SUBMISSION BY THE

Housing Industry Association

to the

Productivity Commission

on the

Draft Report - Barriers to Effective Climate Change Adaptation

28 June 2012

CONTENTS

1. INTRODUCTION 1

2. HIA RESPONSE TO DRAFT RECOMMENDATIONS 2

2.1 Assessing Reforms and Setting Priorities 2
2.2 Building adaptive capacity 3
2.3 Information Provision 4
2.4 Local Government 5
2.5 Planning and Building Regulation 7
2.6 Reform priorities 10

3. HIA RESPONSE TO INFORMATION REQUESTS 11

3.1 Hazard risk information 11
3.2 Local governments' legal liability 12
3.3 Planning and building regulation 12

1. INTRODUCTION

As Governments collectively count the cost from a range of climate events which have occurred in recent times, the most obvious response it to make changes to policy and regulation around the built form. It follows that changes to planning and building regulations would see more houses built that are better adapted to their environment and location.

HIA has previously identified that 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 on individuals or businesses ability to adapt, rather they force them to adapt in a particular way. These approaches reduce the flexibility of home owners in responding and in many ways act as a barrier to adaptation in the housing sector.

In recent times the housing industry has seen a number of strategies and responses from all levels of government that have either increased cost of construction, changed construction methods, adjusted building footprints and locations, and in some cases the loss of developable land (despite that land being zoned for housing or urban development of some type).

HIA is engaging in the debate on climate change and the implications it has for land use planning and building regulations that may arise over the next decade to ensure that the residential building & development industry's views are taken into consideration as government's develop these new responses.

Housing development requires a consistent policy and regulatory approach to climate change and it must involve a partnership approach with local authorities. The piecemeal approaches to zoning and standards implemented in the built form to date, which are largely as a result of building and planning measures from state and local governments, have been implemented in many cases without sufficient scientific data to support their need, are inconsistent with one another and have generally been costly to implement - with the cost being borne by individuals whilst delivering both a private and public benefit.

To that end industry seeks from governments' greater certainty around development processes and requirements around climate change.

It is industry's view that planning, building and taxation measures implemented to mitigate the effects of climate change should be put on hold until such time as credible national data is published and can be acted upon accordingly.

Further, data that is correct at a point in time should be regularly revisited to see that the predicted outcomes to which the built form is adapting are in fact reached, prior to the next level of regulatory requirement being applied. This should apply to both individuals and communities as authorities contemplate appropriate responses to climate change.

HIA has reviewed the draft Report and recommendations and would like to put forward these further comments, to support our initial submission to this Inquiry.

2. HIA RESPONSE TO DRAFT RECOMMENDATIONS

The following comments are based on selected recommendations in the Draft Report which impact upon the residential building and development industry.

2.1 ASSESSING REFORMS AND SETTING PRIORITIES

DRAFT RECOMMENDATION 4.1

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.

HIA advocates that any response to climate change through regulation should be commensurate with the risk the threat poses.

In our initial submission HIA outlined that one of the biggest issues for the industry is that as 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. In essence governments are not so much constraining individuals and businesses but forcing them to adapt in a particular (and largely untested or uncosted) way.

The piecemeal approach to adaptation fails to take into account the element of risk in implementing a measure or any assessment of whether the risk is warranted.

Governments are asking for adaptation measures without understanding the direct level of risk or the cost to the individual of implementation. There is also a lack of understanding of priority actions that might be required in a given timeframe as a consequence of the risk.

An assessment of required actions and the likely time lags between the imposition of the cost and the receipt of the benefit would give some indication of whether the climate matter under consideration is actually a current, short, medium or long term priority. This would also assist with approaches such as prioritising the likely actions needed over the same time periods, reducing the upfront action and costs associated to reflect the timeframe associated with the risk.

Some of the current climate change issues, (such as sea level rise, currently have a disjunct between the risk of inundation and the measures or restrictions being applied to the built form by authorities. A better way would be to look at the likely risk and the likely time frame associated with the risk to determine the appropriate response. High cost options might be preferable if the risk of a certain occurrence is high and the impact of that occurrence is also high. Credible data is required to ascertain this on a case by case basis.

The Commission has found that the uncertainty around the impacts of the reforms should not lead to inaction. This is questionable as it suggests action is required even though there is uncertainty about certain aspects of climate change. In the broadest sense this principle may be appropriate, however the practical outcome of this approach needs to be carefully managed. Action must be specific rather than generic, take account of the upfront costs vs the long term benefits and recognise the potential for staged or phased responses to a phased risk. Most importantly responses need to recognise a suite of solutions – adaptation and mitigation must work hand in hand.

2.2 BUILDING ADAPTIVE CAPACITY

DRAFT RECOMMENDATION 5.1

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 Commission has investigated whether a series of taxation measures would be a successful way to incentivise adaptation to climate change.

The policy levers mentioned in the report include assessing property taxes which ultimately affect the "churn rate" or willingness to move out of a particular property (say if it were affected by environmental factors such as sea level rise to an area that is less likely to be affected by this).

Reducing Conveyancing Duty

A major component of the property taxes that the housing industry, and hence the public as new home buyers bear, is conveyancing or "stamp duty" and other property duties. In HIA's opinion these account for a major and unbalanced amount of overall state taxation revenue.

Stamp duty is a transaction cost which locks owners into properties. This means that home owners are often less readily able to upsize or downsize as their life circumstances change. As the Productivity Commission correctly asserts stamp duties can be a barrier and limit labour mobility as home owners are locked into staying in their existing residence rather than moving to take up other opportunities – whatever the motivation might be.

The argument follows that people wishing to move into an area to lessen their exposure to climate change activities may be prevented from doing so due to prohibitive stamp duty (and other property taxation) costs.

Stamp duty acts to limit the number of transactions, so its removal or the lowering of stamp duty rates could result in a significant increase in property turnover and the increasing ability for home owners to make choices about relocating without the financial losses associated with this tax. This would have a general benefit for the community - not just those who wish to move due to the threat of inundation, bushfire or other similar reason.

HIA is of the view that stamp duty is a highly inefficient and productivity-constraining tax. It is usually paid three times on a typical new housing scenario (sale of land to developer; sale of land from developer to builder; and sale of house and land package to purchaser). At each

stage in housing production stamp duty is collected on both the contract sale price and levied on items such as GST, development charges and stamp duty applied in previous transactions.

With the rates set by states and territories, it is a definite barrier to people wishing to relocate – for whatever reason that may be.

Zoning and reclamation

The recent experiences in Queensland and Victoria have highlighted a need to consider the concepts of 'down zoning' and the potential need to reclaim land at significant risk. The planning and building system in all states and territories and the current processes around zoning are unlikely to have the necessary elements required in the next few years to manage this emerging pressure. This will have an impact on the ability and efficacy of state and local governments to work with existing land owners and needs to become a priority consideration over the next 5 years as more and more land is identified as being at risk.

2.3 INFORMATION PROVISION

DRAFT RECOMMENDATION 6.1

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.

There is a real need for the co-ordination of information on all natural hazards. The Federal Government should undertake this work.

Many existing planning provisions provide guidance and could assist with providing the basis of a national information system of information. In Victoria for example, there are Planning Overlays in place, designated by local councils through planning scheme amendments. The overlays would flag flood prone land or bushfire risk.

But clearly the more information that is available to the general public the better as this will help individuals and authorities to make decisions based on full disclosure.

Hazard mapping of either sea level rise, bushfire risk or other environmental matters is considered useful and could be adopted by state governments and uniformly applied by local governments in their day to day decision making affecting building and planning applications.

Provided it is based on credible data, it could lead to more consistent decisions regarding the individuals need to provided adaptation measures. However it is critical that mapping and information about natural hazards be seen as the 'end game'. The Australian Government must also take a lead role in setting benchmarks and thresholds for adaptation and mitigation and both Federal and State governments need to establish clearer guidance on the tools available to local government in managing these risks. It is not appropriate that local government be placed in a situation of having to determine the best solutions to these risks based on state policies which have terms such as 'have regard to….." or "exercise discretion when considering the potential risks…..". These approaches leave both councils and land owners in an untenable position of presuming what may be required.

2.4 LOCAL GOVERNMENT

DRAFT RECOMMENDATION 7.1

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.

A list of all laws delegated to local government to administer would certainly provide a starting point as to assessing the large task they have in all regulatory areas, however it would not alter any administrative duties that currently apply.

Industry's experience is that in the absence of any guidance or understanding of which levels of government are responsible for adaptation, local governments have no choice but to take their own initiative with climate change.

Climate change adaptation in the built form 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.

Applicants are in the hands of local government for most permit applications – in both planning and building.

Hence significant problems have begun to arise such as one Victorian council, which has in the past required applicants to prepare a site specific coastal vulnerability statement for single dwellings. This is inequitable as not all single dwelling developments require a planning permit and secondly there are no triggers or clear guidelines concerning the type or scale of development which requires the preparation of a coastal vulnerability statement – it is more a matter of opinion.

The Lake Macquarie Council also implemented radical changes to properties development rights around sea level rise and then altered its position, reducing the number of properties affected.

One HIA member has been left with seemingly undevelopable land following the Victorian Planning Tribunal (VCAT) decision to refuse of a two lot subdivision in Waratah Bay. Even though the matter was council approved, and the two lot subdivision complied with the local planning scheme, the Tribunal could not support a subdivision in the knowledge that without mitigation works, there will be no dune, no road, no access to the site and the site is likely to be inundated with sea water. The site already has a single dwelling on part of the allotment and it is unclear now what impact this decision has on the value of the land and whether Council now has an obligation to make retrospective decisions about the existing use.

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, as there is no clear direction from the Commonwealth to guide the responses. Whilst most state governments have strategic documents to guide decisions they have been developed in the absence of a clear direction from the Commonwealth.

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.

DRAFT RECOMMENDATION 7.2

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 uncertainty around liability is no doubt a strong motivator in the proliferation of all of the council matters mentioned above. If there is a way in which councils could be indemnified from future litigation, and the responsibility is placed with the individual, adaptation measures might be better implemented and more appropriate to current levels of risk (rather than future).

Local government has a dual responsibility in this debate – protecting private assets and providing public assets. To date, the issues mentioned above have clouded the responses to protect private assets, with adhoc planning and building requirements and decisions occurring in most states and territories.

However the lack of direction in relation to the protection of public assets in more likely to be the driver of these adhoc responses, along with a failure to recognise that adaptation and mitigation must work hand in hand to resolve both situations.

The Victorian example highlighted a decision to refuse further development on a site due to the fact that the surrounding areas would be affected by sea level rise if no mitigation works were to occur. This fails to recognise that council assets of roads, coastal reserves and the like will in most cases, be managed by the council over time, to reduce their risk. These actions would have a beneficial impact on the adjoining residential land and whilst it may still be affected in some manner, it would not be to the extent predicted as a reason to refuse further development.

Councils are unclear on their position in terms of protecting private assets. If they make a decision based on the best information available at the time, using the best available standards and tolerances for a given risk, will they be open to a claim by a land owner in the future. If they use legal options to ensure the land owner is aware of the risk (such as the options being used in Victoria) and then permit future development, will they truly be protected from a claim?

Moreover, if disclaimers can be used, will councils reconsider their position to mitigate hazards, when no public assets are at risk, placing a greater burden on individuals?

2.5 PLANNING AND BUILDING REGULATION

DRAFT RECOMMENDATION 8.1

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.***

DRAFT RECOMMENDATION 8.3

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 Commission correctly states that there is no well-established approach to incorporating climate change in to land use decisions and many local governments, in the absence of firm direction from state governments are confused about their role and applying their own measures through the planning and building permit systems.

But it should be recognised that local governments and the residential building industry have a long history of dealing with natural risks including 'flood prone' land bushfire risk – so many are experienced in doing this and may be well placed to implement a risk based approach.

Whilst some state planning acts require that certain environmental hazards such as sea level rise considerations be taken into account in development decisions, many of the other environmental hazards are left to local government to administer in an adhoc way.

A risk management approach – whereby the timeframe of the land use is matched with the potential use – could be applied to planning systems in relation to environmental hazards.

Currently builders are being asked to plan their current applications and designs for conditions or an event that may be up to 100 years in the future. This is neither practical nor cost effective. With bushfires, often a very conservative approach is required whereby the property owner must build to much higher standards than may ever be required (which is a cost borne by individual) Making landowners aware of the potential risks on their land and seeking acknowledgement of this may one way forward.

If planning systems could be more flexible - it would provide better outcomes. All levels of Government should only pursue practical and sensible approaches to the issue of sea level rise using risk based approaches. It is essential to ensure that the response is commensurate with the threat.

The key issue in relation to the planning and building system is the need to recognise there are two very different situations that need to be managed and the approach to these must be fundamentally different.

Firstly, the planning system is responsible for zoning of land. The long term designation of land for urban purposes occurs in every state and territory through a variety of strategic plans. Processes then support this which change designated land to zoned land, hence permitting or prohibiting certain activities on that land. This process provides the opportunity to 'get it right' and there should be an overarching aim to deliver 'truth in zoning'. If land is zoned for residential or urban development, then it should be free from ongoing constraints, including

natural hazards. No further studies should be needed to manage the development of that site. Where residual hazard is considered an acceptable approach to zoned land, such as parts of a site being below a 1:100 year flood level or the site being in a bushfire prone area, the building system should then step in to set out the minimum construction standards to achieve a building that, whilst not fire or flood proof, is likely to withstand the lower spectrum of these residual risks.

Moving forward land should not be zoned for residential and urban purposes with an ongoing high level risk identified but unresolved.

Secondly, the planning system is responsible for subsequent approvals for works on land already zoned for residential and urban development that has been identified post-zoning as now being at risk. These areas require a completely different and more measured approach. One that as discussed previously incorporates adaptation and mitigation, rather than presuming no mitigation will occur. A process that seeks to disclosure risks and ensure that all parties are aware of the hazards that now exist and the potential impacts of that on existing and future buildings and land uses.

This approach needs to ask questions like what benefit does the construction of a new back deck or alterations to meet standards for high bushfire risk do for the weatherboard home the deck will be attached to? Is the cost associated with achieve a 'non-combustible deck' commensurate with the benefit to the home owner? Or should the home owner recognise that the home is built to a lesser standard than would apply if it were built today and they need to take necessary steps to protect the whole asset as they see fit, ensure the deck does not compromise the existing home and act appropriately in the event of a fire incident?

How can this approach be codified in the planning and building system? How can that proportion of the 9 million existing homes which are now deemed to be at risk be managed through the planning and building system? Realistically they cannot. As mentioned previously, there is no trigger that requires an owner to do works to alter their home and no trigger to allow a council to mandate that a home should be upgraded.

DRAFT RECOMMENDATION 8.2

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.

Objectives of the BCA

The Commission makes reference to the objectives of the Australian Building Codes Board (ABCB) in discharging their role to develop the Building Code of Australia (BCA). Several references are made to *"minimum standards"* however this is not an accurate reflection of the actual objective of the BCA. The correct reference is *"minimum necessary to achieve relevant health, safety, amenity and sustainability objectives efficiently*".

There is a significant difference in the meaning of these two statements and the correct reference provides more than adequate scope for the ABCB to deliver building standards that address climate change matters to a level that meets community expectation.

"The objectives of the Board will be to (collectively 'the Objectives'):

i. develop building codes and standards that accord with strategic priorities established by Ministers from time to time, having regard to societal needs and expectations;
ii. establish building codes and standards that are the minimum necessary to achieve relevant health, safety, amenity and sustainability objectives efficiently;
iii. ensure that, in determining the area of regulation and the level of the requirements:
   A. there is a rigorously tested rationale for the regulation;
   B. the regulation would generate benefits to society greater than the costs (that is, net benefits);
   C. there is no regulatory or non-regulatory alternative (whether under the responsibility of the Board or not) that would generate higher net benefits;…."[1]

Perhaps the more difficult task is to define what the community's expectation of managing climate change actually is, particular in the current flux of debate. Reference in the draft report for the BCA to 'appropriately' incorporate climate change considerations equally gives little guidance on what should be done.

The extent to which standards in the BCA take into account the climate change

The BCA has the unenviable task of seeking to meet multiple and at times competing objectives. The BCA is often subject to criticism for the failures of the past, albeit they are more like regulations made with the information available at the time to meet the community's expectations at that time.

The objectives and processes of developing the BCA are not limited in their ability to have regard to climate change. What appears to be at issue in the Draft Report is the simple proposition that the standards are not high enough.

The ABCB currently prepares annual work program and the issues around climate change and adaptation have been part of that work program since at least 2007. There may be differences of opinion about what elements of climate change are the current priorities however, it is not the ABCB's role to set the policy agenda, rather the states and territories are responsible for giving this direction.

In relation to the multiple objectives of the planning and building system, climate change itself has many competing problems. For example, mitigation responses to bushfire hazard will involve the reduction of vegetation around an area, whilst those seeking to maintain species diversity will oppose the removal of vegetation and habitat. The BCA is not in a position to 'weigh' up these competing interests. This is a matter that should be resolved through the planning system and it is a matter that requires much greater cooperation between the relevant policy agencies before the planning system is used as the vehicle to ultimately designate land available for urban development.

[1] 2006 Intergovernmental Agreement between the Commonwealth, States and Territories for the establishment of the Australian Building Codes Board.

Regulation impact assessment

The Draft Report indicates that the ABCB have had difficulty introducing changes to manage climate change due to the regulatory impact assessment (RIS) requirements. In particular reference is made to the assessment undertaken for changes to the cyclonic regions.

Criticisms of the RIS process are in our view not warranted solely because they show a negative cost benefit outcome from proposed changes. In fact, the RIS is more rightly functioning as it is intended to be when some investigations show negative outcome, whilst others show positive outcomes. The more important factor in this debate relates to how the regulator, in this case state and territory governments, chose to respond to a negative cost benefit assessment.

However it is also worth noting that the RIS did not make out the case for the actual changes in frequency or intensity of cyclones due to climate change in the first instance based on the research available at the time and used by the ABCB to underpin the proposed amendments. A copy of HIA's submission to that RIS is attached.

Existing buildings and building standards

An additional element in this debate is the need to recognise that the failure of existing buildings in natural hazard events, such as cyclones or bushfires, does not have a direct correlation with building standards for new buildings. There are an increasing number of examples available that now show buildings constructed to current building standards under the BCA do withstand the impacts of a natural disaster.

It is misrepresentation to suggest that the collapse of pre-1990 buildings in a cyclone, or the damage to pre-1999 homes in a bushfire event, is evidence that current building codes are inadequate and not 'keeping pace' with change.

2.6 REFORM PRIORITIES

DRAFT RECOMMENDATION 13.1

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.

HIA would be pleased to support a select council on climate change if it meant that there is a co-ordinated and practical approach to the response.

3. HIA RESPONSE TO INFORMATION REQUESTS

3.1 HAZARD RISK INFORMATION

INFORMATION REQUEST 6.1

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?

Communicating hazard risks through the land title is binding, and difficult to alter if circumstances regarding the risk change or if the data proves to be incorrect and has the potential to affect the value of the property – devaluing a family asset.

In Victoria some Councils have relied on the use of individual agreements struck under the planning legislation to bring about responses to climate change (specifically sea level rise). They are noted on title and are a cumbersome way of dealing with the broader issue of potential coastal climate change impacts on coastal settlements. Agreements are difficult to amend and may cause difficulties in financing, insurance or in the sale of the land. Given the science around the quantum of sea level rise is unpredictable, and there is no national benchmark, it seems out of step to be asking for an agreement on title which is costly and difficult to change or remove should the predicted sea levels change (either higher or lower) over time.

The Victorian agreements are not strictly speaking being struck for normal planning reasons so it is dubious as to whether they should be used at all for the purposes of adapting to climate change.

A far better way to arrange notification may be through a central property information register and property certificates. In the case of Victoria, an online register with all property information exists and is maintained by a government agency. (www.land.vic.gov.au) Prospective property purchasers clearly see online all of the matters that affect the property such as the zoning, overlays and any adjoining property boundaries and zoning, together with a range of other services and reports provided on the site.

In NSW, the section 149 planning certificate already provides a range of constraints information including bushfire hazard and flooding. The potential catch with these processes is that they are based on accurate mapping as they are legally binding documents and used in the conveyancing process. In some instance, where a council has not had the resources to map the constraints in a given area, the certificate is either unreliable or uses an overarching disclaimer which then requires further investigation to ascertain whether a hazard really does exist.

The South Gippsland Shire Council, also in Victoria, moved to introduce an interim provision to planning applications where the subject site is below 5m AHD (Australian Height Datum or where the only road access to the site is below this level). This interim provision was introduced following the Waratah Bay decision mentioned earlier in the submission. The provision requires applicants to enter into agreements under section 173 of the Planning and Environment Act 1987 at the applicants cost in order to secure planning approvals. The Agreements are to acknowledge potential detriment from sea level rise, requiring the owner of the land to abide by a Coastal Climate Change Management Plan and possibly cease occupation of the land in the event of inundation. Yet the Council will proceed to grant planning permits on these sites and it is unclear whether any other mitigation requirements will be placed on the site or the building design.

More broadly HIA considers the use of individual agreements to be an inappropriate response to regulate this issue as sea level rise is not an issue that is specific to one site. Presumably if inundation occurs, it will affect all properties in a certain area, regardless of whether the owner happens to submit a planning application to council for consideration. It is ineffective to burden only new development that requires planning permission while the issue of vulnerability for the rest of an area is not addressed.

As mentioned agreements can be difficult to amend as they run with the title of the land and hence may cause problems for financing projects on the land, insurance for a home or in the sale of the land down the track.

3.2 LOCAL GOVERNMENT'S LEGAL LIABILITY

INFORMATION REQUEST 7.1

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.

If state governments are able to limit the liability facing local governments as they make decisions in respect to climate change, there may be a less radical approach taken by local authorities.

Faced with being made accountable for development decisions that are exposed to the effects of climate change can only result in the most conservative approach. Other avenue must be explored. As mentioned in HIA's initial response, the responses by local government to the legal implications of climate change are arguably more targeted at 'avoidance and mitigation' rather than adaptation.

With the legal liability of local governments reduced or removed it may result in some councils being able to make better decisions that are commensurate with the current and appropriately acknowledged threats being faced in an area.

3.3 PLANNING AND BUILDING REGULATION

INFORMATION REQUEST 8.1

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?

The issue of managing responses to climate change is greater than the planning and building systems and requires an overarching and planned response involving state governments with direction from the Commonwealth as opposed to a piecemeal approach by local planning schemes. Limiting the time for a certain use as has been attempted by certain NSW councils is not considered appropriate. It would significantly devalue a property whilst leaving it with a zoning that permits urban development and would also affect the ability of future owners to seek finance to purchase the property.

It is not usual for a planning permit to limit the timing of a development or use of an existing building. It is used under the NSW legislation for specific types of land uses where the council believes there is merit it 'testing' the waters with a particular development such as hotels, clubs and pubs.

INFORMATION REQUEST 8.2

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?

HIA has previously commented on Councils dual responsibility. On the one hand local authorities are responsible for the maintenance of existing properties and infrastructure and have no ability to force upgrading or changes to a home where no building works are proposed. Whilst at the same time they are required to make decisions about neighbouring properties who are seeking to make changes which provides scope to apply upgrading requirements or to prohibit further development on land already being used for urban purposes.

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 seek compensation for future losses.

INFORMATION REQUEST 8.3

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

Builders and individuals are constantly facing competing and overlapping requirements. By way of example, 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).

As mentioned previously, direction by Federal and State governments on these competing interests is required to gauge whether any one particular constraints is deemed to be a greater priority.