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From: Caroline Speed [cspeed@propertyoz.com.au]
Sent: Monday, 12 September 2011 4:55 PM
To: DCCEE - Residential Disclosure
Cc: Caryn Kakas
Subject: RDC submission - RBMD Consultation RIS
Attachments: RDC - RBMD RIS Submission (Appendix) 120911.pdf; RDC - RBMD RIS Submission (letter) 120911.pdf; RDC - RBMD RIS Submission (template) 120911.pdf

The Residential Development Council welcomes the opportunity to make a submission in response to the Consultation Regulation Impact Statement (RIS) for the proposed mandatory disclosure of residential building energy, greenhouse and water performance.

The Residential Development Council supports the need for a mandatory disclosure of residential building energy, greenhouse and water performance. Providing information to the market is essential to lifting the energy, greenhouse and water performance of the residential sector in general.

The implementation of a mandatory disclosure scheme will have a long term impact, and as such it is important to get the policy right.

Comments and recommendations in response to the consultation RIS are outlined in the attached letter, submission and appendix.

Please feel free to contact Caryn Kakas should you wish to discuss any of these issues further on (03) 9650 8300 or at ckakas@propertyoz.com.au.

Kind regards

Caroline

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12 September 2011

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Residential Building Mandatory Disclosure: Consultation Regulation Impact Statement

The Residential Development Council welcomes the opportunity to make a submission in response to the Consultation Regulation Impact Statement (RIS) for the proposed mandatory disclosure of residential building energy, greenhouse and water performance.

The Residential Development Council supports the need for mandatory disclosure of residential building energy, greenhouse and water performance nationally.

However, there is no robust national tool or framework currently available to support such a mechanism.

In the absence of a national pathway forward, both state and local governments are currently filling the void with programs that serve to further fragment the sector.

Providing information to the market has the capacity to lift the energy, greenhouse and water performance of the residential sector in general.

Mandatory disclosure provides the opportunity to address the performance of the existing ninety-eight percent of housing stock, moving beyond the current policy focus on only new residential dwellings.

However, none of the options outlined in the RIS will achieve the stated policy intention, and all lack sufficient detail to be endorsed outright. A pathway forward proposed by the Residential Development Council is outlined below.

What a mandatory disclosure scheme should accomplish

The Residential Development Council believes any scheme requiring the mandatory disclosure of energy, greenhouse and water performance should:

- include a **public education program** and publicity campaign to **increase consumer awareness** about the importance of improving the environmental performance of all residential buildings (existing and new);
- develop and adopt a **single national rating tool** (or similar) for residential assessment for new and existing residential dwellings;
- secure the **national implementation of a single scheme** with a consistent method of assessment and measurement;
- **end consumer confusion** and 'star overload' in the residential sector, especially regarding energy efficiency;
- **enable comparisons** of energy, greenhouse and water performance across all residential homes on a like-for-like basis; and
- **establish a national database** for the collection of information from the mandatory disclosure scheme, to provide a better understanding of the performance of the new and existing housing stock nationally.

Unless the chosen model meets these criteria, it will not fulfill its policy aim – to inform consumers and improve the environmental performance of residential stock.

Issues with the proposed options

The proposed options outlined in the RIS only partially address what a mandatory disclosure scheme should accomplish. Key issues in the RIS include:

Jurisdictional implementation

The RIS states that the proposed scheme will be implemented through state and territory specific regulations, rather than nationally.

This means that each state and territory could develop a different method of assessment and measurement tool, resulting in up to eight different schemes.

This would result in:

- even more 'star overload' for consumers; and
- increased costs for the property industry through duplication of marketing, training and accreditation activity – which will add to the cost of bringing houses to market.

Rather than end the 'star overload' confusion experienced by consumers, this will compound it. All presumed community benefits in the cost benefit analysis would be negated under this outcome.

Costs and benefits

The RDC considers the introduction of eight different disclosure schemes across Australia to be a significant cost burden to the residential development industry.

The cost to residential builders working across jurisdictions will be substantially higher than the implementation of a single national scheme.

Costs will increase for:

- qualified assessors – training in more than one scheme;
- marketing – preparation of consumer and educational materials for and training in more than one scheme;
- sales – preparation of consumer and educational materials for and training in more than once scheme; and
- consumer education – duplicative and possibly conflicting sustainability core messages.

Shortcomings of the RIS

Any RIS for a national mandatory disclosure policy should have considered:

- the cost to industry of implementing a single national scheme in comparison to the cost to industry of implementing the scheme at the jurisdictional level;
- the negative impacts on net consumer benefit of delivering a fractured system into the market;
- the fact that the fee for the assessment component for options one and two should be similar. As it stands, the total net present value and benefit cost ratio calculations are seriously misleading; and
- how the proposed mandatory disclosure regulations would interact with the thermal efficiency standards outlined in the Building Code of Australia for dwellings commencing or under construction.

Pathway forward

The Residential Development Council supports a phased approach to the adoption of Option 1:

- Stage 1 – A broad **public education program** and publicity campaign to increase awareness of the importance of improving the energy, greenhouse and water performance of all residential buildings (existing and new).
- Stage 2 – **Consultation with industry and jurisdictions** to design and adopt a national residential rating tool to measure energy, greenhouse and water performance.
- Stage 3 - The **implementation of Option 1 as a national scheme** that uses the developed national residential thermal efficiency rating tool as part of the assessment. This will enable comparison between new and existing residential properties and a comparison of like with like. Alternatively, the introduction of Option 6 (that is, Option 1 with assessment opt-out) for a fixed period provides a transition to the full implementation of Option 1.
- The **establishment of a national database** to hold the information from the disclosure scheme which would provide useful information about the national housing stock.

Consultation

This process should not be rushed – it is important to get the policy right.

The implementation of a mandatory disclosure scheme will have a long term impact, and as such it must be done in a way that lifts the average performance of the national residential building stock, rather than entrenching a disjointed, jurisdictional scheme.

The Residential Development Council believes a discussion paper should have been released prior to the Consultation RIS to engage industry and work through the details of the options. At this stage, all options in the RIS lack sufficient detail to be endorsed outright.

The next clear step is to establish an industry consultation group to formulate a pathway to the development of a single national rating tool in advance of a Decision RIS.

Conclusion

Further detailed comments and recommendations in response to the consultation RIS are outlined in the attached submission and appendix.

The Residential Development Council is keen to work closely with Government to ensure the mandatory disclosure scheme achieves its policy aims.

Please feel free to contact me should you wish to discuss any of these issues further on (03) 9650 8300 or at ckakas@propertyoz.com.au.

Yours sincerely



Caryn Kakas
Executive Director
Residential Development Council

Submission Template

Residential Buildings Mandatory Disclosure – Consultation Regulatory Impact Statement - July 2011

Overview

This submission template should be used to provide comments on Residential Building Mandatory Disclosure Consultation Regulatory Impact Statement (CRIS).

Contact Details

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Confidentiality

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A request made under the *Freedom of Information Act 1982* for access to a submission marked confidential will be determined in accordance with that Act.

Do you want this submission to be treated as confidential? Yes
No

Submission Instructions

Submissions should be made by **close of business on 12 September 2011**. The Department reserves the right not to consider late submissions. Please restrict your submission to 4 pages of comments

Where possible, submissions should be lodged electronically, preferably in Microsoft Word or other text based formats, via the email address –
residentialdisclosure@climatechange.gov.au

Submissions may alternatively be sent to the postal address below to arrive by the due date.

*Residential Energy Efficiency
Department of Climate Change and Energy Efficiency
GPO Box 854
Canberra ACT 2601*

Residential Buildings Mandatory Disclosure – Consultation Regulatory Impact Statement (CRIS)- July 2011

General/overall comments

The Residential Development Council welcomes the opportunity to make a submission in response to the Consultation Regulation Impact Statement (RIS) for the proposed mandatory disclosure of residential building energy, greenhouse and water performance. Comments and recommendations in response to the RIS are outlined below.

The Residential Development Council has previously supported the mandatory disclosure of residential building energy, greenhouse and water performance.

This support is based on the premise that a single national system for mandatory disclosure for energy (and greenhouse and water) performance that uses a single method of assessment and rating tool (for options one and two) would complement the introduction of a single national rating tool for residential thermal efficiency for new construction.

Furthermore, information collected from the mandatory disclosure scheme would contribute to providing a better understanding of the performance of housing stock nationally.

The Residential Development Council has concerns about many of the assumptions used to model the net benefit and therefore the benefit cost ratio which are outlined in the submission. The most glaring omission, however, is the lack of a comparison between the cost to both government and industry of implementing a single national scheme rather than implementing a scheme at jurisdictional level.

The Residential Development Council supports a phased approach to the adoption of Option 1 conditional on the following:

- Stage 1 – A broad **public education program** and publicity campaign to increase awareness of the importance of improving the energy, greenhouse and water performance of all residential buildings (existing and new).
- Stage 2 – **Consultation with industry and jurisdictions** to design and adopt a national residential rating tool to measure energy, greenhouse and water performance.
- Stage 3 - The **implementation of Option 1 as a national scheme** that uses the developed national residential thermal efficiency rating tool as part of the assessment. This will enable comparison between new and existing residential properties and a comparison of like with like. Alternatively, the introduction of Option 6 (that is, Option 1 with assessment opt-out) for a fixed period provides a transition to the full implementation of Option 1.
- The **establishment of a national database** to hold the information from the disclosure scheme which would provide useful information about the national housing stock.

Recommendations

The Residential Development Council supports the phasing in of Option 1 conditional on the following:

- The implementation of Option 1 as a single national scheme with a single measurement tool that includes a national thermal efficiency rating tool.
- A recalculation of the costs and benefits to include:
 - a more realistic cost for assessment for Option 2; and
 - the cost to industry of implementing a single national scheme in comparison to the cost to industry of implementing the scheme at the jurisdictional level.
- The establishment of a national database to hold the information from the disclosure scheme which would provide useful information about the national housing stock.

C-RIS Section number: <i>[insert section number eg 3.1]</i>	Comments
<p>2.3 Existing regulations and current policy (p. 15)</p> <p>Interaction with the BCA</p>	<p>It is not clear how the proposed mandatory disclosure regulations would interact with the thermal efficiency standards outlined in the Building Code of Australia for houses commencing or under construction. Key concerns include:</p> <ul style="list-style-type: none"> • What is considered to be the point of sale (i.e. off the plan prior to construction or on possession)? • Will the thermal efficiency assessment of house plans prior to construction be sufficient for mandatory disclosure? • Will an assessment on completion of construction also be required? If so, who should pay for this? • What happens if the assessment on completion is not consistent with the predicted thermal efficiency? Who is liable? • Who is responsible for obtaining the mandatory disclosure statement? • Who is responsible for lodging the disclosure documentation? <p>Furthermore, there is the potential for all of these considerations to vary for each jurisdiction depending on how they choose to implement the scheme which will have a considerable cost impact to residential builders working across jurisdictions.</p>
<p>2.4 A Case for intervention (p. 17)</p>	<p>Under best practice regulation guidelines, government intervention can be justified when (among other things) the benefits of correcting the failure are greater than the cost; that is, when the intervention is economic welfare enhancing.</p> <p>The government objective to realise benefits including reduced energy and water consumption, reduced GHG emissions and improved community wellbeing (not the least of which is an improved ability to manage utility costs) are all valid.</p>
<p>2.4 A Case for</p>	<p>Currently consumers are not able to compare the energy, greenhouse</p>

intervention (p. 17)	and water performance of existing residential properties against new properties. The variance between poorly performing established dwellings and the improved performance of new dwellings should be transparent to consumers. This is an additional market failure that the adoption of a mandatory disclosure scheme should address.
4.1 Regulatory options – 1 to 4 (p. 21)	<p>The RIS states that under options one to four, jurisdictional governments would introduce legislation and regulations to implement the mandatory disclosure scheme.</p> <p>The lack of national implementation of a single approach, method of assessment and measurement tool (especially a national modelling and rating tool) significantly diminishes the benefit of implementing a mandatory disclosure scheme.</p> <p>There is a significant risk that the eight different methods of assessment and their rating tools become entrenched, making the task of streamlining residential energy efficiency rating across Australia considerably more difficult, if not impossible.</p>
4.1 Regulatory options – 1 to 4 (p. 22) Jurisdictional variations	<p>The RDC understands that it is possible for each jurisdiction to develop both a method of assessment and measurement tool that is unique to their jurisdiction, thereby establishing eight different implementations of the same overall scheme.</p> <p>This would create further consumer confusion than already exists, and would potentially require residential builders to educate consumers about the difference between the thermal efficiency requirements of the Building Code of Australia and the mandatory disclosure requirements for residential building energy, greenhouse and water performance.</p> <p>Furthermore, the cost to residential builders working across jurisdictions will be substantially higher than the implementation of a single national scheme in a consistent manner. This will impact on the following costs:</p> <ul style="list-style-type: none"> • Qualified assessors – training in more than one scheme; • Marketing – preparation of consumer and educational materials for and training in more than one scheme; • Sales – preparation of consumer and educational materials for and training in more than once scheme; • Consumer education – duplicative and possible conflicting sustainability core messages.
4.1 Regulatory options – 1 to 4 (p. 24)	<p>The RDC supports the information proposed for disclosure as it captures the key areas required, especially the extension of information beyond the thermal performance of the building shell to include key components such as fixed heating and cooling systems, hot water system, lighting etc.</p> <p>The RDC also supports the inclusion of recommended works to improve performance, in conjunction with cost estimates which allow transparent calculation of cost effectiveness for buyers. This effectively completes the necessary information and should lead to the greatest realisation of benefits from uptake of efficiency measures.</p>
4.1 Regulatory options – 1 to 4 (p. 25)	The RDC supports the modelling of thermal efficiency and the inclusion of the additional components such as fixed heating and cooling systems, hot water system, lighting, clothes line and clothes drying areas, and

<p>Option 1</p>	<p>outdoor living areas.</p> <p>A full thermal assessment of existing residential buildings will enable a comparison of both new and existing residential buildings and enable consumers to make an informed decision.</p> <p>The RDC also supports the inclusion of recommended works to improve performance, in conjunction with cost estimates which allow transparent calculation of cost effectiveness for buyers.</p> <p>This option has the greatest scope to move the industry forward and increase the uptake of works to improve residential energy, greenhouse and water performance. For these reasons, the RDC supports the phasing in of Option 1 under conditions outlined in the General Comments section.</p>
<p>4.1 Regulatory options – 1 to 4 (p. 26) Option 2</p>	<p>The RDC supports some level of modelling of thermal efficiency and the inclusion of the additional components such as fixed heating and cooling systems, hot water system, lighting, clothes line and clothes drying areas, and outdoor living areas.</p> <p>It is unclear whether a modified thermal assessment of existing residential buildings will enable a direct comparison of both new and existing residential buildings. More information is required about what the modified thermal assessment would actually be measuring.</p> <p>For this reason, the RDC does not support this option.</p>
<p>4.1 Regulatory options – 1 to 4 (p. 27) Option 3</p>	<p>There is the potential to educate owners and landlords through a self-assessment process for their property.</p> <p>However, the RDC believes the simplicity required for an online self-assessment of thermal and other building components negates most of the benefit of implementing a mandatory disclosure scheme.</p> <p>The RDC does not support this option.</p>
<p>4.1 Regulatory options – 1 to 4 (p. 29) Option 4</p>	<p>A checklist completed by vendors and landlords is effectively rolling out the Queensland Sustainability Declaration across Australia.</p> <p>There is no evidence that this model has had any impact on the energy, greenhouse and water efficiency of the housing market, however there is significant potential for the checklist to be either incorrectly completed or not completed at all but signed and lodged.</p> <p>The current governance model for the Sustainability Declaration has proven to be very weak, and has enabled the declaration to become a 'tick and flick' exercise with little meaning.</p> <p>The RDC does not support this option.</p>
<p>4.2 Non-regulatory options (p. 33) Option 5</p>	<p>The RDC supports a national public education program and publicity campaign to increase awareness of the importance of improving the energy, greenhouse and water performance of residential buildings, and the opportunities that homeowners, tenants and landlords have to improve the performance of their buildings.</p> <p>However we do not support the suggestion that a checklist could be adopted for this option (see comments above).</p> <p>A campaign of this nature should accompany any of the regulatory options to fully reach home owners, tenants and landlords. The housing market in Australia includes existing and new residential stock, and this</p>

	type of campaign should aim to reach participants in both of these.
4.3 An additional option: assessment opt-out (p. 25) Option 6	<p>The introduction of a mandatory disclosure scheme that enables property owners to opt-out (but adopt a zero rating or score) again negates the purpose of a mandatory scheme.</p> <p>Given it is difficult to predict the opt-out rate, there is a considerable risk in establishing a mandatory scheme where there is the potential for most participants to opt-out. This approach negates the key benefit of a mandatory scheme, namely that participation is required and data is collected.</p> <p>However the RDC supports this option (that is, Option 1 with assessment opt-out) as a transition phase for a fixed period of one or two years to the full adoption of Option 1. This enables the sector to prepare for a mandatory scheme.</p>
4.1 Regulatory options – 1 to 4 (p. 26) Validity period	<p>The RDC supports the approach that an assessment may be re-used for subsequent disclosures (for Options 1 and 2) unless changes are made to the property that impact on the energy, greenhouse or water performance of the building. The government needs to provide information about the trigger for a new assessment for disclosure.</p> <p>The RIS is silent on the interaction with the thermal efficiency requirements of the Building Code of Australia, and whether the predicted thermal efficiency for a new house can be used as part of the mandatory disclosure requirement.</p> <p>The RDC believes that this should be the case, and also that this thermal efficiency rating should be valid for a period consistent with the liability period of the builder (for example, in Victoria this is ten years) for subsequent sale or lease unless changes are made that would impact on the performance.</p>
5.1 Estimating costs and benefits (p. 37) Costs	<p>The scope of the direct market costs outlined in the RIS does not include the cost of implementing eight different methods of assessment and their rating tools for residential builders and developers working across jurisdictions.</p> <p>The RDC considers the potential for eight different schemes across Australia to be a significant cost burden to residential developers and builders working across jurisdictions. This will impact on the following costs:</p> <ul style="list-style-type: none"> • Qualified assessors – training in more than one scheme; • Marketing – preparation of consumer and educational materials for and training in more than one scheme; • Sales – preparation of consumer and educational materials for and training in more than once scheme <p>This additional cost is an unintended consequence of implementing the mandatory disclosure scheme at the state and territory level rather than the national level.</p> <p>Therefore the cost benefit analysis for options one to four is misleading, and should include the cost to industry of implementing a single national scheme in comparison to the cost to industry of implementing the scheme at the jurisdictional level.</p>
5.1 Estimating	The authors of the RIS note that more detail on the practicalities of, and

<p>costs and benefits (p. 43)</p> <p>Practical and administrative impacts</p>	<p>the administrative arrangements for, the timing, implementation and review of mandatory disclosure will be presented in the Decision RIS.</p> <p>This information is required in the consultation RIS in order for the RDC to support any of the options outlined. As it has not been provided, there must be additional consultation about this information prior to moving to a Decision RIS.</p> <p>The RDC has significant concerns about how houses under construction will be treated within any of Options 1, 2, 3, 4, and 6. See comments above.</p>
<p>5.1 Estimating costs and benefits (p. 44)</p> <p>Point of disclosure</p>	<p>The analysis assumes that the point of disclosure is when a property is advertised for sale or lease. Alternative points of disclosure include providing the information on request, allowing buyers to conduct their own inspection, or making information available on a public register.</p> <p>The RIS is silent on how houses commencing, or under, construction will be considered within each of the options. The point of sale for houses under construction is often well before completion.</p> <p>Should Option 1 be adopted, the RDC recommends that the predictive thermal efficiency modelling be recognised by the assessment method adopted for the thermal efficiency modelling component.</p> <p>As mentioned previously, this thermal efficiency rating should be valid for a period consistent with the liability period of the builder (for example, in Victoria this is ten years) for subsequent sale or lease unless changes are made that would impact on the performance.</p>
<p>Appendix B Methodology for the cost-benefit analysis (p. 96)</p> <p>Attribution of benefits across Options 1-4</p>	<p>The assumed uptake of efficiency measures weighted against each option probably undersells the value of Options 1 and 2 (that require a qualified assessor) and oversells the value of Options 3 and 4. Qualified assessors are more likely to spot the key upgrade requirements and make the best case for action – this will not be the case for Options 3 and 4. It follows that the benefits in the CBA attributed the Options 3 and 4 are overstated and those for Options 1 and 2 understated.</p> <p>Further it is likely that self-assessment under Options 3 and 4 will lead to opportunities being missed and errors being made in assessment – again negatively impacting on the benefits calculated in the RIS CBA.</p> <p>The RDC maintains that the 30%, 26%, 20%, 15% needs to be more divergent between Options 1&2 and 2&3.</p>
<p>Appendix B Methodology for the cost-benefit analysis (p. 107)</p> <p>Costs</p>	<p>The assumed fee for assessment for Option 2 of \$172.50 is very low and the RDC queries the validity of this assumption. The fee would be similar to that of Option 1 minus the cost of having plans prepared, which we understand were assumed to be \$400.</p> <p>Therefore the cost of an assessment for Option 2 should be in the order of \$374. Our understanding from the industry (including ABSA) is that this assumption is within a reasonable range based on an hourly rate of roughly \$160 per hour and our understanding that the assessment will take two to three hours.</p>

Appendix

A number of important implementation and administration issues are not addressed within the consultation RIS. Should any of the regulatory options be implemented, information must be provided in response to the following questions for five core areas.

1. Interaction with the Building Code of Australia

Information must be provided in response to the following questions:

- How will the proposed mandatory disclosure regulations interact with the thermal efficiency standards outlined in the BCA for houses commencing or under construction?
- What is considered to be the point of sale (i.e. off the plan prior to construction or on possession)?
- Will the thermal efficiency assessment of house plans prior to construction be sufficient for mandatory disclosure?
- Will an assessment on completion of construction also be required? If so, who should pay for this?

2. Assessment

Information must be provided in response to the following questions:

- Where a house or apartment design may be replicated (for example, volume builders or in an apartment block), will each dwelling require an assessment or can a single rating of each dwelling type be sufficient?
- Will developers/ volume builders be able to have in-house assessors for accreditation? Will there be an issue with conflict of interest?
- What is the validity period of the assessment?
- What happens to dwellings that were constructed after minimum thermal efficiency standards were introduced into the Building Code of Australia? Can the predictive modeling of the thermal efficiency be used to meet at least part of the requirements of mandatory disclosure?

3. Liability

Information must be provided in response to the following questions:

- What happens if the assessment on completion of construction is not consistent with the predicted modeling of the thermal efficiency of the dwelling? Who is liable?
- Who is responsible for obtaining the mandatory disclosure statement?
- Who is responsible for lodging the disclosure documentation?
- Who is responsible for the accuracy of the mandatory disclosure statement? Should there be any inaccurate information, who is liable?

4. Governance

Information must be provided in response to the following question:

- What will be the transition period should a mandatory disclosure scheme be implemented?

5. Cost

Information must be provided in response to the following question:

- Are there other barriers to implementation besides costs that need to be considered?