

Annex 1 – The Department of Building and Housing’s response to direct recommendations in the Productivity Commission Inquiry into housing affordability.

Recommendation 9.1 - The Department of Building and Housing publish for each BCA, the total time taken between receiving applications and finally granting consents and the number of occasions where each BCA has used the 'stop the clock' provision. The Department of Building and Housing audit the 'stop the clock' information from a sample of BCA's.

The Department’s response - The Department agrees with the intent of the recommendation, but publishing a table with the recommended data comparing BCA performance would be relatively meaningless, as it would not take account of the quality of applications received, differences in complexity or delays in responding to requests for further information. We agree that auditing the 'stop the clock' provisions would provide an evidence base to analyse the underlying issues.

Delays in processing consents are often related to the quality of the applications presented to BCAs, as well as with the systems they have in place to process them.

This means it is also important to improve the skills of those providing the plans. As part of the Building Act reforms, the Department is developing ways to make information about the Building Code more accessible, so designers can improve the compliance of their plans.

Recommendation 9.3 – The Department of Building and Housing report on its on-going evaluation of the reforms on allocation of risks between parties to building work five years after introduction.

The Department’s response – The Department agrees with this recommendation. The monitoring and evaluation programme for the implementation of the Building Act reforms will include an assessment of whether there are changes in behaviour related to perceptions of risk.

Recommendation 9.4 - The Department of Building and Housing should provide more specific guidance for Building Consent Authorities about what is required for an alternative solution to comply with the building code.

The Department’s response - The Department agrees with the intent of the recommendation, to facilitate the use of alternative solutions to support innovation. It suggests that it be amended to read:
The Department of Building and Housing should provide more support to assist designers and Building Consent Authorities to demonstrate and assess how alternative solutions comply with the Building Code.

It is inevitable that alternative solutions (where the onus is on the designer to demonstrate compliance with the Building Code) will involve more time and cost than when compliance documents are used (and the requirement is limited to demonstrating compliance with the document). The designer may choose to use an alternative solution to achieve net savings

in the building project as a whole by, for example, reduced construction and maintenance costs.

Ultimately there can be no substitute for competence/expertise when designing and reviewing alternative solutions, because of the non-standard, new, novel and/or unusual nature of such work.

One way the Department can support the use of alternative solutions is to clarify the provisions of the Building Code. The Department is currently amending the Fire Safety, Structure and Noise clauses of the Building Code, to clarify their requirements and improve designers' ability to determine if/when the required performance has been achieved. The development of verification methods, methods of demonstrating compliance with the Code which must be accepted by BCAs, will also assist with alternative solutions.

Recommendation 9.5 – The Department of Building and Housing should review the Multi-proof building consent process with a focus on identifying barriers to its application, and suggesting ways to overcome these barriers.

The Department's response - The Department agrees with the recommendation, and a review will take place in April 2012.

It is now possible for a MultiProof solution to be developed for every building type. A MultiProof approval does allow for site specific conditions. A number of design details can be pre-approved through MultiProof and then the appropriate detail used for the specific site. MultiProof also allows alternative solutions to be incorporated. All the MultiProof approvals to date have included an alternative solution or specific design in some aspect of the approval.

MultiProof approvals have been issued for "flat packed" imported houses, and others have included many options for site specific conditions and consumer preferences. The Department would welcome engagement with the industry, particularly group home builders, on expanding the use of MultiProof.

Recommendation 11.1 – The final structure of the Social Housing Unit should be a Crown entity with an arms length relationship to the Minister of Housing.

The Department's Response: The Department considers that the inclusion of the Social Housing Unit as a semi-autonomous body within the Department of Building and Housing is appropriate. The current arrangement is working well and establishing the SHU as a separate agency would incur additional costs.

A review is provided for as part of the Social Housing Reform Programme, and the final decision will be made by Ministers.

Recommendation 11.2 – We recommend that the Social Housing Fund be increased to better meet the expectations of future social housing provision through the community housing sector.

The Department's Response:

The Government will make decisions on future funding to support the growth of the community housing sector as part of the annual budget process.

As well as allocating funding, it is also the Social Housing Unit's role to facilitate partnerships involving asset transfers. This would further capitalise the third sector and contribute to increased supply of social and affordable housing.

The Department does not agree with the Commission that transfer of 'problem' stock would hold back growth of the third sector. While the value of the housing can be looked at in different ways and generate different numbers (eg current 'market value' or 'discounted cash flow value'), it generates rental cashflow – with the property asset and surplus cashflow available to support borrowing to fund growth. In addition, under-performing stock may be suitable for redevelopment. That is, transfer of end-of-life, poorly configured or otherwise less desirable housing can still provide the financial means for providers to grow the volume of good quality third sector housing.

Annex 2 – The Department of Building and Housing’s response to general questions asked in the Productivity Commission Inquiry into housing affordability.

Question 7.1 - How can territorial authorities streamline and speed up their planning and consenting processes to improve housing supply responsiveness?

The Department’s response – Council district plans have a ten year life before review is legally required. Ensuring land use policy (including land release) and subdivision rules are flexible enough to meet fluctuating demand for land for housing is essential. This could be facilitated by a statutory requirement to have at least five years worth of sufficient development land ready (land that has been appropriately zoned and has infrastructure services available), at all times.

Greater emphasis on getting the land use policy right during plan development, and greater use of controlled and restricted discretionary activity status for residential development projects would facilitate subdivision applications and resource consents, and reduce the likelihood of appeals to the Environment Court.

District plans that clearly state the information required for private plan changes, subdivision applications and resource consents, including the information required by council asset managers, would assist applicants and processing staff. Moving to electronic resource consenting processes could also improve performance.

Question 8.1 - What would be the advantages of making decisions about development contributions contestable through changes in the Local Government Act that would enable a merit based test?

The Department’s response – There are a number of advantages and disadvantages to introducing a merit test for development contributions, and these need to be considered carefully in order to achieve the right balance between streamlining effective processes and preserving people’s rights to participate.

A merit test would encourage:

- consistent methodologies for differentiating between growth related costs, asset renewal and changes in service level
- transparent processes and methodologies for assigning benefits and costs (including positive and negative externalities) to capital works processes
- consistent methodologies across local government
- a focus on the major infrastructure capacity upgrades required for actual growth
- greater transparency and accountability in decision-making on development contributions policy and its role in the council’s funding and asset management strategies.

The disadvantages mainly relate to possible appeals against decisions, which could:

- reduce the transparency and accountability of those decisions to the general ratepayer, by effectively shifting decision-making to the judiciary rather than the elected representatives
- affect the wider financial and asset management framework of councils’ long term plans (LTPs) by delaying adoption of an LTP or compromising the integrity of wider financial and asset management strategy in the LTP. Councils must adopt their

LTP by 1 July of the relevant year (three yearly cycle). If they do not do so, they do not legally have the right to expend any money after that date. The threat of appeal holding up the LTP could be unscrupulously used by minority interests to the genuine disadvantage of the general ratepayer

- strengthen the voice of minority vested interests
- delay council projects that are to be funded as well as the projects of developers relying on the additional infrastructure.

These disadvantages could be overcome in the following ways:

- amend the Local Government Act to specify more clearly how and when and for what purpose development contributions may be used
- provide clear guidelines (statutory or non-statutory) about the methodologies to be used
- time the merit testing early in the cycle for establishing the council's financial strategy, and provide opportunity for full engagement and debate
- establish appeal mechanisms that would ensure issues were settled prior to development of the LTP, for example through mediation or arbitration. This could perhaps be established in the Local Government Act, providing an alternative to Court adjudication.

Front footing and strengthening the engagement and challenge processes would avoid uncertainties and delays in setting the LTP and better retain the integrity, transparency and accountability of the democratic policy setting process.

Question 8.2 - What mechanisms could be used to discourage frivolous litigation?

The Department's response – If the merit appeal is to be with the Court, then requiring proof of "standing" relevant to the assignment of costs and benefits under the development contribution policy should be required. This will be particularly difficult to do without impinging on the appeal rights of general ratepayers who disagree with the costs and benefits assigned to a particular growth related project. Proof of "standing" would provide the Court with a test for the merit and relevance of the appeal and still maintain the right for people to have their say.

Awarding costs appropriately could also discourage ill-considered or inappropriate challenges.

It should be noted that the process for recognising "standing" and the hearing of appeals have the potential to further strain Court resources. The Courts will need to be appropriately resourced to deal with matters in a timely and efficient manner – particularly if the appeal materially affects adoption of a council's LTP. An alternative non-Court based process as suggested in 8.1 above would avoid this.

Question 9.1 - How can we get fast diffusion of knowledge about what works and what doesn't? Are there ways of improving feedback loops about building innovations?

The Department's response – The Building Act and the Code are designed to facilitate and achieve innovation. The Act has as one of its principles the importance of allowing for

continuing innovation in building design and construction. The Building Code is about performance, and is not prescriptive about how that performance may be achieved.

There is a need to ensure that innovation is safe before its use is spread throughout the sector. The Building Act 2004 provides the Department with a number of powers which were not available to the Building Industry Authority, which was the central regulator at the time “leaky homes” were being built. These include powers for the Chief Executive of the Department to issue guidance, including Practice Advisory notices to building practitioners, and to issue warnings or bans in relation to any building product or method.

In practice, the requirement to provide adequate evidence of compliance with the performance clauses of the Code may be a barrier to the uptake of innovation. Sometimes potential innovations are not used due to the evidence costs and the costs of delays in building work while compliance decisions are made. The Department is working with product suppliers to help them prepare for the evidence requirements before innovations are taken to the market, and has developed a Product Assurance Framework to support this.

The second barrier is that building consent authorities sometimes make the introduction of innovations more difficult than necessary. Although the quality of the evidence is sometimes poor, the competency of consent staff and risk aversion can also contribute. The Department has a work programme to lift the performance of consent authorities. This includes the BCA National Competency Assessment system. The Department is also considering whether there is scope for consolidation of BCAs, to make better use of skilled staff, or developing centres of expertise to deal with consents involving innovative products.

Acceptable solutions, which are compliance documents under the Building Act, are a way to bring tested innovation into mainstream practice, without requiring one-off approvals.

Question 9.3 - What are the potential advantages and disadvantages from a contestable market for building consenting and inspection services, either publicly or privately provided?

The Department’s response - Past evidence (the building certifier scheme of the 1991 Building Act) has indicated that private building consent authorities can reduce processing times and improve customer service by providing competition and choice.

The need for appropriate public safeguards and the high cost have hindered the development of competition. Organisations which could potentially provide appropriate public safeguards have found the high risk of litigation is disproportionate to the potential monetary return, and have chosen not to enter this particular market.

Question 12.1 – Has the Commission understood how housing contributes to the well being of Māori communities, allowing that individuals will place different weightings on different elements?

Question 12.2 – Has the Commission appropriately balanced social, cultural, and economic challenges and opportunities for building housing in rural Māori Communities?

Question 12.3 – Are the options the Commission explored for improving the ability of lenders to lend viable? How else might certainty of future demand or security for loans be achieved?

Question 12.4 – Would the unit titles model or retirement villages approach to licenses to occupy be useful for housing developments on Māori land? Are they worth further exploration?

The Department's response: The Department agrees that Māori face adverse housing circumstances and action is required to improve their housing outcomes.

The report's focus on rural Māori housing problems alone does not address the real breadth of the issue. While rural Māori, often in isolated communities, face a unique set of circumstances the current situation is just as difficult for those based in urban centres, and the urban Māori population is much larger.

The report emphasises the need to establish a continued demand for housing on rural Māori land and notes the absence of sustainable employment in rural areas. The Department is establishing valuable working relationships with Māori including iwi, Māori land trusts, and expert consultants with first-hand experience, and is receiving valuable and practical information on Māori land aspirations. They advise that the demand is there, but assistance is required from the Department and other agencies to help overcome the current difficulties in building housing on Māori land (as outlined in the OAG report).

Further, consultation indicates that Māori do not necessarily want to return to their marae, but may be happy to move to a small town nearby. For those who do return to their marae, there is more willingness and ability to commute to services and employment opportunities, than perhaps has been the case in the past.

Financial challenges and alternative models for managing housing developments on Māori land

While the potential options suggested in the report could be explored in more detail, Māori may raise concerns that further structures that do not necessarily align with Māori tikanga are being imposed on them. The Department would be interested to see the details associated with implementing these types of structures and to discuss their implications.

Other approaches that the Department sees value in considering are:

- streamlining the Māori Land Court process
- making more broad changes to the Kāinga Whenua product and the qualifying criteria, such as accepting both a Licence to Occupy and Occupation Orders and removing the first-home buyer criteria, not just increasing or removing the income caps
- exploring the establishment of legal cooperatives in which Māori land would remain protected and collectively owned, but would be easier to build on.

The Department would be happy to pursue these options with the Productivity Commission in greater detail.

Rural Community Regeneration Programme

Aspects of the former Rural Community Regeneration Programme have already been incorporated into the criteria of the Rural Fund (part of the Social Housing Funds) for the 2011/12 year. Criteria for the Social Housing Funds will be reviewed once this year's funds have been distributed. The Department suggests amending the wording on page 197 to reflect this.