



Cabinet Policy Committee

POL Min (02) 22/4

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Minute of Decision

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Building Regulatory Review

On 11 December 2002 the Cabinet Policy Committee, exercising Power to Act granted to it by Cabinet [CAB Min (02) 33/18]:

- 1 **noted** that on 29 October 2002 the Cabinet Business Committee when considering the overall work programme on weathertightness issues:
 - 1.1 noted that officials will report to the group of Ministers by 15 November with their conclusions as to the possible causative links between the philosophy, design and implementation of the Building Act and the weathertightness issue, and any recommendations in light of those conclusions;
 - 1.2 noted that the Building Act Review will be reported to the Cabinet Policy Committee in December 2002 and that that review will now incorporate responses to the weathertightness issue;
 - 1.3 noted that officials will report to the group of Ministers by the end of December 2002 on the wider implications of the weathertightness issue for performance based regulation;
[CBC Min (02) 10/10]
- 2 **noted** that in considering the 15 November report from officials referred to in paragraph 1.1 above, the ad hoc Ministerial group on weathertightness:
 - 2.1 agreed that the following components of a strengthened regulatory system for building quality be recommended in a paper to Cabinet in December:
 - 2.1.1 amending the purpose of the Act to include a purpose which reflects protecting the interests of consumers (potentially 'fit for purpose');
 - 2.1.2 establishing specific criteria in the Building Act to provide greater direction to the regulator(s), and to the purpose and specificity of the Code and Approved Documents and Alternative Solutions;
 - 2.1.3 strengthening the role of the regulator(s) in providing information and education;
 - 2.1.4 registration of builders, including initial and on-going competency assessment;

- 2.1.5 accreditation of all building certifiers/inspectors, based on international best practice for the accreditation of inspection bodies;
- 2.1.6 strengthening the standards setting process;
- 2.1.7 reviewing the regulation of architects;
- 2.2 agreed that further work be undertaken on the following components, with a view to reporting back on them in the Cabinet paper:
 - 2.2.1 compulsory home warranty insurance;
 - 2.2.2 the role of the Building Research Association of New Zealand (BRANZ);
 - 2.2.3 whether more emphasis should be afforded to Approved Documents than currently provided by the Building Act;
 - 2.2.4 the role of Territorial Authorities;
- 2.3 agreed that the Cabinet paper integrate all of the various work streams that have regulatory implications into a single new Building Act Review;
- 2.4 agreed that the Cabinet paper recommend a policy and legislative timetable for the review of the Building Act;
- 2.5 agreed that officials undertake targeted consultation with key stakeholders on the conclusions reached in this report and include their views in the December Cabinet paper;
- 3 **directed** officials from the Ministry of Economic Development (lead), the Treasury, the Department of Prime Minister and Cabinet and the State Services Commission in consultation with the Building Industry Authority, Local Government New Zealand and the Department of Internal Affairs, to report back to the Cabinet Policy Committee by the end of April 2003 on the findings of an extended review of the Building Act including consideration of the findings of the previous review and any recommendations arising from the Parliamentary Inquiry into the Weathertightness of Buildings in New Zealand;

Purposes and Objectives of the Building Act

- 4 **noted** that the current purposes of the Building Act 1991 are to protect people (their health and safety) and the environment, and that the Act does not place an emphasis on the need for shelter and protection from the elements;
- 5 **agreed**, for the purposes of the review in paragraph 3 above, to amend the purposes of the Act to ensure greater protection for the owners of residential buildings by including a purpose which reflects protecting the interests of consumers (potentially 'fit for purpose');
- 6 **directed** officials to report on whether or not the proposed purpose in paragraph 5 above should be extended to owners of non-residential buildings;

- 7 **agreed**, for the purposes of the review in paragraph 3 above, that officials be guided by the following objectives:
- 7.1 effectiveness – giving best effect to the proposed purpose for the Act;
 - 7.2 minimising whole of life capital costs – rather than a narrower focus on reducing just front-end compliance costs;
 - 7.3 innovation – facilitating innovation by allowing for flexibility in operation and the use of new technologies and practices;
 - 7.4 minimising compliance costs – but not at the expense of whole of life capital costs;

Elements of a regulatory environment

- 8 **agreed** that an effective regulatory system requires a balanced mix of elements that work together to minimise the risks and consequences of failure in any one part of the system;

Administration and compliance

- 9 **agreed** in principle, subject to consideration of the review in paragraph 3 above, that:
- 9.1 the Building Code be specified in a manner sufficient to provide guidance to achieve the proposed purposes and objectives of the Act;
 - 9.2 greater weight to be given to the use of approved solutions and verification methods for protecting the interests of consumers;
 - 9.3 greater weight be given to building product accreditations, rather than BRANZ appraisals, as a basis for determining compliance with the Building Code;
 - 9.4 greater guidance be provided to Territorial Authorities (TAs) and building certifiers of the matters that should be taken into account in discharging their administrative responsibilities including more definitive criteria for achieving the “satisfied on reasonable grounds” test for compliance with the Building Code;
 - 9.5 Standards New Zealand have a greater role in the production of standards to support approved documents;
 - 9.6 that all building certifiers and inspectors be accredited, based on international best practice for the accreditation of inspection bodies;
- 10 **directed** officials, in their report back in paragraph 3 above, to include consideration of:
- 10.1 the circumstances and risks under which greater weight should be placed on the use of approved solutions, verification methods and building product accreditations as a basis for determining compliance with the Building Code;
 - 10.2 how greater guidance should be provided to TAs and building certifiers of the matters that should be taken into account in discharging their administrative responsibilities including more definitive criteria for achieving the “satisfied on reasonable grounds” test for compliance with the Code;

- 10.3 whether the standard setting process is adequately funded including consideration of appropriate mechanisms and sources of funding;
- 10.4 the value of disallowing occupation of a house until a code compliance certificate has been obtained including the implications for owner builders;

Enforcement procedures

- 11 **directed** officials, in their report back in paragraph 3 above, to include consideration of:
 - 11.1 the role and placement of the Weathertight Homes Resolution Service beyond June 2003 and whether or not its role should be broadened to include a specialist resolution service for all homeowner building disputes;
 - 11.2 whether or not the regulator should have a role in prosecuting disputes on behalf of some consumers and the circumstances under which such a role might be appropriate;
 - 11.3 whether or not a compulsory homeowner protection insurance scheme should be an element of the proposed regulatory system and the costs and benefits of such a scheme;

Information and education

- 12 **agreed** in principle, subject to consideration of the review in paragraph 3 above, that:
 - 12.1 the role of regulators in providing information and education be strengthened;
 - 12.2 that the information role of the regulator extend to provision of information to consumers on how to achieve value for money in their purchase and how to maintain their investment, and education of building practitioners, TAs and Private Certifiers on the requirements of the Code and how to achieve compliance with it including the weight that should be given to Approved Documents and alternative solutions;
- 13 **directed** officials, in their report back in paragraph 3 above to include consideration of:
 - 13.1 whether the information available in Land Information Memorandums should be extended including the compliance costs of doing so;
 - 13.2 what provisions should be included in the Building Act to guide the regulators' information and education roles including to consumers, building practitioners, TAs and Private Certifiers;
 - 13.3 the financial implications of extending the regulators' information and education role;

Regulation of building professionals

- 14 **agreed** in principle, subject to consideration of the review in paragraph 3 above, that:
 - 14.1 draughtspersons and engineers, as well as architects, should be subject to occupational regulation in developing dwelling design documents;

- 14.2 builders should be subject to occupational regulation in their construction of dwellings;
- 15 **directed** officials, in their report back in paragraph 3 above, to:
- 15.1 review the Architects Act 1963;
- 15.2 consider the findings of a review of the Architects Act 1963 and what occupational licensing provisions should also apply to draughtspersons and engineers in developing dwelling design documents;
- 15.3 the details of an occupational regulation regime for builders and related trades and their employees including the implications for owner builders and whether or not these classes of builders should be exempt from the regime and under what circumstances;
- 15.4 whether the regulations for builders of dwellings should be extended to builders generally;
- 15.5 the transitional arrangements that would be necessary for implementation of the changes to occupational regulation in paragraph 14 above and the implications for current unregistered building professionals and trades people, education and training providers and consumers;

Institutional arrangement and monitoring

- 16 **noted** that responsibility for monitoring the Crown's ownership and purchase interests in the Building Industry Authority (BIA) is shifting from the Department of Internal Affairs to the Ministry of Economic Development from the end of December 2002;
- 17 **directed** officials from the Ministry of Economic Development to discuss with the Chairperson of the BIA how the following can be appropriately reflected in the Statement of Intent of the BIA currently being finalised:
- 17.1 the decisions taken in this paper;
- 17.2 the BIA's response to the Hunn report;
- 18 **directed** officials, in their report back in paragraph 3 above to include consideration of;
- 18.1 the future roles and functions of the BIA;
- 18.2 whether or not the BIA should continue as a Crown Entity;
- 18.3 the monitoring regime that should apply to the BIA;
- 18.4 the current allocation of administrative responsibilities to TAs and Private Certifiers and whether some responsibilities should be shifted to the regulator;
- 18.5 the nature of the review, monitoring and sanctions regime necessary to ensure accountability of TAs and Private Certifiers for their proposed administrative roles and functions;

Financial implications

- 19 **noted** that the above recommendations will have implications for the costs of building regulation and the cost of building in New Zealand;
- 20 **directed** officials to report on the costs and benefits of the above proposals in their report back in paragraph 3 above;

Treaty of Waitangi implications

- 21 **directed** officials, in their report back in paragraph 3 above, to advise on any implications for Maori and other communities of interest;

Legislative implications

- 22 **noted** that reform of the Building Act is important to protect the interests of homeowners;
- 23 **agreed** that the Building Act Amendment Bill be included in the 2003 Legislative Programme with priority 2 (to be passed in 2003);

Publicity

- 24 **noted** that the extended review in paragraph 3 above will be of widespread public interest and will require extensive consultation with building industry stakeholders;
- 25 **invited** the Ministers of Internal Affairs and Commerce to announce details of the extended review;
- 26 **directed** officials from the Department of Internal Affairs and the Ministry of Economic Development to make details of the extended review available, including the publication of this paper and related decisions on their websites;
- 27 **invited** the Minister of Internal Affairs to brief the Chair of the Parliamentary Inquiry into the Weathertightness of Buildings in New Zealand on the Government's decision to undertake the above review including the intention that the extended review should address the findings and recommendations arising from the Inquiry;
- 28 **noted** that the Minister of Internal Affairs indicates that the consultation with the Government caucuses and with other parties represented in Parliament is not required.

Hamish Finlay
Secretary

Reference: POL (02) 228

Copies to: (see over)

Present:

Rt Hon Helen Clark (Chair)
Hon Dr Michael Cullen
Hon Jim Anderton
Hon Steve Maharey
Hon Annette King
Hon Pete Hodgson
Hon Margaret Wilson
Hon Parekura Horomia
Hon Lianne Dalziel
Hon George Hawkins
Hon Paul Swain
Hon Marian Hobbs
Hon Chris Carter (part of item)

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet

Copies to:

Cabinet Policy Committee
Chief Executive, DPMC
Mary Anne Thompson, DPMC
Secretary to the Treasury
Chief Executive, Ministry of Economic Development
Secretary for Justice
Director-General of Health
State Services Commissioner
Secretary of Labour
Chief Executive, Te Puni Kokiri
Minister of Internal Affairs
Secretary for Internal Affairs
Minister for the Environment
Secretary for the Environment
Minister of Pacific Island Affairs
Chief Executive, Ministry of Pacific Island Affairs
Chief Executive, Housing New Zealand Corporation
Chief Executive, Ministry of Housing
Minister of Women's Affairs
Chief Executive, Ministry of Women's Affairs
Minister of Local Government
Secretary for Internal Affairs (Local Government)
Minister of Consumer Affairs
Head, Ministry of Consumer Affairs

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