PROPERTY COUNCIL of Australia

Barriers to Effective Climate Change Adaptation

Productivity Commission Public Inquiry

A submission prepared by the Property Council of Australia

December 2011

Contents

1.0 Property Council in Brief

The Property Council represents the property investment sector in Australia.

Our members include every major property investor in the country.

Members are engaged in the entire property investment sphere, which includes all:

- dimensions of property activity (financing, funds management, development, ownership, asset management, transaction and leasing);
- major property types (offices, shopping centres, residential development, industrial, tourism, leisure, aged care, retirement and infrastructure);
- major regions of Australia and international markets; and,
- the four quadrants of investment – public, private, equity and debt.

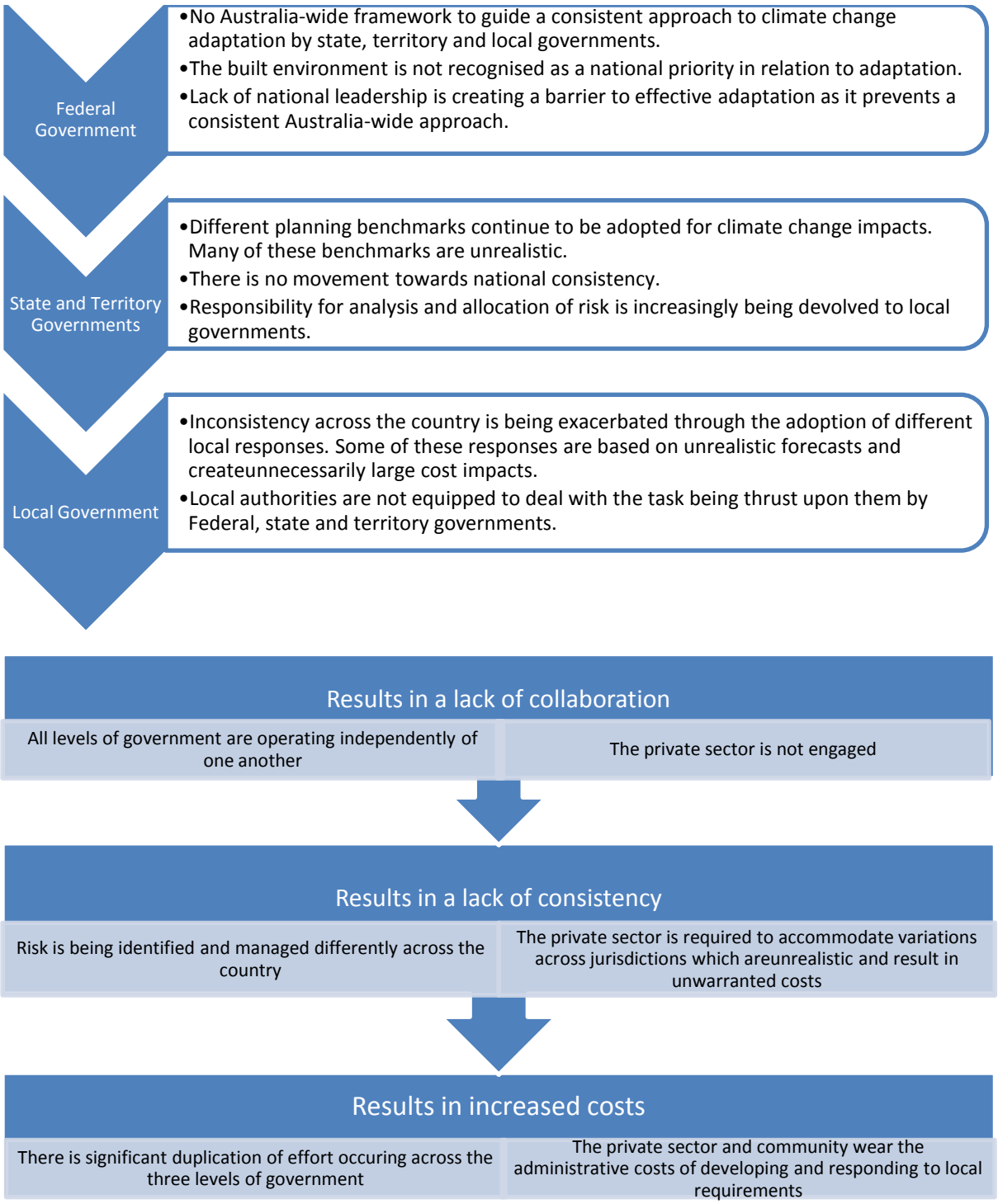
The property sector is intrinsically linked to efforts to adapt to the impacts of climate change. It is the places created by our built environment, and the people they house that much of our adaptation effort will be focused on.

2.0 Executive Summary

Summary of Issues

Many of the barriers to effective adaptation of the built environment stem from a lack of national direction to guide the development of localised climate change adaptation strategies.

The following diagram outlines how this lack of an Australia-wide framework filters through the three levels of government. This ultimately results in a lack of collaboration, inconsistency and increased costs to government, industry and the community.



Summary of Recommendations

The Property Council has identified two Federal Government responses that are necessary to reduce current barriers to effective adaptation to climate change.

1. Establishment of an Australia-wide framework to facilitate effective adaptation
2. Implementation of a national incentives program to accelerate adaptation of the built environment.

An Australia-wide framework

The Property Council recommends the establishment of an Australia-wide framework to address the current barriers to effective adaptation and improve the resilience of communities.

Based on the effective *National Guidelines for Protecting Critical Infrastructure from Terrorism*, the model would:

- Facilitate an Australia-wide response, led by the Federal Government
- Incorporate standard criteria for identifying assets at risk
- Recommend methods for allocating responsibility across asset owners
- Create an information sharing platform to ensure valid information and research is available to all stakeholders.

National Incentives Program

Asset owners are primarily responsible for taking action to protect their own assets, however there is a reluctance to initiate change without adequate incentives.

The creation of an effective Australia-wide incentives program will encourage early adoption of adaptation strategies and encourage innovation in designing solutions to the risks climate change presents to the built environment.

An extension of the Federal Government's *Tax Breaks for Green Buildings* program would provide a suitable incentives mechanism to assist the property sector adapt to the effects of climate change.

Early and effective adaptation of the built environment will not occur without incentives to make changes. An Australia-wide framework for the provision of public and private sector incentives will not only realise cost savings, but will also promote innovation and competition in the early adaptation of the built environment.

3.0 Government Responses

Climate change adaptation is currently pursued in an ad hoc manner by all levels of government across Australia.

This lack of coordination has resulted in ineffective, and often conflicting, planning and regulatory responses across the country. This in turn creates unnecessary costs and risk for business, community and government at all levels, as they struggle to navigate regional variations.

Of particular concern is way in which the failure of one level of government cascades and is magnified by other levels of government.

In this context, current barriers can be identified through an examination of the responses of the three levels of government.

3.1 Federal Government

The Federal Government is currently failing to fulfil its overarching responsibilities in relation to adaptation to climate change.

This is not to suggest that the Federal Government has not undertaken a significant amount of work in relation to climate change adaptation and mitigation.

Importantly this work has included the production of high level mapping based on various sea-level rise estimates, which will be a central tool in identifying appropriate options for localised adaptation to climate change.

However, despite myriad policies, departments and reporting ministers, the Federal Government has not established an overarching framework for other levels of government to follow in the development of their planning work.

This lack of direction has led to the implementation of ad hoc and often conflicting policies and regulatory responses across Australia.

While the Federal Government does not have a direct role in all aspects of climate change adaptation (for example land use planning and development assessment), there is clearly a need for the Federal Government to ensure a level of coordination and consistency in responses developed by state, territory and local governments. In particular ensuring a uniform scientific basis is applied to determine appropriate responses across the country.

3.2 State and Territory Governments

The lack of an Australia-wide framework has resulted in wildly different responses by state and territory governments, particularly in the identification and use of planning horizons and sea-level rise benchmarks.

In the absence of leadership from the Federal Government, state and territory governments are failing to work collaboratively across borders to deliver the level of consistency required to effectively adapt to climate change.

Take for example a direct comparison between the approaches adopted by Queensland and New South Wales (NSW).

Summary: State Planning benchmarks for sea-level rise.

South Australia - 0.3m by 2050

Victoria - 0.8m by 2100

Western Australia - 0.9m by 2100

New South Wales -0.4m by 2050

Queensland - 0.8m by 2100

Northern Territory and Tasmania have no planning benchmarks in place

In Queensland, the draft Queensland Coastal Plan (QCP) has been developed based on a sea-level rise benchmark of 0.8m to 2100. All new developments must cater for this benchmark from the day the plan is implemented, with only previously committed developments permitted to cater for lower sea levels.

In NSW, a sea-level rise of 0.4m to 2050 is being used as a benchmark. In this jurisdiction, the predicted sea-level is noted on Section 149 Planning Certificates as part of property purchase or title search disclosures, with the onus being on the purchaser to then determine the level of risk they are willing to accept.

This not only creates uncertainty for the property industry as they navigate the varying responses to climate change, it also stifles innovation as there is no consistent 'target' to work towards.

3.3 Local Governments

Without clear direction from Federal, state or territory governments, the varying responsibilities and subsequent responses from local governments across the country create a further barrier to effective adaptation.

Increasingly, state and territory governments are placing a greater level of responsibility on local government to manage the future risk of climate change within their communities.

This is reflective of a position that noted in the Issues Paper, that adaptation 'requires a local or bottom-up response'.

However, a lack of financial and human resources at a local level means that such a position is fraught with danger. Many local governments are unprepared or unable to make locally-relevant decisions in relation to adaptation.

Councils may not have the expertise to assess the complex relationships between the economic, social, environmental and built environment impacts that predicted risks will have on vulnerable areas.

In some circumstances, this has resulted in Courts or Tribunals overturning local government decisions. This further erodes confidence in the decisions made by local governments, and opens the door for future compensation claims.

Case Study: Gippsland Coastal Board v South Gippsland Shire Council & Ors

The South Gippsland Shire Council had approved six dwellings on a Crown allotment. Following the approval being granted, Gippsland Coastal Board applied to the Victorian Civil and Administrative Tribunal (VCAT) for a merits review of the decision. VCAT refused the consent to develop the land on three grounds, one relating to the intergenerational risk of sea level rise.

VCAT relied on the precautionary principle and ruled that the location of the proposed development was not suitable for residential development given the unacceptable risk of sea level rise and flooding inundation.

It further determined that, although there was an absence of specific certainty about the degree of sea level rise, there existed a reasonable level of risk based on studies undertaken by the CSIRO.

Case Study: Queensland Coastal Plan (QCP)

In Queensland the QCP requires local governments to develop local adaptation strategies. These adaptation strategies will be used to inform future planning and development assessment in the council area.

There is currently no guidance or funding available for councils to undertake this work.

This may lead to councils refusing developments as they do not have the resources to develop their local adaptation strategy. It may also result in approval delays as councils take time to develop their adaptation strategies and a reluctance to take any action as councils fear compensation claims that may be made under Queensland's 'injurious affection' laws.

4.0 Barriers to Adaptation

The current ad hoc approach to climate change adaptation by governments across Australia prevents effective adaption to climate change.

These failures largely fall into three interrelated categories:

a. Collaboration
b. Consistency
c. Cost.

4.1 Collaboration

As the majority of major assets (excluding residential property) in Australia are owned by government or businesses, and with responses in one sector potentially impacting on another sector (either positively or negatively), a culture of collaboration is a logical policy response to effective adaptation.

However as identified above, there is a lack of coordination across the three levels of government, and currently little collaboration with the private sector.

In particular, there is no mechanism to determine the extent to which one sector may benefit from the adaptation of another sector.

Case Study: Queensland Floods

In Queensland, the floods in January 2011 provided a unique opportunity to review existing infrastructure and interdependencies during a hazard situation.

The resulting planned upgrades of water infrastructure (such as back flow devices) and improved road networks (above designed flood levels) to minimise future flood impacts will remove the necessity of many individual asset holders to retrofit their properties.

The current lack of coordination is in contrast to the approach taken by the Federal Government in relation to protecting critical assets from terrorism.

As part of the *National Guidelines for Protecting Critical Infrastructure from Terrorism*, governments are encouraged to work with business to share information relating to critical infrastructure, including identification of interdependencies.

Confusion and inconsistency in climate change adaptation is being exacerbated by the myriad sources of information and research available from Australia and overseas.

Numerous Federal institutions are responsible for conducting (or commissioning) research- COAG, CSIRO, BOM, NCCARF, DCCEE- along with countless state, territory and private sector institutions.

The absence of a coordinated national response to climate change adaptation has ensured there is no clear authority on the hierarchy, validity or currency of this information.

The *Trusted Information Sharing Network* (TISN) for *Critical Infrastructure Resilience* model provides the basis for delivering the same level of collaboration for climate change adaptation as already exists for counter terrorism.

4.2 Consistency

It is reasonable to expect that the climate change risk associated with a particular activity will be identified, allocated and managed in a similar way across the country with any variances largely resulting from specific local conditions.

However, with various jurisdictions using different information to determine the level of risk and adaptation response they deem acceptable, there is no consistency in the identification and treatment of predicted climate change impacts.

To understand the scale of the adaptation task the built sector is facing, it is imperative that assets and sites at risk of climate change impacts are identified as early as possible, with risks addressed in a consistent manner.

While the Property Council recognises the need for local authorities to implement locally-responsive solutions to climate change impacts, there must be an over-arching level of harmonisation in the development of these responses.

Many of our members operate in several jurisdictions throughout the country. The lack of consistency in adaptation responses, such as the application of sea-level rise benchmarks and associated planning horizons, will impact on the identification of affected assets and how risk is assigned and managed.

4.3 Cost

The lack of collaboration and resultant inconsistencies in planning for climate change increase the costs of effective adaptation for all levels of government, as well as the private sector and the community.

Variations in the levels of risk local governments are willing to accept will inevitably lead to compensation claims, resulting from the erosion of property rights through changes to land use planning as part of local adaptation responses.

In Queensland the QCP identifies 160,000 properties that are at risk of storm surge inundation or permanent erosion as a result of sea level rise of 0.9m by 2100. That is 10 percent of all Queensland properties.

This is potentially a significant liability to be carried by the State and/or Local Governments should established property rights be removed in response to this risk.

With jurisdictions using wildly different benchmarks of sea level rise to determine risk, it is likely that states and local governments will be carrying more or less liability than other jurisdictions simply on the basis of the sea level rise benchmark they use, and how their planning system responds to this benchmark. This creates a high probability of a misallocation of risk.

There are already several instances of costly litigation action, where local authorities have attempted to prevent owners from defending their assets through shoreline protection works, and been taken to court by the asset owner.

Our members who operate across government jurisdictions will face increasing design and consultancy costs as they accommodate variations to land use planning and regulatory responses based on inconsistent policy outcomes.

The duplication of work being undertaken by the three levels of government will inevitably lead to increased costs for the community, as their taxes are used to fund often unnecessary research and administrative costs.

Knee-jerk policy reactions in response to specific natural disasters also add to the cost of adaptation.

When policies are changed before the impacts of an event are properly evaluated, there is a real risk of adding cost to construction without improving resilience.

In many cases, analysis of the damage shows that current regulation is working correctly.

For example, research has shown that properties complying with post-1980s building codes suffered significantly less damage from Tropical Cyclone Yasi than older buildings[1].

This evidence shows that in many cases the current standards are at the right level, and increasing regulatory requirements under the Building Code of Australia would increase costs for no significant safety or resilience improvement.

The aggregate impost to the economy of these individual costs is likely to be significant, and must be analysed in more detail through the Productivity Commission Inquiry.

[1] *Tropical Cyclone Yasi – Structural damage to buildings* (Cyclone Testing Station, James Cook University, 2011)

5.0 Recommendations

The Property Council has identified two Federal Government responses that are necessary to reduce current barriers to effective adaptation to climate change.

1. Establishment of an Australia-wide framework to facilitate effective adaptation
2. Implementation of a national incentives program to accelerate adaptation of the built environment.

5.1 Establishment of an Australia-wide framework

Many of the current barriers to adaptation of the built environment can be eliminated through the establishment of an Australia-wide framework that clearly identifies risk and allocates primary responsibility to the owners/operators of that asset.

Building on the *National Guidelines for Protecting Critical Infrastructure from Terrorism*, the framework must:

- Facilitate an Australia-wide response, led by the Federal Government
- Incorporate standard criteria for identifying assets at risk
- Recommend methods for allocating responsibility across asset owners
- Create an information sharing platform to ensure valid information and research is available to all stakeholders.

With an estimated $160 billion (2008 replacement value) of commercial, light industrial and residential assets predicted to be affected by climate change, early identification of risk is essential.

An Australia-wide approach must be taken to identifying which assets are at risk, based on consistent climate change risks and planning horizons.

Local governments must be able to develop locally-responsive solutions to regional variations in predicted climate change impacts, however these responses must fit within the parameters of the established Australia-wide framework.

Clearly distinguishing the roles and allocation of risk for various levels of government and the private sector will improve each asset owner's capacity to plan for those assets for which they are directly responsible.

Establishing a national platform for sharing information and research will ensure information is accessible, duplication of research is eliminated, data is targeted and consistent, gaps in research are easily identified, and there is national direction on the validity of information sources and conflicting science.

The Property Council believes that without a clear Australia-wide framework to address climate change impacts, the current situation of ad hoc, contradictory policy implementation will continue, exacerbating the impact of current barriers to adaptation.

5.2 National incentives program

A national incentives program is required to support the regulatory mechanisms that will be developed to facilitate effective adaptation.

Regulatory mechanisms, such as new standards by the Australian Building Codes Board should only be used to maintain minimum standards for building safety and resilience.

These regulatory measures should be complemented by incentives to further improve building performance and address the 98% of buildings which are not newly constructed.

Local councils require incentives to undertake the research and data analysis necessary to inform legislative changes to their planning schemes. Incentives in this instance may include financial and technical resources.

Experience dictates that without adequate incentives, it is not financially viable for the property sector to undertake early adaptation to retrofit their assets.

Programs such as Green Door, Green Building Fund and environmental upgrade agreements provide a framework that can be expanded to provide incentives for adaptation.

In addition to this, the Federal Government's *Tax Breaks for Green Buildings Program* should be extended to provide incentives to building owners to not only make their buildings more efficient, but also to make their buildings more resilient to the predicted impacts of climate change.

6.0 Contact Details

For further information in relation to this submission please contact:

Ken Morrison
National Policy Director and Chief Operating Officer
Property Council of Australia
Phone: (02) 9033 1919
Email: kmorrison@propertyoz.com.au

Chris Mountford
Deputy Executive Director
Property Council of Australia – Queensland Division
Phone: (07)3225 3004
Email: cmountford@propertyoz.com.au