

16 November 2021

Committee Secretariat
Environment Committee
Parliament Buildings
Wellington
en@parliament.govt.nz

To whom it may concern New Zealand Green Building Council - Submission on Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill

- 1 This submission is made on behalf of the New Zealand Green Building Council (**NZGBC**). NZGBC is a not-for-profit industry organisation dedicated to promoting a sustainable built environment. NZGBC achieves this by setting standards of best practice through green building rating tools; education and training for all areas of the building industry value chain; and providing access to networks, information and resources for our members to lead the market. Its vision is for all homes and buildings in Aotearoa to be green and sustainable, making healthier, happier New Zealanders.
- 2 We're a non-profit, that includes 520 companies and organisations amongst our members, including banks, energy companies, insurers, government departments, publicly listed property companies, project managers, manufacturers, construction companies, architects, developers, designers and tertiary education institutions. This includes many of the NZX50. These members have a combined market turnover of \$40bn. We also work with local government members, representing over 60% of Aotearoa New Zealand's population.

Summary

- 3 The Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill (Bill) represents an opportunity to require warmer, drier, healthier and more energy efficient housing and for New Zealand to reduce its building and housing related carbon emissions.
- 4 NZGBC considers the Bill should be amended to require and / or incentivise housing development permitted under the MDRS zoning to be to of a higher standard than those prescribed by the building code, in order to ensure the new buildings are efficient to heat, and to reduce housing-related carbon emissions.
- 5 The existing RMA and Building Act regime does not allow Councils to require buildings to be constructed to a higher standard than that prescribed by the building code. Incentives to promote higher building standards under territorial and regional plans are also tightly constrained. This has facilitated the adoption of bare minimum building practices and contributed to homes being cold, damp, unhealthy and energy inefficient.

6 New Zealand has a clear and legislated goal of achieving a net zero carbon economy by 2050. If New Zealand is to achieve its emissions reduction targets, it must make drastic improvements to energy efficiency in its homes and reducing carbon emissions related to the housing sector. Emissions from buildings, energy and industry 'contribute around 44% of long-lived gases in Aotearoa' and represent major a barrier to New Zealand meeting its clear and legislated goal of achieving a net zero carbon economy by 2050.¹ In 2018 consultants, thinkstep, on behalf of the NZGBC, calculated that the built environment contributes up to 20% of NZ's GHG emissions through the combination of operational emissions and embodied carbon emissions.² The Climate Change Commission recommended in its recent advice to the New Zealand Government that 'a plan to transform buildings to be low emissions' be a key element of policy direction.³ It stated:⁴

Aotearoa needs low emissions, energy-efficient, warm, healthy homes and workplaces. Buildings should be constructed using designs and products that lower emissions and improve New Zealanders' health and wellbeing. There must be standards and legislation to support this. Our advice recommends:

- Considered and continued upgrades of minimum Building Code requirements to overcome key barriers that lead to buildings that are not low emissions or as energy efficient and healthy as possible.
- Encouraging construction based on low-emissions designs and practices, because embodied emissions represent a significant proportion of building sector emissions.
- Scaling up energy efficiency assistance to low-income households, so that low-income households can benefit from lower emissions, lower energy costs and healthier buildings.

7 The Climate Change Commission's Recommendation 22⁵ is as follows:

¹ Climate Change Commission "Inaia tonu nei: a low emissions future for Aotearoa – Advice to the New Zealand Government on its first three emissions budgets and direction for its emissions reduction plan 2022 – 2025" (31 May 2021) at 274.

² Thinkstep 2018, The carbon footprint of New Zealand's 205 built environment. https://www.nzgbc.org.nz/Attachment?Action=Download&Attachment_id=2635

³ Inaia tonu nei: a low emissions future for Aotearoa – Advice to the New Zealand Government on its first three emissions budgets and direction for its emissions reduction plan 2022 – 2025 At 14.

⁴ At 275.

⁵ At 294

We recommend that, in the first emissions reduction plan, the Government commit to:

Developing a plan to transform buildings to be low emissions and climate resilient. This should include Government:

1. Acting in partnership. To be enduring the policy approach must be created in partnership with Iwi/Māori, give effect to the principles of Te Tiriti o Waitangi/The Treaty of Waitangi, and align with the He Ara Waiora framework.
 2. Developing the policy approach in collaboration with the building and construction sector.
 3. Upgrading existing buildings and constructing new buildings that are low emissions, healthier and climate resilient. Measures should include:
 - a. Continuous improvements to minimum Building Code requirements such as energy efficiency standards.
 - b. Encouraging construction based on low-emissions designs and practices to reduce building energy use and embodied emissions.
 - c. Scaling up energy efficiency assistance to low-income households to enable them to benefit from lower emissions, lower energy costs and healthier buildings.
 - d. Mandating participation in energy performance programmes for existing commercial and public buildings.
- 8 In parallel, MBIE is actively working with the building and construction sector to reduce emissions from buildings during their construction and operation. The "Building for Climate Change Programme" proposes to develop the framework to reduce whole of life embodied carbon, and transform operational efficiency⁶.
- 9 The housing sector represents a huge opportunity for improving energy efficiency and reducing the nation's energy demand. If New Zealand significantly improves energy efficiency in new homes, it will help to reduce peak demand, free up energy capacity for new technologies such as electric cars, and lessen the urgency for developing new energy generation.
- 10 Despite and contrary to the work of the Climate Change Commission and MBIE's building for climate change programme, the Bill fails to require or incentivise the construction of low-emission, energy efficient homes in order to promote people's well-being and to require buildings that are consistent with lowering carbon emissions, despite the stated needs in the Bill's own explanatory note to:

⁶ Ministry of Business, Innovation and Employment, Building for Climate Change, May 2021

encourage **low-carbon** cities through the provision of denser housing, especially within cities and metropolitan areas, near public transport hubs, or within walkable catchments of city or metropolitan centres. This Bill also encourages intensification in areas adjacent to smaller suburban centres in tier 1 urban environments where there are community services and commercial activities. Those areas are likely to be serviced by current public transport routes or by planned public transport routes. This will promote more efficient use of infrastructure and greater use of public transport⁷

- 11 By not requiring any action in respect of the quality of the buildings that will be enabled by this Bill, the Bill is effectively contrary to attainment of the 2050 zero carbon target, the Climate Change Commission's recommendations to implement a regime that requires or incentivises low emission, energy-efficient, warm healthy homes and MBIE's building for climate change programme. The housing stock that will be enabled as a result of this Bill will slow down the ability to convert New Zealand's housing stock in the direction recommended by the Climate Change Commission, both in terms of embodied or "baked in" carbon, and energy efficient. The Bill is more than just a missed opportunity in this regard - it will actually cause a direct setback in the ability to lower carbon emissions...

Current regulatory hurdles to better buildings

- 12 The main hurdle to district plans including rules relating to standard of buildings is section 18 of the Building Act that says performance criteria cannot be more restrictive than the Building Code. Section 18 of the Building Act has been interpreted to mean that any additional restriction relating to internal (as opposed to external) effects is not lawful. For example, the Independent Hearings Panel considering the proposed Auckland Plan recommended that the references to the NZGBC rating tools be deleted from the proposed version of rules, because these were performance criteria more restrictive than that prescribed in the Building Code.⁸
- 13 This significantly constrains the use of RMA mechanisms to require a better standard of buildings in terms of internal performance, and instead leaves the main RMA regulatory lever in the realm of incentives, rather than prerequisites.

Recommendations

⁷ Bill, explanatory note.

⁸ Auckland Unitary Plan Independent Hearings Panel, Report to Auckland Council Overview of recommendations, 2016-07-22, pages 42-43; Auckland Unitary Plan Independent Hearing Panel, Report to Auckland Council Hearing topic 077, Sustainable Design, July 2017, page 5 "As set out in the Panel's Report to Auckland Council – Overview of recommendations July 2016, in section 5.3 on managing external effects, the Panel considers that controls on internal aspects of buildings under the Resource Management Act 1991, to the extent that they are appropriate at all, cannot exceed the requirements for such controls set by the Building Code".

- 14 NZGBC recommends changes to the Bill and the Building Act as set out in **Appendix A**, or other such similar drafting / consequential amendments which will give effect to the issues raised in this Submission. The intention of the changes are twofold:
- (a) Firstly, changes to both the Building Act and the Bill's Schedule 3 Building Standards, to require building to a higher standard consistent with the Climate Change Commission's recommendations; and
 - (b) Secondly to enable Councils to include additional incentives for lower emissions buildings, over and above the Bill's Schedule 3 Building Standards.
- 15 NZGBC also recommends amendments to the Local Government Act 2002 and Local Government (Rating) Act 2002 to better incentivise, through rates relief, discounted development contributions, and mandatory disclosure on LIMs of the Homestar, Greenstar, Passive House or other certification of a property, construction of buildings certified in respect of key measures relevant to energy efficiency, carbon footprint and health.

Ngā mihi nui



Andrew Eagles
Chief Executive, NZ Green Building Council
0211930495

Appendix A - examples of amendments to the Building Act and the Bill to give effect to relief sought

The following additions (shown as underlined are examples of changes to legislation that could give effect to the relief sought)

Amendments to the Building Act and Building Code⁹

Amendments to the Building Code which provide a tiered development pathway for buildings which achieve a higher standard of building efficiency. This tiered approach would then provide a platform for alternative RMA planning, rating, and development opportunities across other pieces of legislation. Changes are required in the Code to address:

- Better insulation requirements
- Inclusion of air tightness and thermal bridging standards
- Improved ventilation
- Requirements to mitigate overheating
- Efficiency standards for all energy uses
- Energy performance modelling and reporting

Building Act 2004

...

18 Building work not required to achieve performance criteria additional to or more restrictive than building code

(1) A person who carries out any building work is not required by this Act to—

- (a) achieve performance criteria that are additional to, or more restrictive than, the performance criteria prescribed in the [building code](#) in relation to that building work; or
- (b) take any action in respect of that building work if it complies with the [building code](#).

(2) Subsection (1) is subject to any express provision to the contrary in any Act;

⁹ The term “Building Code” is used for the suite of documents that set the requirements for new homes. The detailed requirements are mostly contained in separate Acceptable Solutions documents that the general public thinks of these as the “Building Code”.

(3) Subsection (1) does not prevent any other Act requiring, encouraging or incentivising achievement of performance criteria that are additional to, or of a higher standard than, the performance criteria prescribed in the [building code](#) in relation to that building work;

Resource Management (Enabling Housing Supply and Other Matters) Amendment Bill

...

77F Medium density residential standards must be incorporated into plans

- (1) Every relevant residential zone in an urban environment of a relevant territorial authority must have the MDRS incorporated into that zone.
- (2) In order to give effect to subsection (1), a relevant territorial authority must incorporate the MDRS into its district plan—
 - (a) using the ISPP;
 - (b) if the ISPP is inapplicable, using another plan-making process in this Act.
- (3) In carrying out its functions under this section, the territorial authority must ensure that the provisions in its district plan for each relevant residential zone within the authority's urban environment give effect to the MDRS.
- (4) In carrying out its functions under this section, each territorial authority—
 - (a) may create new residential zones or amend existing residential zones; and
 - (b) may make the MDRS more permissive in their requirements in relation to any area within a relevant residential zone than the requirements set out in Schedule 3A—
 - (i) to give effect to policy 3(c); or
 - (ii) to give effect to policy 3(d) or policy 5, as applicable; or
 - (iii) for any other reason; but (c) may not make any requirement less permissive than those set out in Schedule 3A unless authorised to do so under section 77G and, if so, only to the extent necessary to accommodate the qualifying matter.
 - (c) May create new planning provisions (including objectives, policies, rules and other methods) to encourage or incentivise the construction of low-emission, energy efficient housing;

77O Amendment of NPS-UD

...

- (2) The Minister for the Environment, after consulting the Minister of Housing, may amend the NPS-UD to make any changes that the Minister for the Environment is satisfied are required as a result of the enactment of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 to—
 - (a) remove an inconsistency or a potential inconsistency between the NPS-UD and that Act; or

- (b) amend or replace the definition of planning decision in the NPS-UD; or
- (c) amend, replace, or add new provisions to encourage or incentivise the construction of low-emission, energy efficient housing; or
- (d) otherwise clarify the interrelationship between the NPS-UD and that Act.

77P Review of financial contributions provisions

(1) Each relevant territorial authority may, if it considers it appropriate to do so, include financial contributions provisions, or change its financial contributions provisions, (as applicable), in the district plan, and, if it does so, may notify them in the intensification planning instrument required under section 80F(1) or (2).

(2) A local authority may consider it appropriate to change financial contributions through a rebate scheme (in full or in part) where the construction of low-emission, energy efficient housing has been incentivised through the intensification planning instrument required under section 80F(1) or (2).

(2) In this section and section 77Q, financial contribution has the same meaning as in section 108(9).

80E Regulations requiring tier 2 territorial authority to change district plan

(4) Before recommending the making of regulations under subsection (1) or (2), the Minister must—

(a) consult the Minister of Housing; and

(b) be satisfied that the district of the relevant tier 2 territorial authority is experiencing an acute housing need, and or a need to incentivise building standards for low-emission, energy efficient housing

(6) The Minister, in determining whether a district is experiencing a need to incentivise building standards for low-emission, energy efficient housing -

(a) must have regard to any current policy or regulatory methods which incentivise the construction of low-emission, energy efficient housing; and

(b) may have regard to the extent to which including the Building Function MDRS into a planning instrument would otherwise enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety

Schedule 3A MDRS to be incorporated by relevant territorial authorities

...

8 Other matters to be included in district plan in relation to MDRS

(c) a reference to relevant Home Star, Passive House or equivalent third party verification standards for low-emissions, energy efficient housing applying in the relevant residential areas to which the MDRS apply.

...

Part 2 Building Standards

...

(16) Building Function

(a) Buildings must achieve a Green Star Building (5 or higher) or Home Star (7 or higher) certification Passive House certification, or equivalent third party verified certification for low-emission, energy efficient housing; or

(b) if 'a' above is not practicable, buildings must show how the following matters have otherwise been achieved and verified by a party independent to the project team. The **future** "Building for Climate Change" Operational Emissions Cap has been achieved (one cap ahead of the current cap) illustrating the following performance standards have been met:

- use of low-emission construction techniques and materials
- are resilient to the likely current and future effects of climate change
- insulation requirements above Building Code requirements
- inclusion of air tightness and thermal bridging standards
- improved ventilation above Building Code requirements
- requirements to mitigate overheating
- efficiency standards for all energy uses
- energy performance modelling and reporting