



28 November 2024

Chair
Petitions Committee
New Zealand Parliament
Parliamentary.Petitions@parliament.govt.nz

Dear Chair,

Petition of Christian van der Pump: Remove Building Act 2004 restriction of access to the District or High Court

Thank you for the opportunity to submit on this petition.

LGNZ is not supportive of removing the need for a determination before a decision by a Building Consent Authority (BCA) can be judicially reviewed.

LGNZ strongly believes any changes to the status quo must be part of broader reform, including addressing the share of risk councils currently bear in the system as “last man standing” under the regime of joint and several liability.

The effect of any changes on the Ministry of Business, Innovation and Employment’s (MBIE’s) ability to function effectively as regulator of the building and construction sector should also be considered, noting that Determinations give MBIE a valuable source of information as to the performance of BCAs and other actors in the system.

Councils are key players in the sector, which is set to experience significant reform

Councils in their role as Building Consent Authorities (BCAs) are on the front line of the building and construction sector in New Zealand. In the year to December 2023, over 37,000 new dwellings were consented in New Zealand, the vast majority by councils in their capacity as BCAs.

LGNZ is generally supportive of efforts by the Government to ensure the consenting system is fit for purpose and playing its role in addressing the housing crisis. We appreciate the need to move with greater pace both in the processing of consents, and in the consideration of appeals in instances where decisions made by BCAs are contested.

While, as far as we are aware, there are no plans by the Government to look specifically at the issue of determinations, there is doubtless a focus on streamlining and standardising the process of obtaining a consent. This should in theory reduce the need for decisions by BCAs to be contested, and therefore go some way to addressing the concerns that the petitioner holds.

Joint and several liability means councils already shoulder disproportionate risk, in a tight fiscal environment

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A long-standing issue facing BCAs is their role as a “last man standing” under the regime of joint and several liability, which results in a disproportionate amount of risk resting with councils. In many cases, they are forced to borrow money to pay for significant claims on behalf of others, taking investment away from much-needed areas such as infrastructure.

LGNZ does not believe the determination process is perfect or that there is no case for reform. But in an environment where councils are under significant fiscal pressures, and already shoulder a disproportionately high level of risk in the building system, we do not believe it is viable to take the approach outlined in this petition. This approach would expose councils to much greater risk of litigation than exists already, without any accompanying reform to address those pressures.

Given that the current system probably incentivises BCAs to take an overly cautious approach to issuing consents, removing the need for a determination is only likely to exacerbate this phenomenon, leading to slower consenting. This would frustrate efforts to address New Zealand’s housing crisis.

More should be done to ensure the regulator meets its statutory obligations

We note recent media reporting has highlighted difficulties MBIE is facing in meeting statutory timeframes for making determinations, with some applications taking years to complete. We accept that this is not always the fault of the regulator, who must deal with large volumes of applications that can vary in quality and complexity.

Nonetheless, we believe it is important to ensure determinations are completed promptly. More resourcing should be made available to MBIE to process applications, and consideration should be given to how to better educate applicants so as to reduce the amount of incomplete or inaccurate applications being submitted.

LGNZ would welcome the opportunity to assist in ensuring all actors in the sector are aware of their obligations here, and we are open to discussions with MBIE on how we could support this.

Thank you for the opportunity to submit on this petition. For further information or if we can be of any assistance, please contact William Blackler, Senior Policy Advisor, at William.blackler@lgnz.co.nz.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'SB' followed by a flourish.

Sam Broughton
President
Local Government New Zealand