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Barriers to Effective Climate Change Adaptation
Productivity Commission
LB2 Collins Street East
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Dear Commissioners

Barriers to Effective Climate Change Adaptation - Issues Paper

This submission has been prepared by the Housing Industry Association (HIA) in response to the Issues Paper, *Barriers to Effective Climate Change Adaptation,* released in October 2011.

HIA represents all facets of the residential building industry in Australia, ranging from builders and trade contractors, residential apartment and land developers, building product manufacturers and suppliers and a range of allied building professionals. HIA members are involved in the construction of over 85 per cent of all residential building projects in Australia.

The impact of the current responses by all levels of government to climate change adaptation is an emerging area of priority for the residential building industry. Residential builders and land developers are also working in an environment of heightened awareness to climate change and its impact on current and future housing projects and making business decisions on how best to manage the future risks.

Sea level rise has emerged over the last few years as the most prevalent area of debate and action, primarily through local and state government initiatives. However a range of actions to address bushfire hazard, changes in flood patterns, cyclonic events and the like are also matters the industry has a long history of experience in managing as part of designing and building new residential developments. These matters have been managed through a combination of planning and building regulations and policies.

Current actions to consider adaptation in residential building and development has to date been a process of each level of government developing new obligations and standards, generally through regulatory means, that must be taken into account for 'new' projects. The industry's experience in dealing with barriers to effective climate change adaptation is less evident in day to day operations. Rightly or wrongly, there is an expectation that the responses being taken by government are appropriate and will be proven effective into the future.

The Terms of Reference for the Inquiry address a number of matters that do not fall within the realm of the residential building and development sector, therefore this response seeks to only comment on the matters discussed in Chapter 4 of the Paper relating to the policy instruments that can be used to address the barriers. HIA's comments are set out in Attachment 1.

HIA appreciates the opportunity to provide input to the Inquiry and would be pleased to provide any additional information to support these comments if required.

Yours sincerely
HOUSING INDUSTRY ASSOCIATION LIMITED

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What policy instruments could be used to address the barriers?

The following comments are limited in scope to addressing the issues raised in the paper about *regulatory responses* and how that relates to the planning and building framework. Some responses cover more than one question hence they have been grouped together.

What regulations reduce the flexibility of individuals, businesses and other organisations to adapt to the potential impacts of climate change?

What reforms are needed to improve the efficiency of existing regulations? Are there alternative ways to achieve the desired objectives?

How have state and local governments responded to the potential impacts of climate change through their planning and zoning policies? Are there existing planning policies that could constrain the ability of individuals and businesses to adapt, or reduce their flexibility? What reforms may be needed to meet community objectives while facilitating effective adaptation - are there good examples?

Every state and territory has taken some level of action to respond to the potential impacts of climate change through their planning and zoning policies. The impacts of these approaches are not so much constraining an individuals or businesses ability to adapt, rather they force them to adapt in a particular way. These approaches are likely to reduce the flexibility of home owners in responding as they tend to be fairly black and white.

As happens now, climate change adaptation will be one factor in determining whether land has development potential or not. For land that then has development potential, there are a variety of approaches to how each constraint, including climate change adaption will be managed in respect of the built form. This is seen most clearly in the interplay between council planning standards and the Building Code of Australia (BCA). Examples are given below on the response on building regulation.

The concern for the residential building industry is where state and local government use planning policies to override the BCA. In most states and territories this is possible and in particular at the local government level, creates confusion for residential building and development, as standards are inconsistent across councils. Local government is not required to undertaken any cost benefit assessment of local planning or building regulations and therefore they can apply unduly restrictive and/or costly requirements in response to climate change adaptation.

What implications might climate change have for local councils' planning policies and development approval processes? Has concern about legal liability restricted the ability of councils to achieve good economic, social or environmental outcomes?

Climate change and adaptation responses are already affecting local council planning policies and approval processes through the application of new criteria for assessment and new standards where adaptation is seen to be necessary.

There are several implications of this shift.

Generally, climate change adaptation is outside the area of expertise of local government planning and building staff. They are not well placed to understand where the most reliable data should be sourced and who should be relied upon to recommend adaptation responses. Yet they are increasingly faced with the responsibility to learn what the impacts may be, identify how this may affect both land and buildings and then determine the most appropriate responses to minimise the risk.

The natural response in this scenario is to look to state government for direction. However there is not always a clear direction from the state, or the commonwealth, to guide these responses. From the residential development industry's perspective, direction by commonwealth or state government is a preferred option, as this minimises the variation in responses and standards.

Using sea level rise as an example, the majority of state and territories have adapted state based policies which require sea level rise to be considered in make planning decisions for new land to be zoned for development and for specific developments within existing zones urban areas. However, the policies rely heavily on the precautionary principle and give little specific guidance on how the council should manage the risk. Hence there are currently mixed responses, most evident in Victoria and NSW, whereby some councils are prohibiting development on land zoned for urban use, some are placing strict controls on building and use of land, whilst others are making no changes to way the land can be used, but placing conditions on development approvals which require the land title to be amended to state that the owner recognises the risk and will take no recourse with council if they proceed to develop the land and damage occurs in the future.

This is an unhelpful state of play and whilst arguably it is not a barrier to adaptation as a response is being made, it could be considered a barrier to *effective* adaptation.

Local government has limited resources and has been placed in a position of having to find and then weigh up a raft of different information, data and points of view on the best options for climate change adaptation. The risk and uncertainty involved in choosing the appropriate options is of itself a barrier to an effective response. To simply suggest that using the 'precautionary principle' is the right manner to manage the risk is short-sighted. A key question in this process is "whose risk is being minimised?" – the council's or the home owner?

There are competing risks at play in local government decision making. On one hand council is the authority responsible overseeing development – both the new footprint of future urban areas and changes within the existing urban footprint. In this role, they are charged with making the right choices about the right to future home owners. Yet they do this in combination with having to consider the potential risks to council if they permit development in an area or in a manner which is subject to 'damage' in the future. The legal liability of these decisions should be based on the best information and support from both commonwealth and state government.

There also appears to be little public recognition of the risk to councils if they choose not to permit development to occur. Developments which otherwise meet the requirements of planning schemes can and have been refused which causes a huge amount of uncertainty as the development rights of land are called into question. There will be social and economic implications of such an approach in small coastal towns and regional areas which need to be considered. There are also potential economic impacts on local government if legal action is taken for loss of developable land in areas already zoned for development. Land owners may be within their rights to seek a remedy from council through the acquisition of their land in this situation.

Councils also carry a dual responsibility to existing residents which places them in an invidious position. To refuse an application to develop on one property due to climate change, will raise questions as to the risk of the adjoining property where no work is being proposed. Both owners would be within their rights to ask questions about compensation for future losses if their properties seemingly are being designated as at risk by default.

The responses by local government to the legal implications of climate change are arguably more targeted at 'avoidance and mitigation' - particularly by individuals, rather than adaptation.

Finally, there appears to be little consideration by state and local authorities of public mitigation measures that could be implemented using rates and state taxation measures. This would take the pressure off individuals to constantly manage what is arguable a community wide issue. At this stage public mitigation measures are usually the last consideration - if considered at all. In the current environment, the responsibility appears to fall mainly on the individual.

The goal posts for the residential building industry are changing rapidly and it is an area where more attention needs to be paid by the commonwealth and state governments to ensure a measured debate is had about the costs and benefits of the responses currently being taken by local government.

How might building regulation affect the ability of individuals and businesses to adapt to climate change? Are there any inconsistencies across the States and Territories that could impede adaptation?

What would be the costs and benefits of changing the way that the building code is applied across different geographic or climatic zones, or to establish new zones (for example to allow for greater variation across regions)?

The BCA already has within its scope the ability to provide for variations in standards based on different geographic or climatic zones. This option has been successfully used for a range of provisions but most relevant to this Inquiry would be the variations for cyclonic regions and energy efficiency standards. The method of addressing bushfire hazard provides a slightly different approach which also gives flexibility.

The development of the BCA already embeds a process to consider the costs and benefits of any proposed change. This assessment is, and must, be done on a case by case basis to address the costs and benefits of individual construction changes. However there is a need for a more holistic approach to be taken whereby the changes to the code are assessed in a comprehensive manner. For example, in 2010 the Australian Building Codes Board released separate Regulatory Impact Assessments for changes to cyclonic regions and building standards and construction in acid sulphate soils – both referencing the impacts of climate change as one factor in the proposals. These changes could have been introduced in the same year (along with two further major changes that were proposed unrelated to climate change), yet there is no assessment of the combined costs and benefits of these proposals.

Equally this problem arises where the national building code seeks changes concurrently with the state building regulations. The issue is complicated even further by responses at the local government level. The lack of a comprehensive approach to considering the costs and benefits of future changes to either planning or building standards could be seen as a potential barrier to adaptation.

The changes may be competing for priority with other essential building requirements and there is no process to arbitrate which change should be given prevalence or how the changes could be dovetailed to deliver the best outcomes for both issues. For example, sea level rise, energy efficiency and accessibility. One common construction response to increased flood (water) levels is to increase the floor level of a new home. Some councils in NSW have introduced restrictions on building homes within areas affected by rising water levels which require an elevated floor construction (bearers and joists). This type of construction has implications for the home in meeting minimum energy efficiency standards (a slab on ground floor design achieves a higher thermal performance level) and an elevated home will require stairs to enter the home, which reduces the accessibility of the home for people with disabilities and the elderly.

Similarly, environmental and planning provisions for native vegetation and bushfire hazard are competing interests that on one hand require retention of vegetation, regardless of its' proximity to future residential buildings, increasing the bushfire risk and leading to higher construction costs. Whereas if vegetation is removed, there are impacts on threatened species which can lead to costs to protect flora and fauna on site or elsewhere (offsets).

Arguably the BCA, whilst criticised for being slow to respond to change, provides the necessary scope to accept variations due to climate change. The code readily applies the current cyclonic regions (in tandem with the relevant Australian Standards) and the residential building industry incorporates these requirements as they arise. Energy efficiency in the code is addressed with a different set of regions and complemented by a more tailored set of assessment tools (computer programs) that provide even further fine grained regions (increasing from 8 to over 60 climate zones). An alternative approach is taken with bushfire hazard, where the code and supporting Australian Standard categorise levels of risk and provide relevant construction responses. The code leaves the designation of bushfire prone land to state and local government who are better placed to determine this risk.

However, it is worth noting that not all states have designated, or accurately designated, areas of bushfire prone land, triggering the relevant building standards. It may be considered that an additional mechanism is appropriate to ensure land is identified at the highest level, to 'trigger' the appropriate response.

HIA does not believe the current administrative processes for the BCA require any change to facilitate responses to climate change. The current processes can be shown to already cater for this need and it is important that a perception that the 'stringency' of the BCA is not take to be an administrative process. Rather the stringency is the outcome applied after the due regulatory responses process has been undertaken.