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The Hon Matthew Guy MLC  
Minister for Planning  
Level 7, 1 Spring Street  
MELBOURNE VIC 3000

Dear Minister

### **Clause 13.01-1 State coastal inundation and erosion policy**

During the past six to twelve months, HIA has received a large number of enquiries from members around the State Government's policy and local government's response to coastal planning issues and sea level rise.

As you will be aware under the previous Government, a coastal planning policy was implemented to plan for a sea level rise of 0.8m by 2100 and apply the 'precautionary principle' when making decisions concerning coastal climate change risks.

In particular, HIA members have reported inconsistencies in interpretation of the policy by local councils in making decisions, and instances where residentially zoned land is being considered as undevelopable because of flood risks as far away as 2100.

There are also instances of VCAT refusing applications for small residential developments on the grounds of sea level rise. It is questionable whether this is the intent of the policy.

*Attachment 1* provides details of two cases involving HIA members, illustrating problems with the current coastal planning policy. One of the cases relates to a current permit application and HIA believes it may be worthy of consideration to be called into the Minister's office for a decision. This is because the City of Greater Geelong has recommended a refusal on grounds of advice from the Corangamite Catchment Management Authority, a move which is inconsistent with the Coalition Government's election policy. If the matter is called-in, there would be clarity around the new Government's policy position regarding existing development rights for coastal landowners particularly in relation to the role of catchment management authorities in permit decisions.

HIA believes state and local governments should not incorporate sea level rise considerations into their planning decisions until national sea level rise benchmarks are set, and detailed coastal hazard mapping is complete. HIA has lobbied for all levels of Government to only pursue practical and sensible approaches to the issue of sea level rise using risk based approaches to ensure that the response is commensurate with the threat.

HIA position therefore supports the Victorian Government's election policy in relation to its stance on sea level rise. In particular, the policy to clarify existing development rights of coastal landowners and reviewing the ability of catchments management authorities to interfere with planning decisions<sup>1</sup>.

As mentioned, HIA is aware that the interpretation of the previous Government's policy varies between local councils, catchment management authorities and VCAT. The intention of the policy is unclear and decision makers are taking an ad hoc approach when deciding on planning permit applications for development in coastal areas.

<sup>1</sup> *The Victorian Liberal Nationals Coalition Plan for Planning, 2010 State Election - p18 & p20*

## HIA Recommendations:

In the immediate term, to correct this and clarify the situation for development applications across Victoria's coast, HIA believes that whilst a coastal mapping exercise is underway and until the situation is clarified statewide, the Government should:

1. Direct local councils and catchment management authorities to allow development on current residentially zoned land to proceed as long as it complies with the local planning controls (Zone and Overlays).
2. Revise the practice note: *Managing coastal hazards and coastal impacts of climate change* which is a key document currently used by decision makers when interpreting state coastal policy and clarify:
  - (a) Under what circumstances a local council can request a site specific Coastal Hazard Vulnerability Assessment be prepared – with exemptions for small development applications.  
*Members report that these assessments currently cost at least \$5,000 for a single dwelling and are often without benefit to the planning application. VCAT, and some councils, are requiring site specific Coastal Hazard Vulnerability Assessments for all developments on land within 1 kilometre of the coast and below 5 metres Australian Height Datum. It is inequitable and inefficient that these assessments are undertaken on a lot by lot basis.*
  - (b) The way decision makers should respond to residential development proposals that may be affected by coastal climate change events. Local decision makers appear to be reluctant to consider adaptive design or mitigation measures in relation to future flood risk e.g. raised floor levels, landowner risk acknowledgement, emergency management plans, etc.

In the medium term, HIA believes the Government should:

1. Continue to carry out detailed mapping of our coastline to identify potentially vulnerable areas.
2. Make the State Government's Local Coastal Climate Change Assessments available to the public. These assessments are due to be completed between 2011 and 2012 as part of the Future Coasts Program (DSE).
3. If there is scientific justification to show which areas are likely to be impacted by flooding, storm surges or sea level rise into the future, then guidance should be provided at that time regarding adaptation.

As mentioned, HIA is very concerned about the ad hoc approach being taken in relation to planning decisions and sea level rise. For your information, I have attached the HIA National Policy for Climate Change and Adaptation - Sea Level Rise and a copy of the presentation made to the Coastal Climate Change Advisory Committee during public hearings held in July 2010.

HIA is willing to meet with the Government to discuss this matter and possible solutions to this pressing issue and thanks you for your consideration of the matter.

Yours sincerely  
Housing Industry Association



**Gil King**  
Regional Executive Director

Attachment 1: HIA member cases which illustrate problems with current coastal planning policy.  
Attachment 2: HIA National Policy for Climate Change and Adaptation - Sea Level Rise  
Attachment 3: Copy of HIA presentation made to the Coastal Climate Change Advisory Committee, July 2010

**Attachment 1 - HIA member cases which illustrate problems with current coastal planning policy.**

**179 Fellows Road, Point Lonsdale:** The City of Greater Geelong has recommended a refusal of a two lot subdivision on residentially zoned land 725 m from the shoreline. The refusal is based on the recommendation of the Catchment Management Authority, which is not a statutory referral authority. The proposal complies with the local planning controls but, according to the Catchment Management Authority, it should be refused because it may be inundated during storm events between 2070 and 2100. The council is currently refusing to consider alternative design such as a raised floor level. The recommendation for refusal will be reviewed by an internal development hearings panel on 17 February 2011, if a notice for refusal is made the HIA member is considering appealing the refusal at VCAT – planning permit application number: 1271/2010.

**2 Brown Street, Waratah Bay:** In November 2009, VCAT overturned South Gippsland Shire Council's approval of a two lot subdivision on the basis that by 2100 without mitigation measures, the subject site will be inundated by sea water and otherwise lost to use for the purpose of a residential lot. The case was brought to VCAT on an objectors appeal and VCAT refused the granting of a permit even though the proposal complied with local planning controls and was supported by the local council. VCAT based its decision on the then Labor Government's coastal policy which requires a 'precautionary approach' when considering the impact of climate change. There appears to be no avenue for the HIA member to appeal VCAT's refusal. The relevant VCAT case was: Myers v South Gippsland SC (No 2) (Red Dot) [2009] VCAT 2414 (19 November 2009).

## **Attachment 2 - HIA National Policy for Climate Change and Adaptation - Sea Level Rise**

### ***Climate Change and Adaptation - Sea Level Rise***

- *All levels of Government should only pursue practical and sensible approaches to this issue of sea level rise using risk based approaches to ensure that the response is commensurate with the threat.*
- *The Federal Government should:*
  - *establish a national sea level rise benchmark based on Australian conditions;*
  - *undertake coastal vulnerability mapping based on Australian research including carrying out additional monitoring and data collection; and*
  - *address the ad-hoc approaches which are being implemented through state and local government planning requirements.*
- *State and local governments should not incorporate sea level rise considerations into planning decisions until national benchmarks and coastal hazard mapping is complete.*
- *Local governments should adopt an approach that requires applicants and land owners to formally acknowledge the predicted sea level rise risks. This would allow for residential development to proceed on existing residential zoned land without the need to refuse or delay an application on the grounds of projected sea level rise.*

**Attachment 3 - HIA presentation to the Coastal Climate Change Advisory Committee, 20 July 2010**

Coastal Climate Change Advisory Committee

The follow people have been appointed to the Committee:

- Mr Nick Wimbush (Chairperson);
- Ms Helen Martin;

Thank you for the opportunity to present on the Coastal Climate Change Advisory Committee's Issues and Option Paper. HIA made a formal written response and is delighted to have the opportunity to speak today.

As you may be aware, the Housing Industry Association is Australia's peak residential building industry association, representing over 42,000 members nationally, with 13,000 members in Victoria. HIA members comprise all major building industry manufacturers and suppliers, including all Top 100 builders, as well as small to medium builder members, developers, contractors and consultants to the industry. In total HIA members construct over 85% of the nation's new housing stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building and development industry.

HIA is keen to contribute to this Advisory Committee's process as the existing uncertainties around the myriad of responses to climate change are currently impacting on our members.

The industry's concern with the threat of sea level rise is around the varied approach being adopted by the different levels of governments. There are also other likely construction and production impacts that may be enforced into the future.

To summarise, the industry has concerns around the potential for

- an increase in the cost of construction;
- changed construction methods;
- change in current housing designs and products;
- greater setbacks from foreshore areas;
- increased costs associated with consultant studies;
- increased refusals of development applications; and
- loss of developable land as land is designated as vulnerable to future coastal hazards.

HIA's has formed a national position on this issue, and our policy calls on all levels of Government to pursue practical and sensible approaches to sea level rise - using risk based methodology to ensure that the response is commensurate with the threat. (storm surge impact risks vs sea level rise risks)

HIA supports an approach that would see the Federal Government define national benchmarks for all states outlining the kind of increase in sea levels that can be expected in the next 50 to 100 years. It calls on state governments to follow up with coastal vulnerability mapping that can in turn guide local planning decisions.

HIA believes that state and local governments should not incorporate sea level rise considerations into their planning decisions until these national benchmarks and coastal hazard mapping is complete.

Nor should current developments be held back or refused on the basis of the future threat of sea level rise - HIA members believe that the threat of climate change should not be an impediment to building, but should be considered as a constraint in the same manner as other environmental constraints are currently considered.

Whilst the research is conducted and levels determined, we believe that councils should adopt an approach that requires applicants and land owners to acknowledge the predicted sea level rise risks for existing residentially zoned land where there has been a long held expectation that development is permissible and achievable. Then on this basis, residential development should be able to proceed on existing residential zoned land with due consideration being given to physical or construction options that can be incorporated to minimise the impact to future home owners on a specific piece of land and for a specific building.

This approach would go a significant way towards addressing the ad-hoc approaches which are currently being implemented locally through planning requirements in both Victoria and other states of Australia.

**Having outlined HIA's policy in relation to sea level rise I would now like to give some insight into the variety of local government responses to sea level rise.**

Currently, there is a great deal of concern in the housing industry as many Victorian councils are taking their own approach to responding to the threat of sea level rise. HIA has recently written to the Minister for Planning outlining our concerns about these ad hoc approaches.

Clause 15:08 of planning schemes provides some state policy guidance around sea level rise but it is unclear exactly how councils are expected to implement this.

Some councils appear to be trying to indemnify themselves from future actions in relation to 'new' development and are implementing their own individual responses which are costly for the applicant, inconsistent and may not be needed once proper guidance on the matter has been provided by the State Government.

Some councils are requiring a coastal vulnerability statement to be prepared at great expense to the applicant, (This adds at least \$5,000 to the cost of a new dwelling - for a basic engineer's desktop assessment for a single dwelling proposal).

The City of Greater Geelong is one such council - requiring applicants to prepare the site specific Coastal Vulnerability Statements 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.

One HIA member has been left with seemingly undevelopable land following VCAT's refusal of a two lot subdivision in Waratah Bay. Whilst the local council had approved the application, the Tribunal concluded that even though the two lot subdivision complied with the local planning scheme, *we (the Tribunal) cannot 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.

South Gippsland Shire Council recently introduced 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 already mentioned Waratah Bay decision.

This interim Sth Gippsland policy 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.

This is having a detrimental impact on the local residential building industry. Last year 93 per cent of all building permits issued in South Gippsland required a planning permit (against a state average of 47%) and the Shire was in the top 5 municipalities for the number of applications received to construct a single dwelling<sup>1</sup>. (triggers might be lot size WMOs or DDOs)

So the interim policy is affecting a significant proportion of development in South Gippsland. The uncertainty and cost associated with preparing Section 173 Agreements is having a disproportionate impact on building costs.

More broadly HIA considers the use of Section 173 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 it will happen 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.

Section 173 agreements are 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.

This Council believes it to be an effective way forward as it will be included in the vendor's statement. But in the vast majority of cases, a Vendor's statement won't notify a prospective owner that building in South Gippsland is conditional on entering into a Coastal Section 173 Agreement that will run with the title of the land indefinitely. It will only be effective if a planning permit has been granted on the land after April 2010 (when they introduced the policy).

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<sup>1</sup> Planning Permit Activity in Victoria, 2008-09, DPCD and MAV November 2009

The Section 173 agreements are instigated by planning permit conditions. Under the State guidelines they must relate to the planning permission being granted, fulfill a planning purpose and must be reasonable<sup>2</sup>. The proposed requirement appears only to serve the purpose of, amongst other things, transferring legal liability for any future inundation to landowners.

There appears to have been little willingness for Councils or the State Government to instigate any broader based community action to mitigate the effects of sea level rise or address the impacts of these regulations on existing urban areas, where the majority of land that is being identified as affected by sea level rise, is already being occupied and used for a purpose, whether it be residential or other. HIA believes that planning permit applications should not be refused solely on the basis of precautionary principle as it relates to sea level rise - that is that refusal is granted on the basis of a lack of infrastructure to cater for possible future inundation events, without investigating what mitigation options may exist to retain the development capacity of the land.

In an effort to overcome some of these issues and the council inconsistencies, as mentioned earlier, HIA has called on the State Government to clarify its policy to prevent the ad hoc approaches being adopted to the detriment of both the housing industry and the community at large.

To summarise, HIA believes local governments should not be incorporating sea level rise considerations into planning permit decisions for small scale residential development until national benchmarks are set and state coastal hazard mapping is complete. Local Councils can then make appropriate decisions and apply permit conditions based on this information - with a degree of consistency.

Until such time as federal benchmarks are established, and subsequent coastal mapping is completed, HIA urges the Victorian State Government to:

- Provide interim provisions to clarify when a Coastal Hazard Vulnerability Assessment is required, making reference to the scale of development. These could form part of the Victorian Planning Provisions;
- Provide more guidance to decision makers regarding the implementation of Clause 15.08, particularly in relation to whether it applies to planning permit applications for small scale residential developments. Clearer guidance would mean site specific Coastal Assessments should not be required for small-scale residential planning permit applications;

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<sup>2</sup> Using Victoria's Planning System, Chapter 3.4.7: Planning Permits, pp 29, DPCD

- Allow Councils to adopt an approach that, provided applicants and land owners acknowledge the threat of sea level rise, gives scope to proceed with all developments as planned, without the need to refuse or delay an application on the grounds of future inundation issues. Applications should not be refused solely on the basis that land or access to that land is potentially vulnerable to long term coastal climate change impacts.
- Develop guidance material on the design and construction solutions that can be applied to minimise the impact of sea level rise on urban development, similar to the approach taken now for properties subject to flood protections or bushfire risk.

**In conclusion,**

HIA has today outlined its position in relation to the application of sea level rise as a constraint in the planning and building system. We believe that the Government should look more broadly at the threat of sea level rise as only one of a range of environmental constraints that falls within the “climate change” agenda. Many other measures have recently crept into planning schemes and policies of governments – all of which are impacting the housing industry.

There are already numerous constraints that affect the planning and building process and which are adequately captured through a range of design and construction solutions to achieve an appropriate outcome. These include sustainable design principles, bushfire planning measures, native vegetation management requirements (net gain) including providing offsets, water management, energy efficiency requirements both in and outside of the Building Code of Australia, water use polices on residential sites.

This highlights both the large number of matters the housing industry is dealing with as well as the limited regulatory “gate keeping” measures in place for matters to be considered in the planning system. Unlike changes to the building code – which instigate a regulatory impact statement process to be adhered to – the planning regime does not apply the same rigour and hence creates the opportunity for an ad hoc approach.

Sea level rise is one of the environmental issues that the housing industry is a seeking a consistent and considered approach on from governments and greater certainty around the development process in coastal areas.

The existing state planning policy for coastal areas has been unsuccessful in providing certainty for the housing industry and the community in relation to planning permit requirements.

In Victoria, most new single dwellings, and alterations and extensions to existing single dwellings, do not require a planning permit. Therefore it is inequitable that some residential development in potentially vulnerable areas requires coastal assessment and special conditions on developments - and potentially be refused where similar development in other equally at risk areas, do not.

HIA believes it is also inappropriate to refuse planning permit applications based on the application of the precautionary principle while the State Government policy approach is unresolved.

Overwhelmingly the threat of sea level rise should also prompt governments into community based mitigation measures and funding of new infrastructure to cope – rather than pushing the responsibility back onto individual land owners, builders and developers.

There is a need for Federal Government leadership in responding to the challenges of coastal climate change. In the meantime, state governments should limit the ability for local councils to introduce ad-hoc approaches through local policies which pre-empt either Federal or State government responses.

Thank you for the opportunity today.