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Christchurch City Council submission on the Building and Construction (Small Stand-alone Dwellings) Amendment Bill

Introduction

1. Christchurch City Council (the Council) thanks the Transport and Infrastructure Committee for the opportunity to provide comment on the Building and Construction (Small Stand-alone Dwellings) Amendment Bill ('the Bill).

2. The Council has previously provided a submission on the Ministry of Business, Innovation and Employment (MBIE) 'Granny Flats' Proposal on 12 August 2024.

Submission

3. The following points are provided as summary of the recommendations for changes to the proposed Bill:

    - *Include a new section in the Building Act to expressly require an owner to apply for a Project Information Memorandum (PIM) for when building work is proposed in connection with a non-consented small stand-alone dwelling.*
    - *Change the wording to some of the proposed new sections to make clear the PIM application must contain sufficient information for Territorial Authorities (TA) to be able to make the statements it is required to make with the PIM.*
    - *Not to have a shorter timeframe to process a PIM application for a non-consented small stand-alone dwelling of 10 working days but rather keep it the same as all other PIM applications at 20 working days.*
    - *When a PIM lapses after 2 years TAs are required to decide if a further period should be allowed. Make changes to this provision to require the development contributions to be paid at this point before a further period to complete the building work is given.*
    - *Allow TAs to require development contributions to be paid after the PIM has been issued.*
    - *Make it clearer that the final design documents must contain sufficient information.*
    - *Expand the scope for when a determination can be applied for in respect to non-consented small stand-alone dwelling.*
    - *Make the proposed new section in the Act expressly clear that TAs will not be liable in respect to any of the advice provided by the TAs.*

- *Various recommendations to the wording in the proposed Schedule 1A to make it clearer what are the characteristics and requirements of a small-stand-alone dwelling.*

4. Refer to the Detailed Recommendations in Appendix 1 attached.

Conclusion

5. In general, the Council does not object to the amendments to the Building Act and other related legislation proposed by the Bill.

6. The Council does have concerns there may be unintended consequences for its role as a TA in the way the Bill is currently written. Details of these concerns have been provided in the summary of general position and detailed recommendations to how some changes to the Bill may assist with addressing these concerns.

7. TAs need to be able to levy development contributions for all developments that put increased demand on their infrastructure. The Council is concerned these proposals may hinder the ability to receive payment of the development contribution requirement. Under the Building Act, a TA can currently withhold issue of a code compliance certificate or certificate of acceptance until such time as a development contribution requirement has been paid. This Bill does not provide a TA with anything to withhold pending payment of the development contribution requirement associated with the non-consented small stand-alone dwelling. The Council is concerned that the way the legislation is current drafted, many would be able to avoid paying development contributions for this dwelling type. If not paid, the burden of funding infrastructure required to service demand associated with these developments will simply be picked up by the ratepayers.

Thank you for the opportunity to provide this submission.

For any clarification on points within this submission please contact Steffan Thomas (steffan.thomas@ccc.govt.nz)

Yours faithfully,

Phil Mauger

Mayor of Christchurch

Appendix 1:

Summary of General Position:

In summary, the Bill sets out the following proposed roles of a Territorial Authority (TA) in relation to non-consented small stand-alone dwellings constructed under the provisions of this Bill.

1. TAs receive notification by owners of their intention to build non-consented small stand-alone dwellings through applications of a project information memorandum (PIM) and must issue the PIMs within 10 working days.
2. When issuing the PIMs, TAs must provide additional information in the form of an attached document that states:
    a. whether the proposed building work meets the characteristics of the exemption
    b. whether the land is subject to natural hazards
    c. whether there are any bylaws that may affect the proposed building work
3. A TA may attach a notice to the PIM for any development contributions payable by the owner in relation to the proposed small stand-alone dwellings
4. Within 20 working days of the completion of the building work, the TA is required to receive all the records of work, certificates and final design plans from the owner. It is only at this point that any development contributions must be paid by the owner to the TA.
5. The TA is not required to assess or inquire about the information it receives
6. The TA must keep the information it receives for these buildings for at least the life of these buildings.
7. The TA must monitor the PIMs it has issued for non-consented small stand-alone dwellings for any that have not been completed within 2 years after the issue of the PIM and if any have not been completed, decide whether to allow a further period
8. Processing and issuing of approvals for any connections to the three waters services – water supply, wastewater, and stormwater.

Detailed Recommendations:

Clause 6

The Bill proposes to amend existing section 32 by expanding subclause (b) but section 32 still allows for a PIM to be non-mandatory – 'An owner may apply to a territorial authority for a project information memorandum for building work if –' It must be made clear that 'An owner must apply to a territorial authority for a project information memorandum for building work if the building work is in connection with a non-consented small stand-alone dwelling.

Recommendation:

- Recommend not amending section 32 but including a new section 32A with the following wording. 'An owner must apply to a territorial authority for a project information memorandum for building work if the building work is in connection with a non-consented small stand-alone dwelling.'

Clause 7

The term 'initial design plans' is vague and is not consistent with how this type of information is described elsewhere in the Act as 'plans and specifications.' It may lead to insufficient information being provided by the owner with their application for a PIM for the TA to supply accurate information as required by the proposed section 35A. The information submitted with the PIM application may also be insufficient for the TA to confirm that

the building is permitted under the proposed National Environmental Standards for Granny Flats (Minor Residential Units) which contain different standards (e.g. building coverage), or any relevant District Plan rules outside the scope of the NES (e.g. a minimum floor level which may be higher than the maximum 1m above ground allowed by Schedule 1A).

Recommendation:

- Recommend that the term 'initial design plans' is replaced in proposed section 33(1A)(b) with 'initial plans and specifications with sufficient information for the territorial authority to make the statements required by section 35A and confirm whether any other authorisations are required.'

Clause 8

This bill proposes to reduce the time allowed for when a TA must issue a PIM to within 10 working days after receiving an application in relation to a non-consented small stand-alone dwelling, however it also requires the TA to carry out more tasks.

Recommendation:

- Recommend that the timeframe for when a TA must issue the PIM is kept the same for all PIMs. Section 34 (1) is only to be amended to include the proposed section 31(1A).

Clause 9

If the building work does not proceed, a TA has no way of knowing this for their record keeping. The responsibility should not be on the TA to monitor the completion of work that they have no ability to control.

Recommendations:

- Recommend a further section after section 34 that the owner must notify the TA in writing within 2 years of the issue of the PIM if the building work is not going to proceed.

  The provision in proposed section 34A(b) 'any further period that the territorial authority may allow', places an obligation of the TA to become involved when a project continues more than 2 years beyond the issue of the PIM. The TA is placed in the position where they are being pressured to allow the timeframe to be extended without the corresponding incentive for the owner to finalise the project.
- Recommend that the proposed section 34A includes the PIM will lapse without any provision for further periods if building work has not effectively commenced after 2 years. And where building work has commenced a further period will be allowed once the development contribution is paid by the owner.

Clause 11

Section 35A(2) requires the TA to attach a document to the PIM that includes amongst other things a statement that 'the proposed building work is likely or unlikely to satisfy only the characteristics of clause 1 of Schedule 1A;' This is a very limited scope. The plans and specifications submitted with the PIM applications must also contain sufficient information to confirm whether any other authorisations are required and whether adequate provision to protect from a natural hazard so should also contain sufficient information to also make a statement about the

'Requirements for small stand-alone dwelling'.

Recommendation:

- Recommend that Section 35A(2)(a) (i) states 'a statement indicating whether—(i) the proposed building work is likely or unlikely to satisfy the characteristics of clause 1 and requirements of clause 2 of Schedule 1A.

Section 35A should not include the subsection (2)(a)(ii) 'it is unclear if the proposed building work is likely to satisfy those characteristics;'. The PIM application should contain sufficient information for a TA to make a clear statement that 'the proposed building work is likely or unlikely to satisfy the characteristics of clause 1 of Schedule 1A'. It needs to be clear to an applicant that sufficient information needs to be provided with a PIM application otherwise TAs will continually have to be using the provision in section 34(2).

Recommendations:

- Recommend removing the option in section 35A(2)(a)(ii) 'it is unclear if the proposed building work is likely to satisfy those characteristics;
- Recommend including the changes proposed to clause 7 recommendation above for the PIM application to include plans and specifications with sufficient information.

The proposed section 35A(2)(c) requires a TA to assess the information provided with the PIM application to see if they can be 'satisfied that adequate provision has been or will be made to (a) protect the land, building work, or other property referred to in that subsection from the natural hazard or hazards; or (b) restore any damage to that land or other property as a result of the building work' to any land the TA is required by section 35A(2)(b) to identified if that land is, or is likely to be, subject to 1 or more natural hazards. To be able to make that assessment they will need sufficient information to be provided by the owner with the PIM application. For example, to make an assessment that adequate provision to protect from an inundation natural hazard, the PIM application must include information such as proposed floor levels to meet E1.3.2 of the building code and the proposed finished site levels.

Recommendation:

- Recommend including the changes proposed to clause 7 recommendation above for the PIM application to include plans and specifications with sufficient information.

Clause 12

The Bill currently allows TAs to invoice for development contributions once the work is complete as per section 42B(6). This proposed timing allows owners to occupy and utilise infrastructure before formally completing the approval process. As a result, owners could intentionally delay payment for minor unfinished elements while already benefiting from infrastructure services. This undermines the fair allocation of growth-related costs and risks placing undue financial burden on TAs and ratepayers.

The Council is concerned that development contributions present a significant disincentive for an owner to notify the TA of the completed building work. Owners may be incentivised to not fully complete a non-consented small stand-alone dwelling to avoid the requirement to pay development contributions.

The Council notes there are districts in New Zealand where a development contribution requirement for this type

of dwelling could be anywhere from $70,000 -$100,000.

Additionally, significant administrative complexities arise once the PIM is issued, as TAs lose key enforcement tools. Unlike the traditional building consent process, which relies on inspections and the issuance of a code compliance certificate to trigger invoicing, this exemption regime lacks equivalent mechanisms, requiring manual reporting instead. This creates risks and operational inefficiencies and TAs have limited leverage or visibility to enforce payment after issuance without costly, resource-intensive tracking and manual follow-up by compliance teams.

TAs should therefore be enabled to require development contributions to be paid after the PIM is issued.

Recommendation:

- Recommend that section 36(2A)(b) is replaced with 'the territorial authority may require development contributions to be paid following the issue of the project information memorandum'

Clause 15

S42C(2) states 'section 42B(4) does not require a territorial authority to assess or inquire into any information supplied to it under that provision' but how can a TA reasonably not check whether what is required to be provided is in fact provided.

Recommendations:

- Recommend that section 42B(4) is changed to require the owner to also complete a prescribed form where the owner lists the information required by section 42B(4) and states that all the information required by section 42B(4) is attached. The statement can then be relied on in good faith by the TA that all the information required by section 42B(4) has been provided.
- Recommend the term 'a set of final design plans' in section 42B(4)(b) is changed to state 'a set of final design plans and specifications'

Clause 16

The term 'final design plans' is vague and is not consistent with how this type of information is described elsewhere in the Act as 'plans and specifications.' It may lead to insufficient information being provided by the owner's designer to meet the purpose of section 42C.

Recommendation:

- Recommend where the term 'final design plans' is used in proposed section 45AA it is changed to state 'final design plans and specifications'.

Clause 19

Clause 19 proposes to add (aaa) [*this maybe a typo as there is no (aa) in the current Act)*] that inserts a further provision to section 177(3) for when an application for determination can be made. There is likely to be disputes that could the subject of a determination about a TA's decision in making the statements required by section 35A(2)(b) and (c) in respect to likelihood of natural hazards and/or if adequate provision has been or will be made

to protect from the natural hazards. If a TA states in a PIM that the natural hazard provisions apply, then section 42B(3)(d) excludes the proposal from being exempt from building consent.

Recommendation:

- Recommend adding to section 177(3) the ability to apply for a determination in respect to decisions made by TAs under section 35A(2).

Clause 20

To be consistent with recommendation to clause 16 the reference to 'final design plans' should change in section 216 to state 'final design plans and specifications'.

Recommendation:

- Recommend where the term 'final design plans' is used in proposed section 216(2)(ba) it is changed to state 'final design plans and specifications' and where the term 'initial design plans' is used it is changed to 'initial design plans and specifications'.

Clause 22

Clause 22 proposes a new section 392A with provision that TAs will not be liable in respect to any of the advice provided by the TA.

We support the principle of removing liability from TAs in relation to non-consented small stand-alone dwellings as it will be the licensed building practitioners who hold the key roles in respect to non-consented small stand-alone dwellings. We consider the wording in section 392A needs to go further and state a TA is not liable for anything in respect to non-consented small stand-alone dwellings.

Recommendation:

- Recommend that proposed section 392A states: No civil proceedings may be brought against a territorial authority or any member, employee, or agent of that authority for anything in in respect to non-consented small stand-alone dwellings.

Clause 50

Clause 50 has identified an addition needs to be inserted to the 'limits on application' to building code performance B2.3.1 to address when the durability periods of B2.3.1 apply from to building elements in a non-consented small stand-alone dwelling. This building code performance has always lacked 'limits on application' for building work where a code compliance certificate is not required to be issued. This opportunity should be taken to change the 'limits on application' to B2.3.1 to include a start date for the durability periods of all building work that exempt from requiring a building consent.

Recommendation:

- Recommend extending the insertion proposed by clause 50 to include when B2.3.1 applies for all building work carried out under Schedule 1 and Schedule 1A, Building Act.

New Schedule 1A

The term 'net floor area' is proposed, which is inconsistent with definitions used elsewhere in Schedule 1. There is no definition of 'net floor area'. There is no definition of 'net floor area' but the NES-GF uses the term 'internal floor area' that is defined.

Recommendation:

- Recommend that the term and definition used in the NES-GF of 'internal floor area' be used in Schedule 1A be used to avoid unnecessary conflict.

At 2(1)(e) "At least 2 metres away…" is not defined. Is this the minimum distance of any component of the building, for example the outer edge of the gutter, or to the external face of a wall? Without very clear definition this will be rife for misinterpretation.

Recommendation:

- Recommend that a clear definition is provided of the point of the building that this is measured from.

At 2(1)(h)(ii) 'connect to network utility operator services (**NUOs**), if those services are available, or, if not available, connect to on-site systems, that do not need a building consent to construct:' does not make it clear what type of on-site systems do not need a building consent. Only an existing system with sufficient capacity for the increased flow do not need a building consent.

Recommendation:

- Recommend that wording is changed to 'connect to existing on-site systems, that has sufficient capacity for the increased flow:'

There are a number of other risk factors that could impact on the objective of the Bill that a non-consented small stand-alone dwelling 'must be simple in its design and meet the building code'.

Recommendation:

- Recommend that other limitations that should be considered to minimise risks with these small stand-alone dwellings, e.g.:
  - Ground conditions.
  - Wind loads
  - Ground slope
  - Specific engineering design of structural components unless carried out by a chartered professional engineer
  - Limitation of eaves size (since this is not included in net floor area).

There is a high probability that this new schedule 1A exemption will be combined with schedule 1 exemptions, e.g. addition of carports, verandas, decks etc.

Recommendation:

- Recommend, at the least, commentary is provided on whether there are limitations on the combination of exemptions prior to the small stand-alone dwelling being complete.