in semi-formal discussions with these advisors with whom they have long-standing relationships. This is an important point and on that we return to later in the report, however it is worth noting that well established developers do not change their primary advisors whether they be property related or non-property related advisors. These networks between developers and their advisors were more often than not cited as success factors by our participants. In terms of influence these property related advisors are crucial since they work across development and industries. They have exposure to what others are doing in the industry and may be passing on relevant information to their developer clients. Our interviews however found no evidence that such networking was a source of tax related advice for developers.

At the large end of the market, the developer may engage a Big 4 accounting firm for tax planning and structuring advice. In addition to this the internal tax/accounting team will also be involved in the feasibility analysis (as noted by P4 and P11). Whereas at the smaller end of the market we did not find that the non-property related advisors had much of a role to play in the feasibility stage.

The feasibility and financial modelling stage also involves design decisions, since these are key to costing the project. Again, it is easy to see why the property related advisors, especially the town planner and architect are important here. Along with design decisions, the developer also commits to the type of outcome they want at the end of the project, i.e., build-to-sell versus build-to-rent. This is not to say that in some cases the intention may change, but the importance of the decisions made at this stage is that later decisions (to hold instead of selling for instance) are most likely driven by market-based considerations and conditions than by tax considerations. Additionally, given that the entire feasibility of the project hinges on the chosen model (build-to-sell versus build-to-rent), it is unlikely that decisions to change the use of the development are planned/anticipated decisions.

4.1.3. Commitment and setting up structures

If the project is seen as feasible, the developer commits to the project and most of the tax structuring/planning is designed and implemented[16]. It was very clear from the interviews that the accountants/tax advisors were key to setting up the appropriate structures, typically special purpose vehicles. At the smaller end of the market, this would typically involve a structure comprising a company and a trust. The structures may be more complex depending on funding

[16] Typically, tax and other structures are set up prior to land acquisition.

sources and the use of joint venture partners. In larger entities, especially those with in-house accounting/finance functions, the structuring of new developments is likely to be driven by corporate level strategies, rather than by development managers. In the case of multinational entities, one participant even indicated that in limited cases, the parent company (outside Australia) may ask the local subsidiary to work with accounting/tax advisors chosen by the parent company.

Two important points need to be made here regarding tax planning and establishment of structures: first, the advisors involved with this stage are registered/qualified tax agents/accountants and these are already visible to the ATO and TPB. Second, while all our participants agreed that tax planning and tax minimization were important considerations, these were driven by the property development outcomes the developer sought. In other words, the development is driving the choice of tax structures, not the other way around.

It is also noteworthy that the structures set up at this stage typically do not change until the completion of the project. The significance of this point is that where a project does not go to plan, for example, sales are not as strong as expected, any subsequent decisions made by developers are not tax driven, but more likely to be market driven. We will return to this point when discussing the sale/operational stage.

4.1.4. Approvals and permits

Once the project is seen as financially and otherwise feasible then the next stage is to get the relevant approvals. The process of getting approval for a development is as varied as the developments themselves and is largely dependent on local councils and state-based regulations. In a sense this stage is very similar to the land acquisition stage in relation to the advisors/influencers. The plans made by the town planner and architect, reports by various engineers, etc. are put into action and used to gain approvals. Our interviews indicated that the accountants/tax advisors are not involved in this stage in any way. This stage is almost exclusively the domain of the property related advisors. The only instances where the non-property advisors may be involved is where the developer needs legal advice and or representation where the local council reject planning permission and the matter has to go to the relevant state-based dispute resolution body (for example: VCAT in Victoria; Land and Environment Court in NSW). In such cases, some of our participants indicated that they would need advice from lawyers that specialize in property planning and that their usual lawyers/solicitors would not be sufficient.

The aged care participant (P5) shed light on the complications that arise in gaining approvals in that sector. P5 indicated that aged care development typically face objections from the local community/neighbouring properties and disputes regarding planning approvals, is not a simple process and can take 2 years or more. In such cases the developer would seek specialized legal advice as described above. An important tax implication that feeds into the feasibility of the project however is land tax. P5 mentioned one instance where a project was terminated due to the time taken, and the land tax liabilities made the project unviable.

Another complicating aspect of planning approval for the aged care sector arise from the multiple use nature of these developments. In most cases, these developments comprise various types of properties to suit various stages of ageing. These include townhouses, apartments, serviced apartments, and nursing homes. It is also the case that due to capacity reasons (for instance a greater need for nursing home beds) serviced apartments may be converted into nursing home rooms. Such change of use of facilities may involve a change in GST treatment. P5 indicated that where a change in use of this nature occurs, a variation to the initial permits is necessary. The variation will be typically sought from the same authority that issued the planning and/or building permit, i.e., local councils[17]. In addition to this “change of use” scenario described above, there can also be situations where additional construction is required, and this too typically requires a building permit in addition to the original approvals. This requirement to get additional permits, or get variations to permits, may present an opportunity for the ATO (or other relevant authorities) to trace change of use in aged care facilities independent of input from the aged care provider. If this information can be matched, it would allow for efficient oversight of whether changes in GST treatment are being applied and whether they are being applied accurately. Our data indicates that in the situation described in this paragraph, the accountant/tax advisor is tasked with the necessary changes to GST reporting as a result of the change of use. In that sense the accountant/tax advisor does not influence the change of use decision, but merely makes it happen in order to reflect the change of GST treatment. To put this another way, if the accountant/tax advisor does not make changes to the GST treatment arising from the change of use of the facilities, there will be compliance issues.

4.1.5. Pre-sales

The final sub-stage relates to pre-sales of individual properties in the development. In cases where funding is sought from the banks, certain number of pre-sales are necessary. Where funding is from private sources, the extent of pre-sales required by the financier can vary. Financiers/banks are important actors in the development process, and they have influence, however, their advice/influence is limited to structuring the finance/loans. There was no evidence to suggest that the financiers/banks influenced the structuring of the development project. This distinction between structuring the finance as opposed to structuring the development project is an important one, since it indicates the limited extent of influence of the financier/ banks.

[17] P5 referred to type of permit or approval as a “secondary consent amendment”.

While the focus of this project is not on funding related matters, some of the information we uncovered in the interviews does raise pertinent questions. **[REDACTED]** Our participants noted that at this stage of the process the key advisors are the real estate agents who are naturally involved in selling the product being put out by the developer. Lawyers and/or conveyancers were also involved at this, but this related to routine work around setting up the contracts for sale, buying off-the-plan, etc. It is also important to note that for the developers we interviewed, the conveyancer did not feature as advisors. This was primarily because these developers dealt with their lawyers directly, who in turn worked with conveyancers. There was therefore no real, direction connection between the developer and conveyancers and subsequently, no real influence. There was no indication that any of the other advisors or influencers were involved in this particular stage.

4.2. Construction

4.2.1. Choosing a builder

Once the developer has the relevant planning permits in place, their focus turns to appointing an appropriate builder to carry out the construction. In general, this process involves the developer going out to tender in order to find the most suitable builder. We did come across one (P9) case where the builder was chosen by the developer without a tender process, and the developer worked on an “open book basis” with the developer to work out an appropriate deal.

In terms of the relevant advisors/influencers, there was agreement amongst our participants that the accountant and or tax advisors had very little influence at this stage. Lawyers and solicitors were often involved in drawing up contracts as well as related legal advice at this stage, however their role is limited to compliance and routine work.

In relation to the property related advisors, the key person at this stage is the project manager who typically ensures that the contract between the developer and the builder is executed appropriately. Note that in many cases the project manager is synonymous with the construction manager. Since most of the plans for the building and the development in general are already finalised by this stage, the architects, town planners, etc. are generally not involved at this stage of the process, unless a variation to the design is required. For most of the participants we interviewed, and we suspect for the industry more broadly, the “pure” development work happens in the previous stage. Once construction starts the developers essentially take a back seat until such time as the construction is completed, and the product is in a saleable state.

Where the banks are involved in financing the project, we did come across instances where the banks would be involved in vetting the potential builders. From the developer 's point of view this was simply due diligence on the part of the banks to ensure that the builder had appropriate finances and capacity/capability and was likely to complete the project. Banks in this scenario are also important influencers on developers since they have knowledge of builders across the various clients that they lend to and have sufficient knowledge of the market to know which builders should be engaged for successful completion. Once a builder is chosen then that entity proceeds to get a building permit and the construction work gets underway. Lawyers may also be involved in this stage since contracts need to be drawn up between the developer and the builder.

It was also very apparent from the interviews that most of the parameters of the development are fixed by the time construction starts. Consequently, there is very little by way of advice that the developer seeks at this stage, other than ensuring that there is sufficient oversight of the builder and that the project is on track for completion.

4.2.2. Execution of construction works

This stage is entirely managed by the builder in collaboration with the project manager. In the case of the smaller developers, the project manager may be an external advisor, however in medium and larger developers, this person is generally in-house. As with the previous sub-stage, our participants indicated that this stage was entirely the domain of the builder, and no advice was sought or necessary from the developer's viewpoint. The contracts between developers and builders are also typically of a nature where, once signed, the builder assumes risks associated with costs, etc. In instances where a builder goes into liquidation or cannot otherwise complete/deliver the project, the developer would seek legal advice.

4.3. Sale and/or operation

4.3.1. Sell or hold- change of use decisions

As indicated earlier, the decision to sell or hold the end product of development is made at the feasibility stage. If the project goes according to plan, the developer will simply look to execute their plans to sell or hold the properties. It is also the case that in some instances, the developer finds itself/themselves in a position where the forecast gains from the project cannot be realised in-line with the initial intent. In such cases the developer may decide to hold properties rather than sell. These decisions have significant GST implications and since this was a specific area of focus for the ATO, we asked our participants why they would opt to change their plans. There was unanimous agreement amongst our participants that the decision to change the use of the properties was typically driven by market forces such as market prices, or changes in tax policy by governments. As P8 put it – "developers are entrepreneurs", and their primary interest is in making decisions that are in their financial best interests. The value of the property is of paramount importance and the developer will do what any rational entity would do when market conditions change.

From a compliance perspective, since the change of use decision is essential a business operational decision, we do not see any ways (at present) in which this can be traced or monitored. One potential indicator may be where there is a discrepancy between the quantum of pre-sales (off-the-plan) and settlements. Where funding is through a bank, the quantum of pre-sales data may be available from banks, and settlement data would be available from the relevant state title registry authority. We do not imply however that such a discrepancy indicates any tax mischief, but that this provides a potential indicator where change of use decisions may be made by the developer. A further indicator of change of use would be an amendment to a planning permit if the nature of the use was to change for instance from residential units to retail or offices. Nevertheless, the decision to hold or sell is largely, if not entirely, driven by market forces, rather than tax considerations.

In terms of advisors/influencers, the relevant property related advisors are real estate agents. In a sense they are not advisors as much as they are influencing developers to work within market conditions around pricing. The decision to hold or sell therefore while including input from real estate agent about market conditions, is driven by the developers aims as set out in their feasibility stage.

In relation to the non-property related advisors, we found that both lawyer and accountant/tax advisors are involved. Lawyers are predominantly involved in contractual work and getting settlements done (conveyancers may be doing the actual works, but they have no direct influence here). They are not engaged in anything more than this routine work. Accountants on the other hand may play both a compliance and strategic advice role. P3 for instance mentioned that the accountant/tax advisor is crucial to ensuring that the revenue from the sales was dealt with in the most tax beneficial manner. The accountant/tax advisor may also be called upon to advise on whether the margin scheme can be applied, as well as any GST consequences of change of use (i.e., hold instead of sell).

4.3.2. Operation

This sub section only applies to developers that do not operate on the build-to-sell model. There are some cases where decisions are made by developers during the operation phase that may be driven, at least in part, by tax policy. **[REDACTED]**

4.4. Other issues concerning influencers and advisors

4.4.1. External v internal advisors

In the case of all but the very large end of the spectrum most developers use advisors that are external to their entity. One example of this is the entity for which P4 worked. That entity constructs luxury apartment buildings and has a full-time staff of about five people. All the others involved in the development process who advise the entity in question are external to this entity and operate as consultants. This is of significance in terms of the influence that these advisors have since they are working across developers and may be able to pass on information about how other developers tackle challenges. In terms of the property related advisors, we did not find any evidence that this group was involved in providing any form of financial or tax related advice.

In relation to the large end of the spectrum, most advisors tended to be in-house, particularly the property related advisors. These developers do however typically tend to engage large accounting firms to provide them advice with structuring transactions, as well as for audit and general tax compliance purposes. One participant indicated that using these external accounting slash tax advisors was in fact very important to them since most of the work in this area particularly in relation to structuring is somewhat specialised, and hence having exposure to what other developers might be doing was seen as advantageous.

4.4.2. Reasons for changing advisors

We specifically asked our participants whether there were instances when they chose to switch their advisors. In most cases, developers had opted to change advisors where the incumbent was either unable to provide the required services or that performance issues were identified such as lack of responsiveness and/or professionalism. Again, there seems to be a correlation here between the extent to which a developer is well established versus a new entrant to the market. The latter category is more likely to switch advisors. P9 for example indicated that they had used the same tax advisor for over 30 years. They also indicated that this tax advisor was used by many other property developers in Melbourne. **[REDACTED]** … what this research does indicate is that the networks of advisors that surround a developer tend to be fairly well formed and do not fluctuate greatly. It is also worth pointing out that some of our participants had two accountants / tax advisors; one that does the pure compliance work such as filing tax returns etc., and the other that provides strategic advice. In the case of the smaller developers, we found that there is no separation between the strategic tax advisor and the accountant that does the compliance work.

4.4.3. Networks of developers

Property development in general is a very competitive business, and hence we do not see evidence of extensive collaboration between developers except in the form of formal joint ventures. Nevertheless, there are significant networks between developers as well as between developers and their advisors. This is particularly the case in relation to the property related advisors. We did specifically examine the issue of whether our participants were getting advice, or being influenced by their circle of friends or acquaintances, or had mentors etc. In the case of the relatively inexperienced developer (at the smaller end of the spectrum) there was some evidence to suggest that the developer had a mentor who unofficially guided the person in the initial stages (P7 for instance). It is likely that such networks exist between experienced and less experienced developers, however we cannot be certain about the nature of the advice that is given. In Section 2 we did note that entities that marketed themselves as providers of development advice to would be developers do openly discuss their “partners” on their websites. Therefore, despite the highly competitive nature of the development business there is clearly some level of informal cooperation or partnership that exists between developers, and this may be a source of advice/ influence on developers especially those that are relatively inexperienced. It is likely that these mentorship arrangements, or general networking happens in much the same way as it does in other sectors, such as at industry events, conferences, etc.

4.4.4. Background of the developer

One participant (P8) suggested that the background of the developer had an influence on the type of development they undertook. For example, this participant argued that developers that had qualifications in the property sector were more likely to engage in developments that were more complex, including commercial and industrial. Whereas developers who are for example, accountants are more likely to engage in property development that is smaller in scale, and their primarily purpose is “make a quick buck”. This may suggest that the latter group may also potentially be more likely to engage in schemes that have a tax minimisation purpose.

[REDACTED]

5. Implication for tax compliance and administration

In this section we present the key findings along with implications for tax compliance and administration. This research is somewhat unique in that we have interviewed property developers on an issue not well canvassed in the extant academic or grey literature, namely the influencers that affect development decisions. As we have demonstrated in section 4, property development is a process and activity that is anything but routine, predictable or precise. Developments vary widely and so do the related income tax and GST consequences (not to mention the array of state-based taxes that also come to bear on development decisions). We took a semi-structured interview approach which allowed us to explore the variety of advisors and influencers that a developer engages. As mentioned earlier, we have categorised the advisors/influencers into two broad categories; these being property related advisors and non-property related advisors. The key findings from this research are as follows:

5.1. The role of non-property related advisors

The evidence from the interviews was clear in terms of who the developers turned to for tax advice. While we did question the participants about other, informal sources of tax tips or advice, we found that most developers were keen on getting formal advice from their accountant/tax advisor. Some even suggest that to do otherwise would be irresponsible. In the case of well-established medium to large developers, these advisors tend to be in-house and tax planning and strategy is likely to be driven by corporate level tax strategies cascaded to individual development projects. We did find evidence of "advisor shopping", i.e., developers seeking out accountants that would for instance find ways to claim input tax credits on input tax supplies (wholly or partly). However, as described in section 4, this is something we observed in relation to smaller, less experienced or established developers as opposed to more established or larger entities.

We also found that the type of advice that accountants/tax advisors provided varied. For example, many of our participants indicate that while they used an accountant that carried out bookkeeping, routine tax work, BAS statements, etc, they did not seek strategic advice from them. Depending on the nature of the project and the complexity of the transactions and structures required, developers turned to tax specialists that were experts in the property sector, as well as tax lawyers. From a compliance and administrative perspective therefore, while we may expect issues around accurate lodgement of BAS or income tax returns from the accountant that does bookkeeping/compliance work, we may expect high level tax planning and structing to come from specialised tax lawyers, the Big 4 accounting firms and accountants who have property sector experience. For instance, we had one participant (P9) who had a long-standing relationship with an accountant who he described as "encyclopedia on tax and accounting". Attention therefore may be effectively directed towards these experts that have sector specific experience. Errors may also arise from the advice of the tax specialist not being communicated to the bookkeeper accountant. However, we did not directly investigate this and hence this remains a point for further consideration.

5.2. The role of property related advisors

Clearly property related advisors play a crucial role in many aspects of the project, especially feasibility. While there may be developers that look to engage in property development with a primary objective of obtaining a tax benefit, we found that tax considerations, whilst very important, are only part of the equation. For most developers, the development's success or failure hinges on the ability to generate the forecasted return on investment from a parcel of land. In this process, it is the property related developers that help determine project viability. These advisors are typically specialised and do not appear to be provide advice outside their expertise. As these advisors work across many different developers, it is likely that they carry with them learning from past experience and may share this with their clients. Where unsolicited advice is received, the developer will turn to their specialist accountant or tax advisor for confirmation or advice. In terms of development the breadth of this network of advisors and developers is crucial, and this is discussed next. From a tax compliance perspective, we did not find evidence to suggest that any additional attention is warranted in relation to this category of advisors in relation to the influence they have on tax strategies of developers.

5.3. Property development is a network

The evidence from our interviews suggests that development should be conceptualised as a network comprising multiple unrelated entities that come together to deliver a project. For new developers, creating a network of advisors and consultants is perhaps the most important first step. We did find some evidence to suggest that new developers turn to mentors for initial guidance and perhaps even to make their way into this network. As we elaborated in section 2, when it comes to property investment, there are many entities and individuals that promote themselves as mentors/advisors. Hence, in relation to property investing, and creating wealth through property, these mentors/promoters/advisors are relatively visible. This is, however, not the case entirely with property development. Again, as described in section 2, there are entities that promote themselves as advisors to those who want to enter into property development. These entities are in essence allowing the new entrant developer access to their networks for a fee. There is partial visibility of mentors/promoters/advisors in this space. However, most of these networks are less visible[18] and not available to those observing from the outside. In addition, many connections within this broader property development network are informal and take the form of long-standing relationships between individuals or entities. Our research has been able to focus on the visible and formal parts of the network and we have started to scratch the surface of the informal and less visible. To gain a

[18] The use of term ‘less visible’ here does not imply that anything sinister is involved.

further understanding of the informal and less visible, further longitudinal ethnographic studies would be required.

From a tax compliance and administrative perspective, the visible and formal parts of the network can be seen as starting points. The costs of monitoring the less visible and informal parts may outweigh the benefits. Further engagement with the formal and visible parts may also have a flow-on effect on to the informal and less visible. Compliance in relation to the formal and visible parts of the network may however require further attention from lawmakers, since much of the advice provided by promoters of ‘wealth creation through property’ are unregulated, or underregulated. There may also need to be some review of whether regulation of some form is needed in relation to entities that act as property development advisors to new developers. There are potential question marks over the form and types of advice being provided and whether this should be regulated. We do however recognise that this may be challenging in practice. “Developers are entrepreneurs” was an oft quoted phase in our interviews and regulating them may be politically and practically difficult.

5.4. Incidental findings

Three interesting incidental finding are summarised here. These are incidental since they do not directly relate to influencers, or do not have direct GST related consequences, however that are potentially noteworthy as they may have tax compliance and/or administration implications.

5.4.1. SMSFs used for property development

As we have outlined in section 4, there was evidence to suggest that SMSFs were often the source of private or equity funding for development. While this does not automatically imply that the SMSF may be breaching rules that would render it a non-compliant fund, it does raise questions about the extent of this source of funding and whether this is being actively promoted by accountants/tax advisors.

5.4.2. [REDACTED]

5.4.3. [REDACTED]

6. Conclusion

This report set out to examine the role of various influencers on tax decisions made by property developers. We interviewed developers to gain an understanding of both the process of development and the extent to which various influencing entities were involved. Out findings reveal several important points that have potential consequences for tax compliance and administration going forward. We split the influencers into two broad categories, property related advisors and non-property related advisors. Our research indicates (unsurprisingly) that property related advisors are not in any way influencing the tax decisions of developers. In terms of non-property related advisors, we found that it is only the tax advisor/accountant that influences tax decisions made by developers. Other entities such as real estate agents, conveyancers, financiers, and bank do not play any direct role in influencing tax decisions. The developers we interviewed were in fact wary of getting tax advice from any entity other than their tax advisor/accountant. This report also found that these networks that form property development are complex and if any tax related schemes were being undertaken, uncovering these will require a good understanding of the developers' networks. To this end our findings on the process of development should be useful.

Our interviews also lead us to conclude that in most cases property developers are not that well-versed in tax matters and rely on their tax advisors. While developers are aware of the margin scheme and when input tax credits cannot be claimed, their primary focus is not on GST related matters. They are more likely to be interested in reducing their income tax, whereas GST is seen as 'part of the business'. Where developers receive informal advice on tax matters, they still rely on their tax advisor/accountant to enact the transaction or scheme. There will inevitable be developers that will seek to push the boundaries of commercial versus residential accommodation to take advantage of input tax credits however, this is to be expected.

Lastly, there is a small but growing number of entities that promote themselves as providing development advice to would-be/novice developers. While we found no direct evidence of any tax advise provision or planning emanating from this influencer category, some level of oversight might be needed. This is particularly the case given then property is seen as a vehicle for wealth creation, and it is an industry with relatively low barriers to entry. As the number of small-scale developers increases, they may potentially be more tax compliance and administration issues.

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Appendix 1 – About the team

Dr Venkat Narayanan (Senior Lecturer) Role in project: project manager, qualitative research; analyse and examine tax implications. Dr Narayanan teaches taxation law to postgraduate students at RMIT University. He has worked on a number of research projects including corporate sustainability and accountability; management accounting; accounting education; organisational change; corporate social responsibility; and sociological approaches to accounting and accounting education. In these research projects (including a project funded by the Australian Government Office for Learning and Teaching), Venkat has been responsible for project design, data collection, analysis and report writing. Working primarily in qualitative research methods, he has conducted more than 100 interviews with a diverse range of participants across the topics listed above. His work has been published in scholarly academic journals and he has several research projects underway, addressing qualitative and quantitative research methods.
Associate Professor Ashton de Silva Role in project: economic analysis expert. Associate Professor de Silva is an applied econometrician at RMIT University's School of Economics, Finance and Marketing. He specialises in the analysis of credit and financial markets, government policy, the property (including housing) sector and natural resources. Highly sought-after for his insights and perspectives on current economic and social issues, he has published papers in leading international academic journals and has written several reports for organisations such as the Australian Securities and Investment Commission and the Australian Centre of Financial Studies. He has a strong track record of performing economic evaluation for government, industry and academic audiences. In recent years he has particularly focused on economic policy evaluation, including assessing various government policies such as the baby bonus and the migration patterns of 'creatives'. He has also provided expert econometric advice on rental supplement schemes for New Zealand's Ministry of Social Development on behalf of the Australian Urban and Research Institute.
Dr Judith Callanan Role in project: property development expert. Judith is the Associate Dean for the Property and Valuation programs in the School of Property, Construction and Project Management. Prior to joining RMIT, she had twenty years experience in senior management positions within the property industry, predominantly in asset management and property development. Her specialist areas while in industry have been in airport development and management. Her current research interests are centered around housing, proptech, asset management, property development, and also diversity within the property industry.

Over the last ten years she has also held committee positions within the Industry bodies: Past President South Island branch of Property Council of New Zealand, Property Council of Australia - Woman & Diversity committee, and Education committee for API.

Appendix 2 – Selected list of property advisors and educators

[REDACTED]

Appendix 3 – Interview guide/questions

Property influencers – interview questions

Tell us about what the development process/stages look like for your business.

Development phase

Tell us about a recent property development project that you were involved in: how did it come about, and why did you decide to proceed with it, or reject it?

(Interviewer/s will propose a model of property development if necessary and ask the participant to elaborate on whether that model is accurate/reflective of actual practice)

Thinking about the project you mentioned in 1 above, who were your trusted advisors, who did you turn to when you were thinking about the development/project?

In terms of your professional advisors (tax agents, accountants, lawyers, etc) what role did they play in the development decision?

In terms of your other advisors (real estate agents, other developers, friends, etc) what role did they play in the development decision?

Have you ever changed advisors? Is so what prompted this change? (Prompts: better price, better service, more likely to meet business needs, etc)

Construction phase

Thinking about a project that you've got currently under construction, what are your main concerns? Who do you turn to for advice at this stage of the project?

What role, if any, do your professional advisors play at this stage of the project?

What role, if any, do your other advisors play at this stage of the project?

Which of the advisors in 2 or 3 above are most useful/relevant at this stage of the project?

Sale/operational phase

When it comes to the sale/disposal phase of the project who are your main advisors, what are your main concerns?

How long does this stage normally take? Have any major changes happened to the project during this phase (for example: deciding to sell, rather than rent out, etc)

What role, if any, do your professional advisors play at this stage of the project?

What role, if any, do your other advisors play at this stage of the project?

Which of the advisors in 2 or 3 above are most useful/relevant at this stage of the project?