



Municipal Association of Victoria Response

Productivity Commission - Barriers to Effective Climate Change Adaptation

Draft Report

June 2012

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The MAV is the statutory peak body for local government in Victoria, representing all 79 municipalities.

While this paper aims to broadly reflect the views of local government in Victoria, it does not purport to reflect the exact views of individual councils. This Submission has been endorsed by the MAV Board for submission to the Productivity Commission.

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1 Executive Summary

The Municipal Association of Victoria (MAV) is pleased to respond to the Draft Report from the Productivity Commission Inquiry into Barriers to Effective Climate Change Adaptation. Councils have significant and diverse roles and responsibilities under State and Federal legislation. Through the provision of planning, asset management, community services and environmental management responsibilities, councils influence land use and development. Councils also support and shape community values and behaviours in ways which can enhance, or detract from communities' climate change adaptation.

For councils to effectively contribute to communities' climate change adaptation, they must be supported by clear policy, good data and access to technical expertise. Their operating environment requires a proactive yet precautionary and cooperative approach where climate change mitigation and adaptation measures are fully integrated.

The MAV supports recommendations by the Productivity Commission that address the organisation's priority policy areas and the barriers to climate change adaptation identified in this submission.

2 Introduction

This submission builds on the MAV's submission to the Productivity Commission's Issues Paper, which drew upon recent research reports, *Stocktake of Current Victorian Local Government Climate Change Adaptation Planning* (The Stocktake Report) commissioned in May 2011 and *Supporting Victorian Local Government Manage Climate Risks and Plan for Change* (2011), as well as recent experiences of councils dealing with the impacts of extreme weather events.

2.1 The Municipal Association of Victoria (MAV)

The MAV is the peak representative and advocacy body for Victoria's 79 councils. It was formed in 1879 and given statutory authority under the *Municipal Association Act* 1907. The MAV represents and advocates the interests of local government, raises the sector's profile, ensures its long-term security and provides policy advice, strategic advice, capacity building programs and insurance services to local government.

The MAV provides public liability and professional indemnity insurance to almost all Victorian councils through a mutual scheme. While MAV Insurance is exposed to risks associated with climate change impacts, it is also able to encourage the adoption of practices to manage the insurable risks associated with climate change through its risk management audit processes.

3 Productivity Commission Draft recommendations

3.1 Draft Recommendation 4.1 - Assessing reforms and setting priorities

Reforms to address barriers to effective risk management in the current climate should be implemented without delay, where they are likely to deliver net benefits.

In relation to barriers to adaptation to uncertain future climate trends, the case is less clear.

- *Where a reform has low up-front costs and potentially large benefits, albeit with long time periods between the costs being incurred and the benefits being received, there could be a case for preparatory action. The case is likely to be stronger if the reform will deliver benefits under a range of climate change scenarios.*
- *Where measures have high up-front costs, the community is likely to benefit by deferring high-cost options until better information becomes available.*

The MAV supports the recommendation to remove barriers for adaptation and response to the current climate hazards.

The MAV is supportive of appropriate adaptation with 'no regrets' and 'low regrets' outcomes. For example making sure that long lived infrastructure, such as roads, drains and buildings, is designed with a changed climate in mind. Given the long lead times for significant infrastructure and the benefits of early action, Victorian local government would welcome further support for preparatory work to ensure that adaptation actions achieve a balance between appropriate adaptation and the benefits of early action.

The recommendation suggests integration of climate risks into current business processes, however how this is most effectively done remains unclear for land use planning and some asset management, and is either not yet agreed or fully supported by Australian Standards or guidance materials.

3.2 Draft Recommendation 5.1 – Building Adaptive Capacity

Australian governments should implement policies that help the community deal with the current climate by improving the flexibility of the economy. This would also build adaptive capacity for dealing with future climate change. This includes reforms to:

- *taxes that influence the way resources are used, such as land tax exemptions and conveyancing duty, which could inhibit the mobility of labour, capital, or both*
- *government transfers that reduce incentives to adjust to changing circumstances, such as the reforms recommended in the Commission's 2009 inquiry into drought support*
- *regulations that impose unnecessary costs or inhibit competition or flexibility and could impede climate change adaptation by reducing the ability of firms, households or other organisations to respond to changing circumstances, such as restrictions to water trading.*

The MAV is broadly supportive of this recommendation. However, 'flexibility of the economy', may have significant adverse effects on communities, as has been seen with structural adjustment of the manufacturing sector. Adaptive capacity for the community, that is people, is a different proposition for an economy that is flexible. The MAV would strongly encourage further attention to be given to planning for flexibility that supports households and communities, rather than just capital, as communities will be affected very differently.

3.3 Draft Recommendation 6.1 – Information Provision

The Australian Government initiative to improve the coordination and dissemination of flood-risk information should be expanded over time to encompass other natural hazards. Guidelines to improve the quality and consistency of risk information should be regularly updated and take climate change into account where feasible.

The MAV strongly supports this recommendation, which would help councils and the community better plan and be prepared for natural hazards. The appropriate dissemination of such information is critical. Local government, currently, must be cautious about accepting information that is not able to be shared publicly, as it could be charged with having knowledge without acting. For example, the Digital Elevation data and inundation modelling generated under the Victorian Future Coasts program is provided conditionally, leaving councils with access to information about potential impacts that they are unable to share with potentially affected property owners.

As part of the Port Phillip Bay Adaptation Pathways Project, we have had limited access to newer, more comprehensive catchment flood modelling. This information has been highly useful, but is not generally available to councils, being held carefully by Melbourne Water, due to their uncertainty about the modelling assumptions, and associated risk and political issues. The assumptions underpinning such modelling should be based on agreed, national scale guidance informed by the best available science.

The MAV, supporting an 'all hazards' approach would welcome the expansion and increase in detail of hazard information. Our recent work in Port Phillip Bay highlights this gap, there is good information, albeit not accessible, on coastal and catchment flooding, but little on the risk of bushfire, which may well pose a greater risk to some of the case study areas. It is a difficult and uncertain task to integrate a changed climate into hazard modelling. The coordination role of a consistent hazard approach should include appropriate standards for data collection, modelling methodologies, scale and tolerances as well as temporal guidance about climate change matters such as for storm events causing urban inundation. Responsibility for hazard mapping should be firmly allocated to either State or Federal governments, with the consistent translation of this into risk information for different contexts and time periods. Doing so would enable more effective communication of hazard and risk information to councils and communities.

3.4 Draft Recommendation 7.1 – Local Government

There is uncertainty about the roles and responsibilities for adaptation by local governments, including in the areas of land-use planning, coastal management, and emergency management. As a first step to clarifying these roles and responsibilities, state and Northern Territory governments should publish a comprehensive list of laws which delegate regulatory roles to local governments. This would assist state, territory and local governments to assess whether local governments have the capacity to effectively discharge their roles.

The MAV would welcome greater clarity about the roles and responsibilities for local government in relation to adaptation. Equally, clarity needs to be brought on the central role that the state and territory governments have, and how councils complement this. For example, while Planning Schemes in Victoria are developed at the municipal level, they must implement the State Planning Policy Framework and require 'sign-off' by the State. Emergency management plans are also prepared at the municipal scale, but are a multi-agency document with council just one of a number of equal partners in their development and implementation.

Importantly, the resources that councils are able to bring to bear on adaptation actions is constrained and the capability of councils varies. When compared against the State with its ability to raise funds and allocate resources, it is clear that the delegation of many regulatory roles to councils presumes capacity that may not exist. For example, financial constraints on councils borrowing restricts expenditure on land acquisition for future adaptive flexibility.

Councils publish a register of delegations to the CEO and the organisation which provide a useful listing of their responsibilities under various State legislation.

3.5 Draft Recommendation 7.2 – Local Government

Uncertainty about the legal liability of local governments is emerging as a barrier to effective climate change adaptation. State and Northern Territory governments should clarify the legal liability of local governments regarding climate change adaptation matters and the processes required to manage that liability.

The MAV strongly supports this recommendation. Councils, as responsible planning authorities must be reasonably protected from common law liability when acting in good faith, consistent with State policy and guidance materials. Councils in different States should have a consistent minimum level of protection to assist them in undertaking their roles, duties and functions. This advice must be comprehensive and clear for the breadth of council activities, such as when council is acting on behalf of the State, such as a Committee of Management for coastal Crown land.

3.6 Draft Recommendation 8.1 – Planning and Building Regulation

As a priority, land-use planning systems should be revised to ensure that they are sufficiently flexible to enable a risk management approach to incorporating climate change risks into planning decisions. In doing this, consideration should be given to:

- *transparent and rigorous community consultation processes that enable an understanding of the community's acceptable levels of risk for different types of land use*
- *the timeframe of risks and the expected life time of proposed land use*
- *the costs and benefits of different types of land use.*

Flexibility is welcome, however will need to be 'negotiated' within a clear State policy and regulatory context, and to help ensure unintended consequences are avoided.

Each community will have an acceptable level of risk and what they can afford will differ widely. Protection works in coastal areas can have unintended and detrimental consequences for other areas of the coast and effectively simply 'shift' a risk.

There is no Victorian State Hazard Strategy, setting out the principles and policy to guide decision making and how the risk of flooding, fire, or landslip are balanced in the short, medium and longer term. This then means that there is little guidance about how priorities for State funding are determined, and when a community should expect State support, or not. In cases when a disaster was reasonably foreseeable, whether the State should have worked to minimise the cost of damage over time, or whether this is a local government or community responsibility. Without such guidance at the state level, there is likely to be significant inequity in responses. This inequity will also play out nationally. For example, Victorian governments have, for many years, discouraged floodplain and canal estate development, reducing cost of damage to community and government. Will future disaster responses at a national and State level incentivise such approaches or effectively reduce adaptation funding available to States who have taken a precautionary approach in the past?

3.7 Draft Recommendation 8.2 – Planning and Building Regulation

As a priority, the Building Ministers' Forum should ensure that the National Construction Code and associated standards (including those developed by Standards Australia) take climate change impacts into account. As soon as practicable:

- *the Building Ministers' Forum should provide a formal response to the Australian Building Codes Board's 2010 review of the Building Code of Australia under climate change*
- *the Australian Building Codes Board should develop a formal work program that outlines its approach to incorporating climate change in the National Construction Code over time. This work program should reflect any formal government response to the 2010 review of the Building Code of Australia.*

The Australian Government should give consideration to the public funding requirements for the Australian Building Codes Board and Standards Australia to undertake this work.

The MAV supports this recommendation. Local government is both a user of such codes, and may permit such construction work, and would welcome the appropriate inclusion of climate change impacts. The foundational work and research would provide a basis for local government to work with bodies such as the Institute of Public Works and Engineering to update standards for roads, bridges, footpaths and local drainage to incorporate climate change impacts.

3.8 Draft Recommendation 8.3 – Planning and Building Regulation

The Council of Australian Governments' Select Council on Climate Change should consider, as part of its adaptation work plan, appropriate responses to managing the risks of climate change to existing settlements in high-hazard risk areas.

The MAV supports this recommendation. Consideration should be not only on high-hazard risk areas, but also areas with significant net economic benefit to the state and the nation. For example, some areas of Melbourne's CBD may not necessarily be the highest-hazard risk areas, but the magnitude of the economic impact is very high due to current investment and economic activity.

The MAV would like to see the integration of climate change adaptation into the National Urban Policy and Cities principles.

3.9 Draft Recommendation – Emergency Management

The Australian Government should commission an independent public review of the Natural Disaster Relief and Recovery Arrangements. This review should commence as soon as possible and desirably produce a preliminary report by the end of October 2012. The review should consider whether the arrangements lead to inadequate infrastructure investments or insurance decisions, or reduce the incentives of state and territory governments to appropriately manage their risks. It should also examine alternative arrangements or funding models.

The MAV strongly supports this recommendation and would like to see the review extended to the state-based arrangements for reimbursing councils. In Victoria, councils claim reimbursement for natural disaster-damaged essential infrastructure and other eligible expenses through the Natural Disaster Financial Arrangements (NDFA). The NDFA is administered through the Department of Treasury and Finance. The State Government then claims a portion of these reimbursement payments from the Commonwealth Government, through the Natural Disaster Relief and Recovery Arrangements (NDRRA).

Essential infrastructure generally covers the repair of roads and bridges, reserves and associated community facilities. Public buildings destroyed are dealt with on a case-by-case basis but are not usually funded through this policy.

Betterment: The current arrangements whereby essential infrastructure damaged by a natural disaster can be replaced or restored to more disaster resilient standards than its pre-disaster standard is known as betterment. The current arrangement for funding betterment of eligible council-owned infrastructure is one third council, one third State and one third Commonwealth. The one third component for many Victorian councils is prohibitive in many cases. As a result, there have been a number of examples where roads have been restored to original condition, only to be damaged again in the next flood.

Salaries and wages: There is a need to recommend a more flexible funding model in relation to staffing and contractors than the current model.

The NDRRA funding only covers “extraordinary salaries, wages and other expenditure which would not have been incurred had the emergency not occurred”. This has meant that councils are forced to resort to the use of contractors even if the use of council staff would be a more efficient arrangement. A number of councils have provided feedback on the cost-effectiveness of utilising their own staff such as:

- Contractors build in profit margins which councils do not;
- Contractors know that the works are government-funded, and there is a risk that prices will be inflated;
- In remote and rural areas contractors typically come from regional centres. Given the distances and demand, it is likely that prices will be driven up; and
- In some cases, the opportunity is lost to employ local casual staff and boost local employment

Community recovery: There is no guaranteed reimbursement available for costs associated with providing support to community members during or after an emergency. Recent events have seen significant delays in recovery packages provided by the State and Commonwealth governments. This leaves councils in a vulnerable position and councils with limited resources have reported that this uncertainty has resulted in restraint in the provision of immediate relief and recovery services.

3.10 Draft Recommendation 12.1 – The Role of Insurance

State and territory taxes and levies on general insurance constitute a barrier to effective adaptation to climate change. State and territory governments should phase out these taxes and replace them with less distortionary taxes.

The MAV supports, in general, this recommendation regarding distortionary taxes.

3.11 Draft Recommendation 12.2 – The Role of Insurance

The Australian Government should only proceed with reforms that require all household insurers to offer flood cover if it can be demonstrated that the benefits to the wider community would exceed the costs. These benefits and costs should be assessed, and any reforms implemented, after barriers to effective climate change adaptation in other policy areas are addressed.

The MAV supports this recommendation.

3.12 Draft Recommendation 12.3 – The Role of Insurance

Governments should not subsidise premiums for household or business property insurance, whether directly or by underwriting risks. This would impose a barrier to effective adaptation to climate change.

No comment from the MAV.

3.13 Draft Recommendation 13.1 – Reform Priorities

The Australian Government should focus on national policy responses in areas such as emergency management, research and information provision. Existing agencies will have a role in managing policy responses in these areas.

The Council of Australian Governments' Select Council on Climate Change, and any successor, should coordinate policy responses in areas where cooperation between levels of government is required.

The MAV supports this recommendation. State and local government legislation across planning, emergency management, and water management for example, vary from state-to-state, so the response is best coordinated at those levels. The Council of Australian Governments' Select Council on Climate Change can greatly assist in coordination of research and could bring significant benefit by working with the insurance industry to better understand risk across the landscape.

4 Information requests

4.1 Information Request 6.1 – Hazard Risk Information

How useful are property title documents, property certificates, rates notices and rental contracts as means for communicating natural hazard risk information to households and businesses? What alternatives are available? What costs and risks would state and local governments incur in providing such information?

Property title information is of varying utility for conveying hazard information in Victoria. Section 32 of the *Sale of Land Act* requires a vendor to provide certain information to a purchaser before a contract of sale is signed. As well as property and building history information, the Section 32 statement includes planning information relating to the zoning and a notice where zoning may restrict the use of land. Overlay controls are not required to be disclosed, as they do not affect 'use'. In Victoria, hazard information is generally dealt with through the declaration of areas (building controls) and the use of overlays.

The Planning Property report, however, is comprehensive, free and accessible at <http://services.land.vic.gov.au/landchannel/jsp/reports/ReportsIntro.jsp> or via an iOS application. The reports now available also include Bushfire prone area maps (building control) following the State-wide hazard mapping undertaken after the Bushfires Royal Commission. State-wide flood hazard information could also be made available in this way.

It is important that the impacts of sea level rise, coastal erosion, and intense storm events be properly integrated into the hazard map modelling in a consistent way, over agreed time periods.

To look at an aspect of a hazard in isolation may overstate or understate the consequences. For example, looking at coastal inundation in isolation of catchment flooding, coastal infrastructure and coastal processes is confusing to the general public.

The asset life or nature of the investment should align with the hazard and scenarios being assessed and greater clarity about how this is done will reduce both costs and risks to government.

4.2 Information request 7.1 – Local Governments’ legal liability

The Commission notes the current arrangements in New South Wales to limit the legal liability of local governments through the Civil Liability Act 2003 (NSW) and the Local Government Act 1979 (NSW), and seeks further information on whether this approach (or alternatives) could fully address the legal liability issues facing local governments in other jurisdictions when dealing with climate change adaptation.

The MAV is not able to provide any detailed information to assist with this information request. The ALGA report, *Local Council Risk of Liability in the Face of Climate Change – Resolving Uncertainties*¹, prepared by Baker & McKenzie may assist.

The MAV received advice from Michelle Quigley some years ago regarding the mechanisms at that time to protect councils in their role as planning or responsible authorities relating to coastal climate change impacts. The work also examined what forms of legislative provision that could be introduced to existing or new legislation to protect councils discharging their planning powers. Subject to legal privilege, this work may be able to be provided on request.

The approach taken by Wellington Shire for example, who have been dealing with climate change and sea level rise implications for existing and proposed development around Ninety Mile Beach and Lake Reeve (Honeysuckles to Paradise Beach) through the use of a Section 173 agreement and the acknowledgment of risk by the land owner is one approach. This is an interim response, rather than an alternative.

¹ Available at: <http://www.alga.asn.au/site/misc/alga/downloads/environment/ALGA%20Consolidated%20Report-v7B-1392955-SYDDMS%20-%20Final.pdf>

4.3 Information request 8.1 – Planning and Building Regulation

To what extent do current state and territory land-use planning frameworks facilitate or impede the use of different land-use planning tools, such as time-limited development approvals or ‘triggers’? What changes are required to state and territory planning frameworks to address any impediments?

Time limited development is not an option currently practiced in Victoria, and is made more difficult with the distinction between permit requirements for use and/or development, as many of the ‘uses’ are as of right, and the permit is only for the development. When a permit is required for the use and development this may be possible, although the MAV would contend that the planning system is not well placed for the ongoing management of the use and development approved.

Planning frameworks can assist in identifying areas where development should, and should not, occur. Guidance about the appropriate triggers for different categories of land use and development would be required to guide permit conditions where development can occur.

The role of planning becomes less significant relative to other policy ‘levers’ when dealing with a risk to a land use or development that commenced prior to the risk being known. Existing settlements present a public policy challenge, but the role of planning systems is much less than when compared to the clear role in identifying land where development may be at risk from fire or flood.

4.4 Information request 8.2 – Planning and Building Regulation

The Commission seeks views on individual, business and community preferences for managing the risks of climate change for existing settlements.

- *What levels of climate change risk are appropriate for existing settlements? Does this differ for private and public assets?*
- *What approaches should governments take to ensure these levels of ‘acceptable’ risk are maintained?*
- *In what circumstances should governments use ‘protect’, ‘accommodate’ or ‘retreat’ options for managing climate change risks to existing settlements?*

The impacts of climate change may make existing hazards, such as inundation, erosion and fire more likely. These need to be modelled, but the current levels of protection from flood should not change, unless they are impossible to achieve at a cost society will bear. When a coast is highly erodible the question becomes more complex.

Consideration should be given to the principle of the beneficiary of the risk mitigation should be the one to pay. Where the beneficiaries are many and dispersed, or there is a large public benefit, such as the Southbanks of Melbourne or Brisbane, then the funding of adaptation options through taxes and charges may be appropriate.

Where the benefits are highly localised, the MAV is of the general view that the beneficiary should pay directly, rather than the community bearing the cost.

Where the problem pre-exists contemporary knowledge, and the benefits may have been enjoyed over many generations or property owners, there is an argument for funding of adaptation options through taxes and charges, unless retreat is appropriate.

When retreat is appropriate would depend on whether the cost of damage is greater than the benefits of the use of that area; where the transformation of that area to 'attack' the risk is not possible; and where the cost benefit of the protection and accommodation options are negative, even under a different more intense development scenarios.

4.5 Information request 8.3 – Planning and Building Regulation

The Commission is seeking submissions on gaps or overlaps between land-use planning and building regulations that may act as barriers to adaptation.

There are gaps and overlaps between building and planning and this is unlikely to change. There is a perception among building regulators that many matters regarding Ecologically Sustainable Development (ESD), for example, are best dealt with through a building regulatory framework. However, MAV's work and local government experience suggest this is not the case. Some matters are only planning matters, some are building matters and some may be either. Many matters are more effectively and efficiently dealt with, through the design process when identified at a pre-planning or planning stage such as siting.

Many developments in Victoria do not need a planning permit and so both frameworks must be complementary to optimize the outcomes sought.

4.6 Information Request 9.1 - Infrastructure

Are there any examples where the economic regulation of infrastructure has impeded investments to facilitate adaptation?

No comment from the MAV.

5 Conclusion

The MAV is broadly supportive of the Commission's draft recommendations.. Councils are strategically well-placed to support and shape community values and behaviours in ways which may enhance, or detract from communities' climate change adaptation, not to mention their land use influence or infrastructure investment. Yet, must not be seen as the last line of defence,

rather a partner in preparing for a changing climate and managing current risk, with state agencies in particular.

For councils to effectively contribute to the effort of assisting Australia adapt for a changing climate, they must be supported by clear policy, good data and access to technical expertise. This is critical due to the long-term nature of climate change impacts and the need to continually reassess risks and adapt responses.