

Mayor and Councillors
COUNCIL

13 JUNE 2019

Meeting Status: **Public**

Purpose of Report: For Decision

SUBMISSION TO MBIE ON BUILDING SYSTEM LEGISLATIVE REFORM

PURPOSE OF REPORT

- 1 This report requests approval of the draft submission to the Ministry of Business, Innovation and Employment (MBIE) on building system legislative reform.

DELEGATION

- 2 In accordance with the Governance Structure and Delegations for the 2016-2019 Triennium, Council has authority for this matter.

BACKGROUND

- 3 On 16 April 2019, MBIE released a consultation document entitled, *Building system legislative reform: Discussion paper*. Submissions close on 16 June 2019.
- 4 The primary intent of MBIE's building system legislative reform is to develop an efficient building regulatory system in New Zealand that enables a high-performing building and construction sector, while also ensuring that buildings are safe, healthy and durable.

ISSUES AND OPTIONS

- 5 The proposed legislative reform covers five key areas:
 - a. Building products and methods;
 - b. Occupational regulation;
 - c. Risk and liability;
 - d. The building levy; and
 - e. Offences, penalties and public notification.
- 6 The MBIE submission form provides some detail about the changes proposed in each of these areas and poses questions for submitters. The completed template is attached to this report. Below are summaries of some key aspects of the proposal and our response to these.
- 7 Because building products and methods are central to safe and durable buildings, the proposal seeks to strengthen existing regimes and introduce more regulation. Our response indicates that the proposals do not go far enough because 'Codemark', the current product certification scheme, remains voluntary, uptake is unlikely to improve, and individual building consent

authorities (BCAs) will remain responsible for assessing building products and methods. It is our view that BCA's are not best placed to make these assessments.

- 8 Occupational regulation aims to protect the public from harm by ensuring services are performed with reasonable care and skill. Although agreeing that the competency of various practitioners requires more robust assessment, our draft submission is that the proposal does not go far enough to ensure this outcome. BCA staff are required to upskill, gain qualifications, and undergo comprehensive competency assessments annually. This same degree of rigour has not been applied to designers and constructors through their various licensing regimes. Our view is that lifting competence standards of licensed building practitioners (LPBs) will improve the quality of building work.
- 9 The proposed changes in the area of occupational regulation will have implications for the BCA, as well as other parts of Council that undertake building works. Additional categories of LBP's and a new certification regime for engineers will require changed criteria for contracting building work, including both design and construction.
- 10 In the area of risk and liability, the discussion paper identifies two issues that need to be addressed in order to ensure protection for homeowners and provide incentives for builders and designers to produce high-quality work.
- 11 The first issue is that often homeowners aren't aware of the risks of the building process, and may not have plans in place to manage risks. To address this concern, the proposal is to introduce guarantee and insurance products (GIPs) for all residential new builds and significant alterations. It is proposed to be voluntary in the sense that homeowners may opt out. Councils would be required to gather data and record the existence of GIPs on Land Information Memoranda (LIMs). Our submission recommends that GIP uptake be mandatory and disclosure of GIPs could be through the sale and purchase agreements rather than LIMs.
- 12 The second issue is that (BCAs) may currently face a disproportionate share of damages when other parties are absent. However, the proposal is to retain the current joint and several liability provisions. Retaining the status quo is justified by the need to provide adequate compensation for homeowners. This shifts the burden to ratepayers when other parties have avoided or limited their accountability. Our recommendation is that with compulsory insurance (i.e. the proposed GIPs) the homeowner interest is protected and there is no longer an impediment to moving to proportional liability.
- 13 The discussion paper proposes several changes to the building levy to help reduce building consent fees without affecting service levels. MBIE has a large sum of levy money unexpended and, therefore, proposes to reduce the levy amount (25%) and widen the scope on which levy money can be spent to broader stewardship of the building sector. Our submission supports widening the scope for levy spend and suggests other areas for support of the sector. The proposed reduction in levy (\$153 reduction for a house valued \$350,000) is not supported as the levy money is needed for greater MBIE involvement (for example, to play a more active role in upskilling the sector).
- 14 The proposed changes to offences and penalties aim to deter poor behaviour and better align the Building Act with other legislation that protects people's lives and wellbeing. The specific proposals would be to increase the maximum financial penalties under the Building Act; set higher maximums for organisations

than for individuals; extend the timeframe for enforcement agencies to lay charges; and update public notification requirements to reflect the public's increasing use of the internet to access information. Whilst our submission supports all these proposals, it suggests that, due to the low number of prosecutions taken, higher penalties should be extended to infringements, which are more widely utilised by Councils.

- 15 The submission – including the full list of questions and Council's proposed responses – can be found in Appendix 1.

CONSIDERATIONS

Policy considerations

- 16 There are no policy considerations for this submission.

Legal considerations

- 17 There are no legal considerations for this submission as the proposal is to retain joint and several liability. Legal Counsel advice has been included in the development of this submission.

Financial considerations

- 18 The financial considerations related to the proposals are minimal. The proposals, if legislated, could slightly decrease income from handling the MBIE levies, and some development of our systems could be required for recording GIPs.

Tāngata whenua considerations

- 19 We have not engaged directly with iwi on this submission.

Strategic considerations

- 20 *Toitū Kāpiti* includes an aspiration for a resilient community that has support for basic needs and feels safe and connected. Therefore, it is important that Council advocate for outcomes that will have a favourable impact on the District.

SIGNIFICANCE AND ENGAGEMENT

Significance policy

- 21 This submission is considered to have a low level of significance under Council policy.

Consultation already undertaken

- 22 No public consultation was undertaken for the development of this submission.

Engagement planning

- 23 An engagement plan is not required for this submission.

Publicity

- 24 This submission will be uploaded to the 'Submissions we have made' section of the Council website.

RECOMMENDATIONS

- 25 That Council approve the submission to the Ministry of Business, Innovation and Employment on the building system legislative reform programme, attached as Appendix 1 to this report.

Report prepared by	Approved for submission	Approved for submission
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ATTACHMENTS

- 1 Submission to the Ministry of Business, Innovation and Employment on the building system legislative reform programme.