

BRIEFING TO THE INCOMING MINISTER FOR BUILDING AND CONSTRUCTION

1. Property Council New Zealand (“Property Council”) is a not-for-profit organisation that represents New Zealand’s commercial, industrial, retail, property funds and multi-unit residential property owners. Property Council New Zealand represents all the forms of commercial property and property investment in New Zealand.
2. Property Council Members own or manage property portfolios the value of which exceeds \$25 billion. Our organisation actively involves itself with central, local and other government associated bodies, promoting the views, goals and ideas of our members. Property Council’s underlying policy is that economically sustainable communities are good for New Zealand’s future well-being, and that such communities will only be viable if we do three things:
 - re-establish New Zealand as an attractive investment destination;
 - improve local and national governance through law reform; and
 - further invest in infrastructure and utilities that secure New Zealand’s economic prosperity.

A Road for Reform

3. In September 2008 Property Council released its manifesto document, *A Roadmap for Reform*, which codifies a series of public policy changes that are necessary to transform and reenergise New Zealand’s economy. *A Roadmap for Reform* calls for the following:
 - economic growth (starting with an overhaul of the Resource Management Act 1991);
 - fairer taxes;
 - greater overseas investment;
 - cutting red tape;

- delivering the dividends of wealth creation back to the creators of wealth;
 - smarter governance at all levels of government; and
 - the opportunity for all New Zealanders to own property, gain financial security and enjoy a quality standard of living
4. Property Council is committed to working with the New Zealand Government to advocate for public policy reforms that deliver the aforementioned policy outcomes. We see the deliverance of these outcomes as one that first requires collaboration and a common purpose between the New Zealand Government and the business community (including the commercial property sector).

Public policy in the context of New Zealand's current economic profile

5. Property Council starts out from the perspective that New Zealand's economic fortune since 2001 has been built on high commodity prices, which has shielded the economy from the problems created by structural deficiencies in terms of the labour market, low productivity, inadequate infrastructure, low savings rates, and a high rate of taxation. Inflationary pressure has forced the Governor of the Reserve Bank to maintain a tight monetary policy, which has led to New Zealanders paying some of the highest interest rates in the OECD.
6. Current monetary policy has provided the Reserve Bank with significant means to reverse New Zealand's economic decline. With the Official Cash Rate currently set at 6.5 per cent, New Zealand has significant capacity to reduce the cost of credit and maintain domestic liquidity. The Crown also has a low level of Net Debt, which enables it to borrow in order to fund infrastructure (a stimulus) and (less likely) personal tax cuts.
7. However, New Zealand continues to be buttressed by structural problems in the labour market, barriers to foreign investment, a low skills base, inadequate infrastructure, a tax system that stymies investment, and a poor savings base. While economic transformation is necessary, it starts with the requirement to address the fundamental structural problems that constrain New Zealand's performance within an already unfavourable global economy.

The foundation of New Zealand's economy

8. The building, construction and property industry is one of the key drivers of economic growth in

New Zealand. The industry is job-rich and the wealth created through building construction, ownership and occupancy enables local economies throughout New Zealand to grow and prosper. For example a case study of commissioned by Property Council in 2007, which examined the economic contribution of the construction and property management sectors to the Waikato region (as a case study), supports this argument. The research undertaken by the University of Waikato demonstrates that the property industry directly impacts on 25 per cent of Hamilton City's economy (compared to the farming and processing industry, which accounts for 24 per cent of the Waikato Regional Economy).

Building and construction issues

9. Property Council submits that a regular series of ministerial forums would provide for a proper dialogue between the Government and industry stakeholders who operate in accordance with the provisions of the Building Act 2004 ("the BA 2004"), and the Building Code. In August 2008 Property Council attended a ministerial Building and Construction Sector Forum. A number of significant industry issues were debated, including:

- New Zealand's construction sector reflects low productivity relative to the construction sectors in other developed countries and other sectors of the New Zealand economy. Low productivity encompasses a range of issues, such as regulation;
- the current barriers to achieving intensive urban developments that are acceptable and affordable to consumers, and enable a coherent approach to intensive urban developments; and
- the impact of central, regional and local government on the sector's ability to respond to the opportunities and risks of change. The sector needs a regulatory environment that supports quality and adapts to changing consumer preferences, supports innovation and efficiency in design, minimises unnecessary barriers and results in timely and consistent decisions.

Recommendation to the Minister for Building and Construction

Property Council recommends that the continuation of ongoing ministerial forums, chaired by the Minister for Building and Construction, in order to highlight public policy costs, benefits, opportunities and threats confronting the building and construction sector.

Building Act 2004

10. Property Council supports the refinement of the BA 2004 to ensure that the Minister, the Chief Executive of the Department of Building and Housing (DBH), and all territorial authorities, all Building Consent Authorities, and other certifiers authorised to exercise powers pursuant to statute do so in a timely manner to minimise compliance costs. Consistent with this refinement, the BA 2004 must reflect only those regulatory provisions that contribute to the efficient and cost-effective construction and refurbishment of buildings, and the well-being of people who own them and use them.
11. The economic viability of building and construction projects requires that applications for building consents, variation to building consents, and applications for Certificates of Public Use are handled in a fast and timely manner. Property Council places a premium on supporting a regulatory environment that enables building certifiers to process applications in a timeframe that is compliant with the statutory deadline codified in the BA 2004.

Building Act 2004: independent registered certifiers

12. The move to establish building consent authorities, which have responsibility for certifying building works pursuant to the BA 2004 is a by-product of the weathertight homes issue. The move to transfer responsibility for certification to the local government sector guaranteed the provision of this service at a time when private certifiers were unable to obtain professional insurance.
13. The building industry has significantly evolved since the weathertight homes issue first arose in 2002. The level of industry knowledge and an increase in standards (relating to both building products as well as services) has improved the reliability of the certification process.
14. New Zealand property owners and developers need the benefit of a fast, efficient and timely building certification process. Property Council considers that such a process will only be possible if suitably qualified private certifiers are able to offer professional certification services. By widening the pool of service providers, who in turn certify building works that comply with the specifications of the Building Code, the Government would significantly increase the capacity of the certification industry and reduce the compliance costs associated with standing times. The benefit of reduced compliance costs would flow through to consumers in the form of a greater supply of affordable building works.

Building Act 2004: building consent application times

15. Any person or organisation applying for a building consent is currently liable to pay a levy pertaining to the estimated value of the building work to which the building consent relates. Section 48(1) of the BA 2004 requires that a Building Consent Authority must, within 20 working days after receiving an application for a building consent that complies (e.g. in the prescribed form and containing the information that the authority reasonably requires), grant the application or refuse the application.
16. The BA 2004 should be amended to require that if a certifier fails to comply with the requirement codified under section 48(1) to either grant or refuse the application then that certifier should forfeit part of the levy pertaining to a building consent. Such an amendment would provide a disincentive for a certifier to delay the processing of applications for any reason other than the requirement for further information.
17. The BA 2004 should permit a certifier to grant an extension for a specified period of time for the purpose of processing of an application.¹ If a large quantity of information pertaining to the application, or the requirement to consult with specified organisations, such as the New Zealand Fire Service Commission, is likely to compromise the Building Consent Authority's operations, a certifier should be able to:
- specify a period of extension not exceeding more than 10 working days;
 - give the reasons for that extension; and
 - confirm that the applicant has the right to complain to the Chief Executive of the Department of Building and Housing.
18. The BA 2004 should be further amended to require that if a certifier requires further information pursuant to section 48(2), he or she shall forfeit part of the amount of the levy pertaining to a building consent if the information requested is unreasonable and not required by the authority in determining whether to grant or refuse the application. The certifier should be able to show that it acted on reasonable grounds and that the information required from the applicant was essential to ensure compliance with the Building Code for the works which the building consent application

¹ The requirement for a specified period of time would provide the applicant with a greater degree of certainty as to the time it will take a Building Consent Authority to make a decision as to whether to grant or refuse the application.

relates to.

19. Section 48(2) of the BA 2004 should also be amended to require that the provision for the certifier to provide further information shall apply up to 10 working days after the date that the application was lodged. This requirement provides the applicant with the possibility that he or she may be able to source and provide the additional information requested so as to aid the authority in determining whether to grant or refuse the application. If the request for further information is not received within 10 working days after the date of lodgement then the certifier should be deemed to have accepted the application and that the applicant can expect to receive a building consent within the statutory timeframe.
20. Nothing in section 48 or the amendments proposed by Property Council should prevent a certifier and the applicant from agreeing to an alternative deadline. If agreement is reached to amend the statutory deadline, but the certifier does not comply with the agreed revised deadline, then that Building Consent Authority should be liable to forfeit part of the levy pertaining to the building consent.

Building Act 2004: information requirements (prescribed form)

21. Section 45 of the BA 2004 specifies how to apply for a building consent. The plans and specifications that must accompany a building consent application are codified pursuant to section 45 and required by regulations specified pursuant to section 402.
22. While the BA 2004 prescribes the requirement to provide information, there is no consistency in terms of the type of detail of information required by different building consent authorities. The lack of consistency is not in itself a failing of the BA 2004. However a lack of consistency in terms of information requirements from one building consent authority requires clarification.
23. Property Council recommends that standardised forms issued by regulation be adopted by certifiers throughout the country, or multiple forms that are based on the size or nature of the work.² This would provide the development community with a greater level of certainty and understanding in terms of the type and detail of information provided. The provision of useful and rigorous information by the applicant at the point of lodgement would enable the certifier to reduce the time

² Property Council supports all Building Consent Authorities complying with the schedule of information required pertaining to a building consent application currently lodged (as at 8 March 2006) with the Auckland City Council.

it takes to consider a building consent application pursuant to section 48 of the BA 2004.

Building Act 2004: building consent variations

24. A building consent that has been issued sets a benchmark against which a building or building works is assessed for the purpose of ascertaining code compliance. If a variation to the approved building works is required, the process for obtaining a variation is consistent with the process for applying for the original building consent itself, no matter whether the variation is significant or not.
25. No statute or regulation defines what constitutes a variation. The absence of a statutory trigger for requiring a variation is problematic because the process for applying for a variation, as with the building consent is both expensive and time-consuming and can affect the ability to obtain a Code Compliance Certificate.
26. Pursuant to section 7 of the BA 2004, Restricted Building Works means building work that, –
- (i) requires a building consent; and*
 - (ii) relates to an element of the building that is critical to the integrity of the building and the health and safety of its occupants; and*
 - (iii) is declared by the Governor-General, by Order in Council, to be a restricted building work for the purposes of this Act.*
27. Restricted Building Works includes (without limitation) work on the building envelope and the structural support of the building.
28. The BA 2004 should be amended to require that a variation to a building consent is only required in relation to Restricted Building Works pursuant to section 7. As a consequence a variation to a building consent is required only if for example the variation impacts on the integrity of the building and the health and safety of its occupants. If the proposed building works falls outside of the definition as codified under the Act, then no variation should be required.³ For the purpose of empowering a certifier to apply discretion, nothing in the BA 2004 should limit a certifier from identifying, at the time of granting a building consent, any other building works that will require a

³ A certifier should have the discretion to determine what building works require a variation.

variation application if any change is made.

Building Act 2004: Certificate of Public Use

29. A Certificate of Public Use may be issued for the purpose of allowing for an existing public building to be occupied prior to completion of a project (normally occupancy and usage of a building would be delayed until a Code Compliance Certificate has been issued for the work). A Certificate of Public Use may be issued by a territorial authority if, and only if, "... satisfied on reasonable grounds that members of the public can use the premises or part (as the case may be) safely...".
30. There is no consistency as to how different territorial authorities establish what information is necessary to determine that the safety of the public will not be compromised via staged occupancy and public use. The requirement to provide information pursuant to an application for a Certificate of Public Use (and the subsequent negotiation with a territorial authority in order to obtain that document) can be both time-consuming and add an extra cost to the overall building project.
31. Section 362A of the BA 2004 should be amended to require a certifier, if requested by the applicant, at the time of granting a building consent or variation, to notify the applicant as to the nature of the building works that will trigger the requirement to obtain a Certificate of Public Use. The amendment should also specify at what point the works will require a Certificate of Public Use to be issued prior to occupation. For prearranged circumstances a Certificate of Public Use should be issued automatically if all necessary inspections have been carried out to ensure compliance with the conditions of a building consent.

Building Act 2004: building warrants of fitness and other fees

32. Section 108 of the BA 2004 requires that an owner of a building for which a compliance schedule has been issued, must supply to the territorial authority a building warrant of fitness. This warrant of fitness includes prescribed information pertaining (and not limited) to the inspection, maintenance and performance of specified systems set out in a Compliance Schedule.
33. Section 108 places the burden of supply of information for a building warrant of fitness solely on the owner of the building. Therefore the cost of compliance with the BA 2004 rests with the owner of the building, not the territorial authority.
34. No territorial authority should be permitted to charge an administration fee for handling information

pertaining to section 108 (although some do). To remove all doubt about the right to charge, section 108 should be amended to prohibit a territorial authority from charging an administration fee for the purpose of receiving information pertaining to a building warrant of fitness.

Building Act 2004: Chief Executive to act as a Building Ombudsman

35. Section 177 of the BA 2004 empowers the Chief Executive to determine whether particular matters comply with the Building Code. Applicants may also apply to the Chief Executive for a determination on decisions made by building consent authorities. To this extent the Chief Executive assumes a role and function similar to the Ombudsman.

36. Property Council considers that section 177 of the BA 2004 must also enable an applicant to apply for a determination pertaining to:

- the time it takes a Building Consent authority to process a building consent application beyond the 20 working day statutory deadline (including (a) any extension of time requested by the Building Consent Authority, and (b) the reasons given for the extension of time);
- any attempt by a territorial authority to charge administrative fees for handling information (in particular, administrative charges pertaining to section 108 of the BA 2004); and
- any attempt by a Building Consent Authority to impose conditions on the applicant to address issues that are not considered by the applicant to be relevant to the proposed building works.

Recommendation to the Minister for Building and Construction

Property Council recommends an overhaul of the Building Act 2004, including:

- enabling suitably qualified private building practitioners to certify building works that comply with the Building Code;
- a regulatory framework that enables the timely processing of building consent applications;
- consent application fee waivers, which should apply with a building certifier fails to process consent applications in accordance with statutory deadlines;
- standardised forms issued by regulation be adopted by certifiers throughout the country, or multiple forms that are based on the size or nature of the work;
- a statutory amendment that specifies that a variation to a building consent is only required in relation to Restricted Building Works pursuant to section 7 of the Building Act 2004;
- a statutory amendment that require a certifier, if requested by the applicant, at the time of granting a building consent or variation, to notify the applicant as to the nature of the building works that will trigger the requirement to obtain a Certificate of Public Use. The amendment should also specify at what point the works will require a Certificate of Public Use to be issued prior to occupation;
- a statutory prohibition on a territorial authority charge an administration fee for handling information pertaining to section 108 (building warrant of fitness); and
- the Chief Executive of the Department of Building and Housing to simultaneously assume the role of a Building Ombudsman, who handles disputes relating to issues such as consent processing times, the charging of fees, and the imposition of conditions pertaining to proposed building works.

Building product information

37. Building practitioners need reliable technical information about the building products that are available in the New Zealand market. This information includes product details as well as how products should be used.
38. Property Council concurs with the New Zealand Building Industry Federation (NZBIF) view that New Zealand needs a technical database of building products, which would enable:
- building practitioners to make informed assessment and choices about building products;
 - determinations about whether or not building products will be code compliant;
 - consistency about the use of building products by building certifiers (as opposed to the current situation where product requirements and decisions may vary from one building consent authority to the next).
39. The Product Certification Scheme managed by the Department of Building and Housing (DBH) is no substitute for a properly developed technical database of building products. That Scheme is high level and will not be able to assess and certify products in a timely manner, in keeping with the opportunities for product innovation available to building practitioners.

Recommendation to the Minister for Building and Construction

Property Council recommends that the Minister work with the Property Council and other building industry stakeholder groups to develop a technical database of building products.