

20 September 2011

Residential Energy Efficiency Team
Buildings and Government Energy Efficiency Branch
Department of Climate Change and Energy Efficiency
GPO Box 854
Canberra ACT 2601

email: residentialdisclosure@climatechange.gov.au

Dear Sir or Madam,

**Re: Mandatory disclosure of residential building energy,
greenhouse and water performance – Consultation Regulation Impact Statement**

The Urban Taskforce represents Australia's most prominent property developers and equity financiers. We provide a forum for people involved in the development and planning of the urban environment to engage in constructive dialogue with both government and the community.

We have reviewed the *Mandatory disclosure of residential building energy, greenhouse and water performance Consultation Regulation Impact Statement July 2011* and identified some issues of concern. Our concerns are generally outlined below for your consideration.

1. There are already systems in place that address energy efficiency

Recently constructed residential buildings have been designed and constructed to comply with rigorous standards contained within the Building Code of Australia. In the case of dwellings to be constructed in NSW there are further sustainability goals that need to be achieved in the development. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 requires that a detailed assessment process be undertaken to demonstrate that the proposed dwelling will perform well in areas of thermal comfort, energy efficiency and water conservation. In fact, meeting BASIX requirements guarantees that a newly constructed dwelling will achieve at least a six (6) star sustainability rating.

It should be noted that in 2009 COAG agreed that the energy efficiency of new residential buildings should be set at six stars. Hence, dwellings constructed in New South Wales or any other state that implements a similar system as BASIX will achieve the desired six star sustainability standard.

Therefore it is argued that in the case of dwellings constructed or substantially refurbished since the introduction of BASIX should not need the disclosure of energy, greenhouse and water performance as the benchmark set by COAG will have been achieved. If there is an absolute need for disclosure, nothing more than a notation stating that the building is BASIX (or equivalent) compliant should be required.

2. Mandatory disclosure will not necessarily influence purchase and/or rent decisions

There is no evidence that energy and water performance are, or are likely to become, the major influencers of home purchase or rental behaviour.

The key drivers around a home purchase decision relate to the size of a dwelling, the location of the dwelling, the amenity of the immediate surrounds and the broader region, the price of the dwelling, etc. New homes are not like televisions or washing machines. Each home is a bespoke product, and is highly individualised. Unlike a washing machine, or television it will be

rare for a home buyer to be in a position to buy (or rent) two substantially identical products that are distinguished only by their energy or water efficiency ratings.

3. Mandatory disclosure will not necessarily improve building sustainability

The assumption is made that mandatory disclosure will influence a prospective vendor or landlord to make changes to the building or appliances so that a sustainability rating will be improved. The case has not been made that this will actually occur. In fact, for reasons outlined above, home buyer and renter behaviour is more likely to be influenced by factors other than energy and water efficiency.

Additionally, the suggestion that investing in energy and water efficiency will yield a greater sale price for vendors is naive, given the chronic undersupply of housing in high demand locations. Home purchase prices in such markets tend to be a product of borrowing capacity and expectations about interest rates and future income.

Where capital investments (of any kind) are made in a home, the value of those investments may not be realised if the potential buyers of the home were already at the limits of their buying capacity. Hence the capital investments that tend to lead to higher sale or rental returns are those that switch a home from one established category to another. For example, from a three bedroom house, to a four bedroom home. From a run-down derelict, to a freshly renovated property, etc. Homes are categorised by a wide range of factors, and energy and water efficient homes are unlikely to become such a category in their own right, more important than the number of bedrooms, the internal living space, the location, and the recency of renovations generally.

The government is clearly attempting to introduce such a category via regulation, but there is no evidence that a regulatory approach can drive such a fundamental shift. Even an education approach is unlikely to be successful as long as, for example, a home owner perceives that the amenity difference between a four bedroom and three bedroom home is greater than the consequences of an efficient/less efficient use of energy and water.

The cost of energy and water would have to rise by a phenomenal degree (beyond the wildest expectations of carbon pricing) before the efficiency issues loom as large as the traditional factors that are used to categorise homes for sale or rent in the general housing market.

4. Mandatory disclosure simply means more Government

The fact that there is a perceived lack or imbalance in sustainability information does not automatically justify Government intervention. Everyday transactions occur where the buyer does not have the benefit of all the possible information to assist in the decision making process. The Productivity Commission found that:

The need for Government regulatory intervention does not immediately follow from the identification of information deficiencies: information deficiencies are pervasive yet most markets continue to function reasonably efficiently. ... it is not generally efficient to eliminate all negative externalities or promote infinitely large quantities of positive externalities. In many cases, externalities do not create significant problems (Productivity Commission 2000).¹

In this context one cannot justify the creation of additional bureaucracy. With any new scheme, governments at all levels will surely be required to take on additional functions. Furthermore there will be a need for new regulation, enforcement and monitoring systems to be established and staffed, all a significant cost to the Government and community.

Alarming, it is noted that not only will property owners need to carry the cost of assessments and certification, they will also be slugged with additional lodgement fees to essentially cover the cost to government for administering this scheme.

¹ Department of the Environment, Water, Heritage and the Arts (2008) *Consultation Regulation Impact Statement- Mandatory Disclosure of Commercial Office Building Energy Efficiency* p. 12

5. Option to opt-out is worthy of support

Option 6 which provides for a voluntary mechanism whereby property owners could seek to opt-out is worthy of consideration. While the Urban Taskforce questions the value in the disclosure regime, the provision of regulation so that property owners could opt-out of obtaining an assessment but then be required to disclose a 'zero' rating or score may be a worthwhile policy. Relatively newly constructed developments already need to comply with sustainability requirements, hence the benefits of disclosure are marginal in any case and owners of buildings that are older will have the option to consider whether disclosure and/or upgrade is warranted.

We accept the argument that such a scheme would minimise the administrative and cost burdens for property owners who are aware that their property does not perform well, or where it is apparent that the next purchaser will most likely demolish the property.

Furthermore, where a zero rating has been assigned, the prospective purchaser or renter can make an informed decision to either proceed with the transaction or commission their own assessment.

6. The typical cost of sustainability assessment can be better spent

The content of a sustainability assessment has not been defined, however it has been suggested that such assessment pursuant to the preferred option could cost the household approximately \$1,121. This is clearly not a wise expenditure for new or refurbished properties where the requirement to meet stringent sustainability goals already apply.

7. Mandatory disclosure will lower the sustainability bar

Whenever Government brings in a new rule or standard, industry's primary response is just compliance. That is, there is no incentive to exceed requirements or go the extra step to seek market leadership or superiority. There is no reason to do anything more than meet Government's base standard. When Government sets a development or building standard, industry will meet that standard. For instance, prescribed building standards such as fire ratings, building separation or development standards such as building setback, height and floor space ratio do not encourage innovative solutions nor guarantee the best outcome for the environment. However, when prescription is replaced with desired outcome and performance, the opportunity for industry originality results in better innovative solutions.

Given the opportunity, industry will respond to market forces. This can be clearly demonstrated by the development and voluntary adoption of the green star energy rating system. The property industry has embraced this approach and has successfully used this system to improve energy efficiency of buildings. In fact, there is healthy competition in the market place because there is a market driven imperative for some to seek higher standards. This pursuit of energy efficiency has nothing to do with Government regulation, but everything to do with market forces.

In the end, where the market demands energy efficiency and/or sustainability ratings, building owners are quick to respond.

8. Urban Taskforce preference

As noted above, we are not convinced that a mandatory disclosure of sustainability performance for residential buildings is necessary. However, if the Government was to pursue this policy, we urge the introduction of a scheme that does not require the home owner or landlord to spend money on the commissioning of assessment reports. In this regard, if Government was not to introduce a non-regulatory scheme (option 5) then we urge the Government to only pursue a scheme that involves a self assessment checklist or tool (options 3 or 4) that can be easily completed by the home owner or agent.

The Urban Taskforce is of the view that mandatory disclosure will not significantly influence decisions on building selection and will become yet another costly compliance requirement for Government and industry.

These comments are offered to encourage constructive dialogue between Government and the development industry and we ask that you accept these comments as our contribution to this debate.

We are always able to provide a development industry perspective on policy and we would welcome the opportunity to meet and discuss these issues in more detail.

Yours sincerely

Urban Taskforce Australia

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is written in a cursive style with a long horizontal stroke at the end.

Aaron Gadiel
Chief Executive Officer