Taituarā
Local Government Professionals Aotearoa

Making it Easier to Build Granny Flats: options paper consultation

Submission to the Ministry of Business, Innovation and Employment on potential options to make it easier to build a 60m² secondary dwelling.

August 2024

Submission of Taituarā on
Making it Easier to Build Granny Flats: options paper consultation

Submission to the Ministry of Business, Innovation and Employment on potential options to make it easier to build a 60m^2 secondary dwelling.

What is Taituarā?

> Taituarā — Local Government Professionals Aotearoa thanks the Ministry of Business, Innovation and Employment (MBIE) for the opportunity to submit on the Making it Easier to Build Granny Flats options paper consultation.

Taituarā is an incorporated society of approximately 1000 members drawn from local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities. We are an apolitical organisation. Our contribution lies in our wealth of knowledge of the local government sector and of the technical, practical, and managerial implications of legislation.

Our vision is:

> *Professional local government management, leading staff and enabling communities to shape their future.*

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to the planning and delivery of services. As part of the sector's purpose to promote community well-being and given the specific delegation of building responsibilities to councils, ensuring the delivery of healthy, durable and safe buildings for communities is a high priority for the sector.

Our Regulations and Bylaws Reference Group (RBRG) and Resource Management Reform Reference Group (RMRG) provides practitioners' perspective on building, consenting and environmental planning. We would like to thank the RBRG, RMRG and members for their input into this submission and encourage MBIE to work with the Taituarā RBRG to ensure the building consent system achieves its objectives.

1. The Problem

Are regulatory compliance costs for consenting and building disproportionate to the risks? Do council processes significantly add costs and delay building times?

Evidential data is lacking

The data in the consultation document contains gross time taken to consent houses and no breakdown of timings including matters that are in the hands of applicants. There is no discussion of overall building costs for a 60m^2 house.

The overall cost for a 60m^2 secondary dwelling would generally be around $250,000 and of that the building consent would be a small percentage; 0.75-1.5% of the cost of the project, roughly $3,000. Eliminating building consent costs is unlikely to generate noticeable cost savings given the overall magnitude of the building costs. They provide confidence and assurance to all the parties involved by ensuring high standards, and keep records of the project and its legal compliance status.

There is no data on how much time it takes to consent a simply constructed 60m^2 secondary dwelling. The consenting time may already be shorter than 20 days because they are not complicated builds. Anecdotal evidence from councils is that simple two-bedroom houses are consented quickly, generally within 10 days.

Building projects can be delayed for many reasons, i.e. design issues, building product availability, lack of product substitutes, builder's availability, coordination of sub-services, weather, finance. Without data on time divisions, the proposed changes may not be targeted to the right area of the process to affect meaningful time improvements.

1. **The Problem: recommendation**

   That MBIE obtain greater granularity about building data to ensure the problem is properly identified, ie, collect data on consent times for small, simple, single storey houses.

2. Alternative consenting options

We are not convinced that the building consent processes are a major impediment to building simple 60m^2 secondary dwellings. We address the substantial risks later in our submission. However, we set out three alternative options as follows:

Option 1

An alternative approach to increasing the supply of these houses is to shorten the consenting time to 10 days and use MBIE's $71M excess building levy fund to pay councils

for the consents, thereby saving the owner time and money. This process would sit entirely within the existing consenting scheme.

Option 2

Alternatively, the national Multiuse approval scheme with its 10 day consenting timeframe could be utilised for the granny flat scheme. MBIE could use its excess building levy fund to provide a range of multiuse approvals with different layouts, free of charge for owners to select one and submit to council for consent.

Option 3

Lastly, MBIE could write regulations about the form and content of plans and specifications for granny flats and also provide regulations for the inspection of granny flats. More assistance for owners and builders at the design stage would result in benefits flowing through the compliance process. The Building Act already allows for regulations of this type.

These processes would provide the surety provided by the consenting process is not lost to the owners.

The value of BCAs

Everybody involved in a building project benefits from the value and surety that a BCA brings. They ensure compliance with legislation and the building code. This provides surety around structural integrity, fire safety, accessibility and energy efficiency. The role of the BCA contributes to creating houses that are safe and habitable. They provide expertise and guidance through building inspections and ensure the building complies with the plans. They mitigate risks of people living in substandard homes and prevent costly rework, delays or legal issues that may arise from non-compliance. They ensure confidence and assurance in a building project and provides a layer of checking which deters fraud.

The value of planning consent

Planning consent officers are experts in planning and policy. They navigate the district's unique features and understand protection of its values, e.g. heritage, historic, cultural, environmental, urban, rural, industrial, and business sites. They also understand areas subject to natural hazards and areas that are unbuildable due to contamination or toxic hazards. They ensure long-term sustainability of the district or city and sustainability of individual properties.

2. Alternative Consenting Options: recommendations

That MBIE opt for one or more of the following easier options to increase supply of secondary simple 60m^2 dwellings but with fewer risks:

a. Use the existing BCA consenting process, but
    a. shorten the consenting time to 10 days, and
    b. use MBIE's excess 71M building levy fund to pay councils for the consents,

b. Use the Multiuse approval scheme with its 10 day consenting timeframe with
    a. MBIE using its excess building levy fund to provide a range of multiuse approvals with different layouts, and
    b. Making them free of charge for owners to select one and submit to council for consent

c. MBIE could write regulations about the form and content of plans and specifications for granny flats and also provide regulations for the inspection of granny flats. The benefits would flow through the compliance process.

3. Outcome and Principles

The outcomes and principles do not have sufficient focus on quality assurance, liability, long-term asset outcomes, and setting expectations on land use.

Quality assurance and liability

Councils

Removing councils fully from the regulatory process needs to work for all parties - councils, homeowners, lenders, insurers and Licensed Building Practitioners. The regulatory functions that councils provide give homeowners, banks and insurers certainty that the building complies with the minimum requirements of the Building Code. Removing councils from the process shifts the responsibility for certainty to other parties.

The proposals will provide two separate pathways for building a secondary 60m^2 dwelling, and the existing BCA pathway and the new LBP/schedule approved pathway. Therefore, homeowners will continue to have the option of using the existing BCA pathway if they choose. We strongly recommend that the two pathways be kept separate with council BCAs explicitly exempt from regulatory functions or liability in the new process.

The drafting in the proposals is not explicit about whether councils are required to check or regulate anything when they receive the Project Information Memorandum (PIM) request or the proposed Permitted Activity Notice (PAN). It could be read that councils will simply be filing the document and not undertaking compliance work, or it could be read that they will be reviewing granny flat compliance. It needs to be clearly articulated that councils will not

be undertaking building or resource consent compliance and enforcement in the granny flat process.

Under the scheme councils will not receive any building consent fees or resource management fees for granny flat developments but it does not necessarily follow that they will not have any liability. Councils have regulatory expertise. By virtue of their expertise liability exists if they know about a build, that there may be a problem with it, and they do nothing about it.

We strongly recommend clear wording that for those using the granny flat scheme, council BCAs will not be undertaking any regulatory processes nor be liable for any building or planning works carried out under the scheme and for which they have not had a role or contributed towards.

Licensed Building Practitioners (LBPs)

Councils have concerns about the proposals for LBPs to self-certify their work. Councils review their building applications and frequently there is incorrect or missing information. Furthermore, there are significant numbers of failed building inspections from LBPs not building to code nor following the plans. Although there are excellent LBPs, there is a spread of ability which is borne out by the LBP Board having a large backlog of complaints.

We strongly recommend the Government strengthens the LBP scheme to ensure high quality granny flat outcomes.

Without councils' regulatory oversight of LBP designs there are increased risks of buildings being developed on land with hazard risks or over councils' underground services. There are also increased risks of non-compliance with fire regulations, which are drafted in a highly technical style therefore generally difficult to access.

We further recommend the granny-flat schedule be set out clearly in *one* document with relevant Building Act and Resource Management Act rules aligned, e.g. the setbacks and distance from boundary. The format should be accessible at the level of a new LBP graduate and contain wrap around instructions for every aspect including assessment of protected sites, hazardous land, underground services, regional considerations (e.g. setbacks from waterways) and fire rules. We do not support having two documents, a schedule and an NES for LBPs to navigate.

On a final point we consider that the Plumbers, Gasfitters and Drainlayers' scheme also needs strengthening. The move to self-certification has seen notable regulatory failures, including deaths from poor self-certification practices.

Long-term asset outlook for homeowners

The discussion document does not address longer term implications of building under the granny-flat scheme. Owners are building a major asset that they expect to last for at least 50 years. The proposals need to provide certainty for owners and future owners for the activities of selling, buying and fixing their homes. The granny flat scheme should be robust enough stand alone on its own merits and command the confidence of others.

Setting public expectations on land use

Exempting granny flats from the district plan rules raises questions about the purpose of environmental planning. If granny flats do not need to comply with the district plan, why should other buildings have to comply? The policy undermines the district plan.

We recommend there be clear policy explanations on the reasons a secondary 60m^2 dwelling is exempt from District Plan rules because it is important for regulators to set town planning expectations that are reasonable and fair to everyone. If the rules are not fair across all users, there will be disregard for them and councils' ability to regulate will diminish over time.

3. Outcomes and Principles: recommendations:

That the principles include:

a. clarity that there are two separate pathways for building a secondary 60m^2 dwelling:
    i. the LBP/schedule granny-flat pathway which clearly states council BCAs will not be undertaking any regulatory processes nor be liable for any building or planning works carried out under the scheme, and
    ii. the existing council BCA pathway
b. housing safety
    i. strengthen the Licensed Building Practitioner Scheme, and
    ii. ensure there are mechanisms for LBPs to identify hazards (as listed in the next point)
    iii. have the granny-flat schedule be set out clearly in *one* document with relevant Building Act and Resource Management Act rules aligned, e.g. the setbacks and distance from boundary. The format should be accessible at the level of a new LBP graduate and that it contain wrap around instructions for every aspect including assessment of protected sites, hazardous land, underground services, regional considerations (e.g. setbacks from waterways) and fire rules. We do not support having two documents, a schedule and an NES for LBPs to navigate.
c. quality outcomes for building construction and for its 50-year lifetime
d. clear policy explanations on the reasons a secondary 60m^2 dwelling is exempt from District Plan rules.

4. Risks

We have identified risks with the enforcement regime, remedial work, development contributions, garages, disconnect with existing exemptions, limitations of PIMs, unintended consequences of land use, the National Environmental Standard, and the alignment with the definition of "minor residential dwelling".

Enforcement regime

Councils will inevitably receive complaints from neighbours living next door to granny flat constructions if they suspect they are not built to the New Zealand building code (NZBC) or they have a perceived negative impact on their own properties. On investigation and confirmation the building work does not meet the NZBC, building inspectors may issue the owners with a notice to fix. If the owners do not correct the problem, councils may issue an infringement and/or take enforcement action.

The cost of any enforcement action will inevitably have to be funded by ratepayers.

We encourage MBIE to review the enforcement regime and ensure it is fit for purpose for granny flat constructions that use the new exemption provisions, and that there are adequate remedies.

Remedies for building or planning breaches

We have reservations about the proposal to remove the independent council regulatory processes from the granny flat scheme because it will result in a poacher – gamekeeper conflict for licensed building practitioners. Without sufficient strengthening of the LBP regulator there are risks of reduced building quality for these houses.

Building or planning breaches are typically resolved before work has started on any given site. This is the value of the consenting process. The granny flat scheme will make breaches more likely to be identified after the fact which will make them more costly to resolve than if they were brought to light at the design stage.

Owners will have to take expensive private civil action against the builder or other parties involved for a remedy.

We further recommend that s63 Building Act, Notices to Fix, includes the addition of the LBP who did the work as a "specified person" to provide direction to the courts for remedies.

Finally, please note that councils will undertake environmental enforcement under the RMA for planning breaches.

Development contributions and PIMs

There is a financial disincentive for owners to request a PIM or lodge a PAN. Informing council of the project will result in fees for a development contribution and alert councils to revalue and increase rates on their property. Owners could be avoiding $20,000 in development contributions by not notifying therefore the impact of a $1,000 infringement fee will not be a sufficient disincentive. We recommend a much higher infringement fee

especially since the PIM or PAN will be the only mechanism to alert councils the secondary house is being built and they have no other involvement in the project.

PIMs are often requested when the house is designed or in the process of design. We recommend that development contributions be mandatorily payable before the PIM/PAN is issued, and councils have the power to withhold the PIM/PAN pending payment. If the building project does not go ahead due to information from the PIM/PAN, the development contribution could be refunded to the owner.

Councils will maintain the ability to enforce any non-compliances through the courts. However, a current problem councils have enforcing payment of development contributions is that the courts order payment of infringement fees but have no power to order payment of the development contribution.

We also note that some councils charge financial contributions not development contributions. These councils need to be included in the proposals.

We recommend the court process be strengthened to order payment of the development contribution, cost recovery and the council's infringement fee.

Finally, please note that PIMs do not consider regional matters e.g., natural hazard information, setbacks from waterways, or indigenous biodiversity sites which is a gap in the PIM process.

Garages

Where district plans limit the floor area of a dwelling, owners sometimes circumvent the limitation by building a garage addition then converting it to dwelling space without consent, e.g. they build a 60m^2 two-bedroom house with attached double garage of 36m^2 and convert it into a 96m^2 house.

We recommend clear drafting that the net floor area includes all enclosed areas of the building.

Disconnect with the existing exemptions

A further risk is that the proposed building consent exemption will create a disconnect with the existing exemptions in Schedule 1, (ss 3, 3A and 3B), thereby creating confusion. It is inconsistent to retain the existing exemptions as they are when the new exemption allows a larger building footprint and sanitary/cooking facilities.

The exemption schedules need to be able to be consistent with each other and distinguishable so that it is clear which one is being used. We recommend Schedule 1, (ss 3, 3A and 3B), be either revised or removed when the new exemption is adopted.

National Environmental Standard vs National Policy Statement

In urban areas where medium or high-rise zoning is planned, councils do not want single storey dwellings. The effect of secondary 60m^2 dwellings is counter to the NPS-UD and will

have the unintended consequence of decreasing housing density in some areas, essentially an under-utilisation of the land.

Similarly, we foresee issues with granny flats on rural land regarding land use, amenity and reverse sensitivity and potential on-site wastewater system overloading. The granny flat proposals have urban planning rules which do not accord with rural lifestyles. Some councils receive significant pressure for housing on rural lots and the granny flat scheme will undermine district plan zoning.

A potential issue relating to On-site wastewater disposal where there is a propensity to connect to an existing system, which may not already be functioning correctly. If a system is overloaded, this may lead to environmental contamination if the original system has not been designed to meet the new demand. There is also a question of space required to accommodate an expanded system and whether there is sufficient reserve area for a failed system.

The NPS-UD has development criteria for tier 1, 2 and 3 councils which lends itself to mitigating the unintended consequence of underdevelopment.

We recommend that the national planning instrument be the NPS-UD with a granny flat amendment, and that the NPS-UD, NPS-HPL and are aligned and coherent on the matter.

To prevent unintended consequences, we further recommend that councils zone areas suitable for secondary 60m^2 dwellings and exclude sites with severe natural hazards (site instability, severe flooding), and natural heritage overlays.

The rules should address natural hazard risks, e.g. proximity to Mean High Water Springs (MHWS) and rivers or streams. Coastal hazards and flood risk areas are not always mapped in an overlay.

We agree that subdivision, matters of national importance, the *use* of minor residential units and regional plan rules are not managed through an NPS (or NES) for minor residential units.

The NES proposal will have the effect of mismatching NES rules with district plans which effectively undermines the District Plan, e.g:

- permeable ground may decrease from 50 to 20% thereby increasing storm water from 50 to 70%, without wrap around council planning
- flood prone areas may not have storm water capacity to take the extra load, some houses may get built but not be able to connect
- may end up with very small urban lots

An NPS would make it mandatory for councils to take a coherent approach with their planning and is our recommended approach.

If an NES is still progressed over a suitable amendment to a NPS, we recommend the use of an NES similar to the NES-CS (contaminated land) there can be permitted activity criteria (i.e. yards, size etc) and also the requirement to notify to Council, including drainage plans.

We support site coverage 50% for residential zones and that there be a maximum site coverage for rural zones. We support a 30% permeable surface. Our recommended setback distances are 2m to front boundary, and 1.5 m to side and rear boundaries to his help mitigate noise emissions from close living of multiple dwellings.

If the policy is to enable a minor dwelling in association with an existing dwelling then a maximum radial distance should be set for rural properties e.g. close to the existing dwelling so the productive nature of the land is not fragmented.

Minor Residential Dwelling definition

The definition of Minor Residential Dwelling in the National Planning Standards 2019 is:

> "a self-contained residential unit that is ancillary to the principal residential unit and is held in common ownership with the principal residential unit on the same site."

We have a concern that "ancillary" is not consistent with "self-contained". A dictionary definition of ancillary is "subservient, supporting or subordinate to the main activity". In this case the main activity is the residential unit and it is unclear how one self-contained house is ancillary to another self-contained house. The potential risk is that the matter would be taken to court to decide the question.

We recommend clarification of whether a 60m^2 secondary dwelling meets the definition of a Minor Residential Dwelling.

d. Risks: recommendations:

Enforcement regime

a. we encourage MBIE to review the enforcement regime and ensure it is fit for purpose for granny flat constructions that use the new exemption provisions, and that there are adequate remedies

Remedies for building or planning breaches

b. note that under the granny flat scheme, building and planning breaches are more likely to be identified during construction or after completion, rather than at the design stage, making them more expensive to remedy

c. note that owners will have to take expensive private civil action against the builder or other parties involved for a remedy

d. add "the person who did the work" to s63 Building Act, Notices to Fix, as a "specified person" to provide direction to the courts for remedies

e. note that councils would undertake environmental enforcement under the RMA for planning breaches

Development contributions and PIMs

f. that the granny flat policy explicitly states that the PIM or PAN notification processes are for council records only, that no building or planning regulatory functions are

required of councils, and they are not liable for any building or resource consent non-compliances

g. the infringement fee for non-notification of the building project be increased substantially from $1,000, given that the owners could save around $20,000 in development contributions

h. that development contributions be mandatorily payable before the PIM/PAN is issued, and councils have the power to withhold the PIM/PAN pending payment. If the building project does not go ahead due to information from the PIM/PAN, the development contribution could be refunded to the owner

i. that court process be strengthened to order payment of the development contribution, cost recovery and the council's infringement fee

j. Include a process for councils that charge financial contributions rather than development contributions

k. that MBIE notes PIMs do not consider regional matters e.g. natural hazard information, setbacks from waterways, or indigenous biodiversity sites

Garages

l. it is clearly drafted that the net floor area includes all enclosed areas of the building (to avoid later conversion of garages to dwelling space)

Disconnect with existing building exemptions

m. that Schedule 1, (clauses 3, 3A and 3B), be be consistent with each other and distinguishable so that it is clear which one is being used

National Environmental Standard vs National Policy Statement

m. that the national planning instrument be the NPS-UD with a granny flat amendment, and that the NPS-UD, NPS-HPL and are aligned and coherent on the matter

n. to prevent unintended consequences, we further recommend that councils zone areas suitable for secondary 60m2 dwellings and exclude sites with severe natural hazards (site instability, severe flooding), and natural heritage overlays

o. the rules address natural hazard risks, e.g. proximity to Mean High Water Springs (MHWS) and rivers or streams. Coastal hazards and flood risk areas are not always mapped in an overlay

p. note that we agree subdivision, matters of national importance, the use of minor residential units and regional plan rules are not managed through an NPS (or NES) for minor residential units

q. that councils zone areas suitable for secondary 60m2 dwellings, and exclude sites with severe natural hazards (e.g. site instability, severe flooding), natural heritage overlays, reverse sensitivity issues, or decreased density

r. if an NES is progressed we recommend the following:

    a. site coverage of 50% for residential zones

    b. that there be a maximum site coverage for rural zones

    c. that there be a maximum radial distance from the existing dwelling for rural properties

    d. that there be 30% permeable surface

    e. setbacks be 2m to front boundary and 1.5m to side and rear boundaries

Definition of Minor Residential Dwelling

s. there be clarification of whether a 60m2 secondary dwelling meets the definition of a Minor Residential Dwelling

Taituarā - Local Government Professionals Aotearoa
Level 9, 85 The Terrace, Wellington
PO Box 10373, Wellington 6143

T 04 978 1280
W taituara.org.nz
E info@taituara.org.nz