

# Perceived barriers to getting resource and building consents for medium-density housing

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- staff of the New Zealand Productivity Commission
- developers, architects, designers, project managers and other industry practitioners.



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### Abstract

This report outlines experiences that industry practitioners and councils have had with resource and building consent legislation and processes as they apply to medium-density housing. It identifies some of the issues and barriers that the building industry members report in getting consent applications approved and Code Compliance Certificates issued. The report also identifies actions already under way to address the issues and suggests further steps to make these processes easier, more responsive and more efficient. Two case studies illustrate various aspects of the consent process for medium-density housing developments.

### Keywords

Medium-density housing, MDH, resource consent, building consent, Building Code.



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## Executive summary

Medium-density housing (MDH) – multi-unit dwellings up to 6 storeys<sup>1</sup> – is becoming increasingly common in New Zealand because of the potential benefits such housing can offer. These include more efficient use of a finite supply of land, potential for greater cost-effectiveness in provision of infrastructure and services and potential for more social connectedness for dwellers and communities.

The government considers MDH a part of the solution to address New Zealand's housing affordability challenges. Many of the larger councils in New Zealand are currently making provision for the development of more MDH in their districts as their response to the challenge.

MDH construction, as with all new builds, needs to be consented before construction can begin. MDH needs building consent and often resource consent too. Both processes impact on construction timeframes and costs.

Changes to resource management legislation are currently being implemented. These aim to remove some legislative stumbling blocks to development and construction generally. However, there is nothing currently in train to address consenting specifically for MDH to make it easier, cheaper and faster. This is in spite of the clear need for expeditious, flexible and consistent processes so industry can respond to central and local government's push to deliver more housing. Currently, these processes can be viewed by the building industry as hoops to jump through, barriers to negotiate or additional costs to carry rather than enablers. These perceptions may impact on their choices and ability to build MDH. We have also explored council and consenting authorities' views on these processes and recorded their views on the barriers and challenges in working with the current processes.

This BRANZ exploratory research is based primarily on guided interviews with council staff, developers, architects and regulatory experts on their experiences around the consenting processes for MDH. The interviews were based around a set of key questions on their experience of the MDH consenting process. The interview guide is appended as part of a full description of the methodology (see Appendix A). Two case studies are also included to illustrate real-life experiences in working through resource and building consent processes (see section 5).

The interviews focused on three basic questions:

- What are some of the current considerations when applying for MDH resource and building consents?
- What, if any, are the issues associated with resource and building consent processes for MDH?
- How can issues associated with resource and building consent processes for MDH be addressed?

This report delivers some preliminary findings on these issues.

The key finding is that there is a general consensus amongst both builders and consenting authorities that there are challenges in the MDH consent processes that, if resolved, would make a significant difference to those building and consenting MDH.

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<sup>1</sup> This is the current BRANZ working definition for medium-density housing.



One of the main areas of concern comes from opinions provided by builders and developers. In their view, perceptions around current consenting processes are having a significant negative impact for some on their ability to deliver MDH.

Our research found that, for builders and developers, issues with MDH consenting fall into three areas:

- The legal framework itself, which includes timing (i.e. the 'stop the clock' provisions).
- How legal requirements are implemented and understood by industry.
- Perceptions about the level of local government and industry competency in understanding and complying with the requirements.

Some industry stakeholders hold the view that there are issues with both the legislative framework and its implementation. Some industry stakeholders feel that too much discretion is provided to councils around resource consents, and this results in confusing and uncertain design requirements, notification decisions and condition setting. A lack of clarity and uncertainty about the time it takes to receive a consent can have significant cost implications for the industry.

There is also a view that there is inconsistency around the time it takes to receive an appropriately documented consent.

For their part, councils expressed the view that developers often do not provide all the necessary documentation with their initial application because of an apparent lack of understanding of the requirements. Some councils consider that, while there are many good MDH development companies, there are now a number who are unfamiliar with building MDH. Some of these companies are undertaking work beyond their experience and capability.

Both councils and industry participants agreed that councils can have difficulty in attracting and retaining staff with the necessary capability to deal with complex building consent applications. This does not help the situation.

The view of both councils and builders/developers that there are Building Code-related issues with MDH stem mostly from the fact that aspects of the Building Code were not designed for the current range of MDH typologies. The lack of clarity about how the Building Code should be applied means architects and designers wanting to design MDH need to develop their own alternative methods. This can be a costly exercise. In addition, councils are often reluctant to agree to these proposed methods due to uncertainty about the potential risks.

Building Code issues with MDH relate mostly to clauses:

- *G6 Airborne and impact sound* – some believe it is out of date and does not go far enough to protect consumers
- *E2 External moisture* – Acceptable Solution E2/AS1 does not apply to mid-rise MDH over a certain height
- *C Protection from fire* – some believe specific aspects of clause C are overly complex, confusing and expensive to comply with.

This research explored to what extent these issues are being addressed. We found that changes being implemented to resource management legislation are expected to make district plans and planning documents more consistent and clear and reduce what

some see as overly onerous notification requirements. There are some likely and potential changes to the Building Code that would have an impact.

Both councils and builders/developers provided a number of ideas for how consenting might be improved. These included suggestions that central government might take a more active role by issuing national policy statements to councils about their planning documents. It was also suggested that government might even establish urban development authorities to fast track developments and override district plans.

A clear message was received as part of this research that both councils and builders/developers agree on the need for better guidance and information to rely on. The view was that an accessible, centre of excellence type of information resource would be useful. Subsequently, this research recommends that education and information materials be provided that directly target MDH for use by councils and the industry. There is a consensus view that a more concerted effort should be made for information to be shared across the MDH spectrum. Another agreed recommendation is for further research, particularly international research about MDH consent processes, where New Zealand has much to learn from the experiences of other countries.



## 1. Introduction

There is growing discussion around MDH as it becomes increasingly common in New Zealand, but what precisely is it? For the purpose of the research reported here, BRANZ has defined MDH as multi-unit dwellings up to 6 storeys (Bryson & Allen, 2017).

Although the term medium-density housing is widely used, there is no consistency in the use of the term (Bryson & Allen, 2017). Various definitions focus on site size, building height, the number of units per site or number of dwellings per hectare as defining features. Some definitions include house typology.

The BRANZ definition encompasses all the typologies of building that are commonly thought of as MDH. The definition includes (but is not limited to):

- apartments that are up to 6 storeys (medium-rise apartments)
- townhouses, flats and terraced housing
- commercial conversions
- residential homes that have been divided (also referred to as internal subdivision).

The potential social, economic and environmental benefits that MDH can provide are well recognised and established.

Some of these benefits evident from our literature and case study research include:

- more efficient use of a finite supply of land
- retaining the ability to use rural land for productive purposes
- greater cost-effectiveness in the provision of infrastructure and services
- lowered costs for residents from reduced time spent travelling
- more concentrated demand for public transport making it more cost-effective and ultimately providing a better quality of service
- the possibility of more social connectedness and vitality.

There is increasing pressure in some parts of New Zealand to promote more sustainable forms of urban development because of continued urban growth. MDH is an attractive solution for planners at both national and local level because it enables more houses to be built on less land.

Housing affordability has become a bigger issue in recent years, and many planners see the increase in MDH as a positive development to address this. This is not only because MDH is a mechanism to increase supply of housing. MDH can be more affordable because economies of scale can be achieved from sharing common areas.

More MDH is being built. Building consents in New Zealand have risen considerably since reaching a low in 2011. Statistics New Zealand (2016) published MDH building consents for 2016, comparing them with those from a year earlier:

- 4,401 townhouses, flats, and units (up 20%).
- 2,307 apartments (down 9.1%).
- 1,952 retirement village units (up 2.8%).

Many of these consents would fall within the definition for MDH provided in this report, but defining exact numbers is challenging. Council officials were asked whether they kept information specifically on the number of MDH buildings that have been consented in their districts. They were also asked if they had data on how many MDH



buildings would be coming on stream in the short or medium term. Having such information would enable them to undertake strategic planning, including planning for the staff and resources required for the resource and building consent functions expected to arise.

Unfortunately, the way current systems operate means that none of the council officials interviewed as part of this research were able to access and provide MDH-specific information in relation to consents. Auckland Council officials, however, advised that information and statistics were being generated to show how many MDH units were being built in Special Housing Areas for the purpose of reporting to government. This was helpful for our research.

The *National Construction Pipeline Report 2016* (MBIE, BRANZ & Pacifecon, 2016) states that:

multi-unit dwelling consents represented more than one in every four (30%) consented dwellings in 2015 and is projected to account for more than one in every three (40%) by the end of the forecast period [2021].

The report also provides information on the previous consents and forecasts for retirement units and apartments (some of which would be included in the BRANZ definition of MDH).

The RCG Development Tracker (Greater Auckland, 2017) contains a good indicative database and interactive map of MDH buildings built in the last 5 years across New Zealand. It also identifies MDH development planned for the next few years.

The information about current and projected consents points to a growing MDH market in the coming years.

## 1.1 The focus of this research

The research reported here is part of the BRANZ programme of work “Enabling the industry to provide medium-density housing” and answers three basic questions:

- What are some of the current considerations when applying for MDH resource and building consent?
- What, if any, are the issues associated with resource and building consent processes for MDH?
- How can some of the issues that are associated with resource and building consent processes for MDH be addressed?

This report is intended to be a preliminary piece and is not intended to be an in-depth analysis of every consent problem or proposed solution as it applies to MDH. Research findings are based on interviews with stakeholders across New Zealand in central and local government and industry. The conclusions reached are based on the information, perceptions and views they have provided.

This report has been informed by recent literature and by interviews with council officials, developers, architects and regulatory experts. There is a particular focus on legal requirements and compliance paths and their experiences of the processes that apply to the construction of MDH. The content of the report is presented at a level that assumes readers have a working knowledge of consent processes, applicable legislation and the Building Code.



Participants in this study included the following:

- 15 council officials working in the resource and building consenting areas. Face-to-face interviews were held with Auckland Council, Wellington City Council and Christchurch City Council officials. Telephone interviews were conducted with Hamilton City Council and Queenstown Lakes City Council officials. In addition, all councils were invited to respond to our questionnaire.
- 10 developers, architects and project managers involved in MDH, including consenting,
- Three Ministry of Business, Innovation and Employment (MBIE) staff.
- Two Ministry for the Environment (MfE) staff
- Two Productivity Commission officials.

A full description of the methodology undertaken, including the interview guide, can be found in Appendix A.

## 2. Resource and building consent requirements for MDH

### 2.1 Resource consent requirements for MDH

Resource consents are permits that allow an individual or organisation to use or take water, land (including subdivision) or coastal resources. They also allow the discharge of water or wastes into air, water or onto land. Depending on circumstances, a land use consent may be needed for particular activities such as extending an existing building or constructing a new one. In most instances, a consent is needed for subdivision, dividing land or buildings for separate ownership.

Whether a resource consent is required, and what type, depends on the type of activity being undertaken and how the activity is classified in the local district or regional plan. Activities that need a resource consent are classified in territorial authority plans as being controlled, restricted discretionary, discretionary or non-complying. The territorial authority must grant a resource consent for a controlled activity (with a couple of exceptions). The council can refuse to grant a resource consent for a restricted discretionary, discretionary or non-complying activity, although the decision can be appealed.

The Resource Management Act 1991 (RMA) sets core requirements. They vary between regional and territorial local authorities (councils). Regional councils are generally responsible for environmental and public transport matters and are subject to the Local Government Act 2002. They have a key role under the Resource Management Act 1991, which charges them with the integrated management of the natural and physical resources of a region (Environment Guide, 2014). Specifically, regional councils are responsible for:

- sustainable regional wellbeing
- managing the effects of using freshwater, land, air and coastal waters by developing regional policy statements and the issuing of consents
- managing rivers, mitigating soil erosion and flood control
- regional emergency management and civil defence preparedness
- regional land transport planning and contracting passenger services
- harbour navigation and safety, oil spills and other marine pollution (Department of Internal Affairs, 2011).

The Quality Planning website states:

Section 30 of the RMA sets out the statutory responsibilities of regional councils. These include controlling the use of land for soil conservation purposes, maintenance and enhancement of water quality and ecosystems, and controlling discharges of contaminants. Accelerated loads of sediment have the ability to change the physical, chemical, or biological condition of water and, therefore, fall within the definition of 'contaminant' under the RMA ...

Section 31(1) of the RMA sets out the statutory responsibilities for territorial authorities. Controlling the use, development or subdivision of land covers a wide range of issues, including vegetation cover, amenity values, infrastructure, roading, and natural hazards. As earthworks can have adverse effects on all these matters,



territorial authorities will need to evaluate how these matters are to be appropriately managed.

Section 106 of the RMA amongst other things requires territorial authorities to consider land stability issues (erosion, falling debris, subsidence, slippage and inundation) and access when determining subdivision applications. (Quality Planning, 2017)

In addition, regional authorities are required to become building consent authorities (BCAs) to undertake building control work on dams (MBIE, 2017).

Each of the urban territorial authorities participating in this research has its own practices, and some have additional requirements before a resource consent will be issued. Section 104 of the RMA sets out decision-making criteria. Councils may have additional requirements determined by the dictates of their district plans and by requirements and definitions for MDH unique to each council. These establish the rules that developers or their agents must follow. In addition, section 104 allows a council to consider “any other matter the consent authority considers relevant and reasonably necessary to determine the application”.

### 2.1.1 Time limits to issue consents

The RMA sets statutory time limits for local authorities to process resource consent applications. The Ministry for the Environment’s website contains extensive information on the type and number of resource consents issued. It also includes the fees charged for resource consents by different councils, the number of consents approved within time limits and the number requiring pre-application meetings. Information collected by the Ministry for the Environment indicates that a high proportion of consents are processed within the statutory time limits. In 2014/15, for example, 96% of all new resource consents were processed within the statutory time limits (Ministry for the Environment, 2016b). These statistics, however, do not take account of whether the councils issuing the consents made use of the ‘stop the clock’ provisions in the RMA. Under these provisions, when councils request further information from an applicant, the clock is stopped and not restarted until the information has been provided. This means that, while processing time may be within limits, actual time may exceed that. It is not possible to know how often that happens and what total timeframes for consent are using this data.

The Resource Legislation Amendment Act 2017, which became law on 18 April 2017, made significant changes to five different Acts, including the RMA (Ministry for the Environment, 2017). This is discussed further in section 4.1.1. A key aim of the changes is to decrease the time it takes to issue consents. There are also changes to the circumstances in which consents must be notified.

The length of time it takes from acquiring to fully developing a site varies considerably (setting aside questions of land banking). It depends on the size and nature of a residential property development and therefore the number of planning resource management steps required. Grimes and Mitchell (2015) note that the key factors impacting on the length of the planning process include:

- the size and scale of the development
- the initial planning designation of the land and the scale of any change of use via a plan change, if a plan change is required
- whether the development proposal conforms to the existing planning rules

- whether the proposed development is a radical change relative to the existing land use, style and density of other developments in the surrounding area
- the quality of the information provided by the developer to the council
- whether council officers support or disagree with the development proposal
- the level of earthworks required to develop building platforms
- the availability of infrastructure.

The presence of many of these factors and their impact on the time it takes to make decisions were confirmed by developers, architects and councils interviewed as part of this research.

### 2.1.2 District plans

District plans made under the RMA for the main urban centres typically include zones for activities and manage the bulk, location and type of development taking place. Relevant territorial rules and resource consent requirements stipulate site coverage, building height and other bulk and location requirements. Current land use zoning in the main centres typically has intensive and medium to high-rise housing centered around CBDs and the CBD fringe and the metro-centres. MDH may also be permitted in the inner suburbs or further out from the CBD.

Each council follows its own process when developing and reviewing district plans. The following is a basic description of the district plan provisions and resource consent requirements that currently apply to MDH in the New Zealand cities where the most MDH development is occurring. It provides a snapshot of the ever-evolving district planning processes in Auckland, Wellington and Christchurch and the variability of the status of design guides or manuals.

#### Auckland Council

The Auckland Plan was released by Auckland Council in March 2012. It provides estimates of new housing demand by urban centre classification and estimates of demand outside the urban limits out to 2040. In 2016, the Auckland Unitary Plan, a planning instrument to implement the Auckland Plan, replaced the former Regional Policy Statement and 13 district and regional plans. The Unitary Plan represents a significant change in the rules that govern how the council controls the use of land and resources in Auckland. It also sets out what applicants need to consider when seeking resource consent.

The Unitary Plan sets out land zoning at a detailed level and determines what buildings and associated infrastructure can be built and where it can be built. At the time of writing, the Unitary Plan is only operating in part. This is because appeals to the Environment Court and High Court are unresolved. If there are any outstanding challenges, those affected provisions cannot be considered operative, and any relevant legacy plan provisions will remain.

Until then, the council has provided thorough advice for those making a resource consent application (Auckland Council, 2016). There are rules that set out what activities may or may not need a resource consent. At the time of writing, these are laid out in the Proposed Auckland Unitary Plan (PAUP) – Decisions Version and the district and regional plans of the former councils.

The Unitary Plan, once fully operative, will allow for more MDH to be built in many parts of inner suburbs, with some developments up to 4 storeys, including in the following zones:



- Terrace House and Apartment Building (THAB) Zone: up to 4-storey apartments.
- Mixed Housing Urban (MHU) Zone: up to 3-storey terraces.
- Mixed Housing Suburban (MHS) Zone: up to 2-storey terraces.

### *Auckland Council design advice and requirements*

The Auckland Design Manual (ADM) (Auckland Council, 2017a) is a resource for professionals involved in design, building and development. The ADM illustrates how the outcomes sought by the Unitary Plan might be achieved.

The ADM is not part of the Unitary Plan and is not incorporated by reference in terms of the provisions of Part 3 of Schedule 1 to the Resource Management Act 1991. This means that the ADM includes matters that are outside the scope of the RMA and therefore the Unitary Plan (in other words, they are not mandatory). The ADM influences the council's advice and forms the basis of the Built Environment Unit's best-practice urban design advice, particularly at pre-application stage. However, its stated aim is not to drive council's decision making, and applications will not necessarily be declined where MDH development fails to meet best practice.

The three architects interviewed as part of this study remarked that the ADM is limited in its scope in some respects. The view from this group was that they often paid more attention to the Unitary Plan's development controls, which were considered to be relatively well devised.

Auckland Council encourages the use of design statements for developments across the Auckland region. Design statements, whilst not mandatory, are intended to present the analysis and thinking behind the design of a proposed development.

Some projects first need to be reviewed by the Auckland Design Panel. The council determines whether an application should be reviewed by the panel according to triggers set out in a terms of reference document, which outlines the process. Projects that go to the panel are usually at the pre-lodgement stage of the resource consent process. The terms of reference note that recommendations from the panel "are to assist Council officers in forming their professional opinions with respect to a proposal and the requirements of the District Plan" (Auckland Design Office, 2017, p. 6). They are not intended to be binding recommendations. The triggers include large-scale residential developments over 20 units and any locally significant development that council officers believe would benefit from independent urban design review.

In July 2016, the Auckland Unitary Plan Independent Hearings Panel made its recommendations to the council (Auckland Council, 2017b). The panel recommended that Auckland Council use assessment criteria to consider whether objectives or policies within the PAUP are being or have been met. Developers interviewed as part of this study consider even the assessment criteria were written in a way that was prescriptive and read more in the nature of rules.

Review of documents from the Independent Hearings Panel indicate matters relating to amenity were not included and that they considered such matters to be beyond the legal power of a planning document.



The Independent Hearings Panel redrafted the matters for discretion and the assessment criteria.<sup>2</sup> The redrafting intends to make the actual matters of discretion clearer and more specific. The assessment criteria are drafted as matters to consider in assessment as opposed to rules. The redrafting has also been undertaken to better align with, and in some cases link to, the zone policies. In Auckland, according to developers participating in this research, the view is that the use of design manuals and assessment criteria is overly prescriptive. This has not found favour with this group of participants. This was considered to go against the aims of the Regional Policy Statement. The Independent Hearings Panel expressed their view as follows:

Good design is based on principles rather than rules. Mere reference to good design or the listing of preferred design principles is ill-suited to a regulatory framework which imposes binary 'grant/decline' outcomes. Discretionary decision-making must be exercised on the basis of relevant and clear objectives, policies and assessment criteria rather than on subjective preferences.<sup>3</sup>

### Wellington City Council

Wellington City Council deals with two types of resource consents: subdivision and land use consents. Greater Wellington Regional Council looks after all other types of resource consents, and this is consistent with their functions and is the case for all regional councils in New Zealand.

The Wellington City District Plan (Wellington City Council, 2017), operative since 2000 and subject to rolling review chapter by chapter, sets goals for proposed housing intensification. Residential development is encouraged within the existing footprint of the urban area of Wellington City. Intensification means housing developments must incorporate a greater mix of housing typologies denser than the current predominantly low-density single detached dwellings. To deliver intensification, planning in Wellington aims to incorporate MDH typologies that result in more dwellings while using less land.

The district plan provides for "new multi-unit developments" within the Inner and Outer Residential Areas and the Coastal Edge. The district plan states that the council will encourage new multi-unit developments to locate on "windfall sites"<sup>4</sup> and undeveloped residentially zoned properties. Windfall sites are loosely defined as relatively large properties that are located within an established residential area but have never been developed for residential purposes. The district plan says that, because these sites have not been used for residential purposes, their redevelopment generally does not lead to a loss of existing residential character.

There is an emphasis on maintaining existing character and amenity in these areas. Chapter 4 of the Wellington City District Plan describes medium-density residential areas as tightly defined residential areas where high-quality medium-density housing

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<sup>2</sup> Report to Auckland Council: Hearing topics 059–063: Residential zones.

<http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/unitaryplan/Documents/ihprecommendations/ihp059to063residentialzones.pdf>

<sup>3</sup> Report to Auckland Council: Overview of recommendations on the proposed Auckland Unitary Plan.

<http://temp.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/unitaryplan/Documents/ihprecommendations/ihpoverviewofrecommendations.pdf>

<sup>4</sup> This term was used by a BCA official participating in this research.



will be actively encouraged. The provisions of the plan allow for medium-density residential development of 2–3 storeys in height.

In relation to the Inner Residential Area, the district plan notes:

Any proposal comprising two or more units within the Inner Residential Area will be considered as a multi-unit development. New multi-unit development can significantly alter townscape character, particularly where smaller sites are amalgamated and established development patterns are changed. In response the Council has placed controls on the design of multi-unit developments within the Inner Residential Area ... To aid the assessment of new multi-unit development the Council has incorporated, as part of this Plan, design guides for neighbourhoods within the Inner Residential Areas. (Wellington City Council, 2017)

All new multi-unit developments within the Inner Residential Area will be assessed against the content of the Residential Design Guide 2014.<sup>5</sup> This is to ensure that the proposed buildings (and associated spaces) make a positive contribution to the local townscape. The Design Guide is incorporated by reference in terms of the provisions of Part 3 of Schedule 1 to the Resource Management Act 1991. Material incorporated by reference in a plan or proposed plan has legal effect as part of the plan or proposed plan. This is different in Auckland where the Auckland Design Manual is not incorporated by reference and so does not have the same legal status.

#### Christchurch City Council

Much in Canterbury has been influenced by the earthquakes in 2010 and 2011, including district plans. Christchurch City Council has two district plans – the Christchurch City Plan and the Banks Peninsula District Plan – that define areas (zones) for residential or industrial activities. Each has its own set of rules.

The Christchurch City Plan and the Banks Peninsula District Plan are under review at the time of writing, and the review is expected to be completed by the end of 2017. The end result will be the Christchurch District Plan. Property zonings are affected by the review, and the Proposed Christchurch Replacement District Plan (Christchurch City Council, 2017) contains information on new zones and the corresponding rules. While MDH developments are already encouraged in Christchurch's inner suburbs through the district plan, review of Christchurch City Council's district plans will identify other appropriate areas and enable intensification in these areas.

The provisions in the Proposed Christchurch Replacement District Plan relating to the Residential Medium Density Zone adopts a widely used approach. This defines medium-density residential development in terms of the number of households per hectare (Environmental Management Services, 2015). Specifically, it refers to a site that delivers:

- a minimum density of 30 households per hectare (one unit per 330 m<sup>2</sup>)
- a maximum density of 65 households per hectare (one unit per 150 m<sup>2</sup>).

Under the Canterbury Earthquake Recovery Act 2011 and its replacement, the Greater Christchurch Regeneration Act 2016, recovery (now regeneration) plans are also special planning instruments to respond to the Canterbury earthquakes. A package of

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<sup>5</sup> The WCC Residential Design Guide can be found at [https://wellington.govt.nz/~/\\_/media/your-council/plans-policies-and-bylaws/district-plan/volume02/files/v2residential.pdf?la=en](https://wellington.govt.nz/~/_/media/your-council/plans-policies-and-bylaws/district-plan/volume02/files/v2residential.pdf?la=en)



residential intensification rules was introduced into the Christchurch City Plan in December 2013, as directed by the Land Use Recovery Plan (LURP).

The LURP directed the council to put in place land use policies and rules to assist rebuilding and recovery of communities (including housing and businesses) that have been disrupted by the earthquakes. The rules promote infill housing and intensification as a way of quickly increasing the availability of residential accommodation, without changing the overall character of residential areas (Christchurch City Council, 2017c).

Christchurch City Council has published an urban design guide for building multi-unit housing in Living 3 zones (Christchurch City Council, 2017a). The guide notes that it provides advice on interpreting the City Plan urban design, appearance and amenity assessment matters outlined in Part 2 of the City Plan.

There are two tiers of criteria in the design guide:

- The 'shoulds' indicate the basic requirements that must be met in order to get resource consent.
- The 'encourages' are the 'nice to haves' that result in a higher-quality development.

The Christchurch Urban Design Guide is not incorporated in the way that the Wellington Residential Design Guide is incorporated under the RMA as a legal instrument. It merely refers to requirements in the plan that are legal requirements and then sets out further design principles that would be preferable (nice to have). Developers participating in this research reported this variation across territorial authorities to be unhelpful.

## 2.2 Building consent requirements for MDH

Compliance with the Building Code is the primary driver of the building consent process. Some important aspects related to building consent applications are:

- Building Code performance requirements
- civil actions
- pre-application meetings
- restricted building work
- development contributions.

Brief comments are made here about building consent-related legal requirements. This is for the purpose of context and because these requirements have repeatedly come up as general themes when discussing building consent issues with councils and the industry.

Under section 49 of the Building Act 2004, a BCA:

must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.

This requirement is important to keep in mind when thinking about a council deciding whether to grant a building consent and the type of considerations that form part of such a decision.

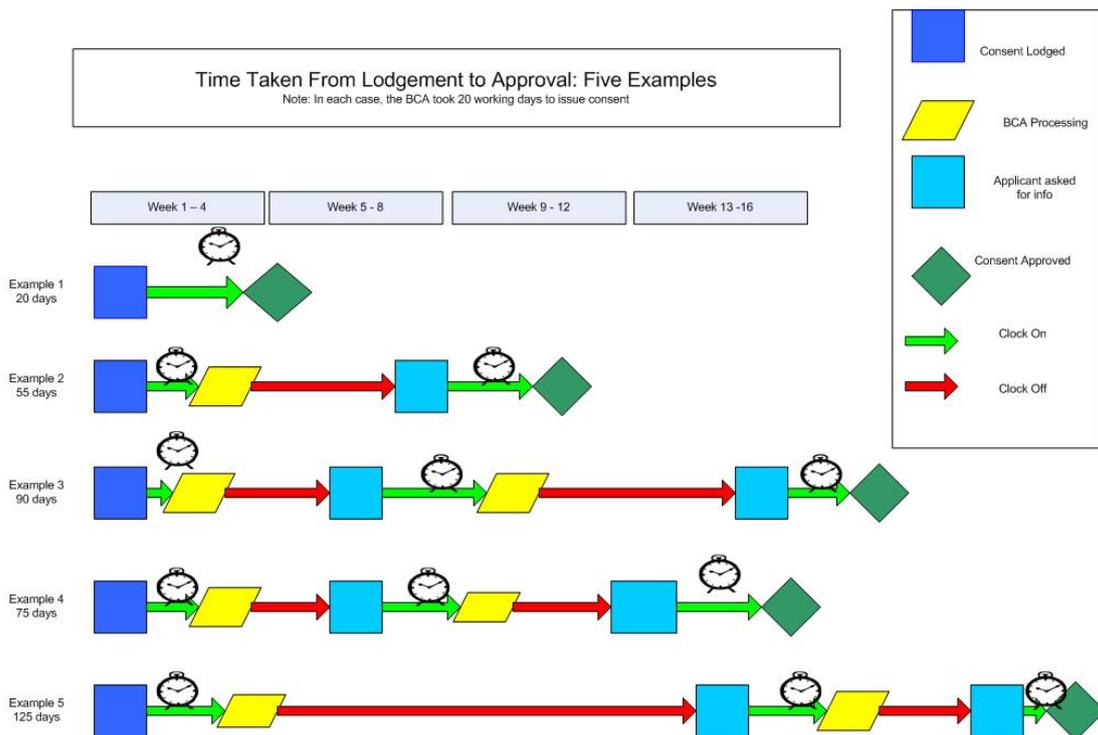


The Building Code sets out an objective and prescribes functional and performance requirements that buildings must comply with in their intended use. (The Building Code is found in Schedule 1 of the Building Regulations 1992. Although those regulations have been revoked, Schedule 1 remains in force.)

The building consent processes employed by councils vary to some extent, but the essence is captured in *Guide to applying for a building consent (residential buildings)* (Department of Building and Housing, 2010). This document provides a useful overview of the building consent process. It also describes the requirements and the level of documentation and information that BCAs should receive when a consent application is lodged.

BCAs must process applications for a building consent within 20 working days of being lodged. They can, however, request relevant information that is missing from the original application, which effectively stops the clock until the information is received.

All councils interviewed as part of this research use a 'stop the clock' mechanism, if required, to request further information or if the required fees have not been paid. This mechanism is used by BCAs to ensure they have the required information prior to decision making. Using this mechanism means that BCAs are able to meet performance and accreditation requirements because they can still show that most applications were decided within the 20-working day timeframe. The result can be that applications can take considerably longer to progress in real time (Figure 1).



**Figure 1. Examples of timeframes for processing consent applications.**

Some BCAs commented that developers are either not aware of or do not accept the validity of the 'stop the clock' mechanism. This means they expect consents to be approved within 20 working days despite not having provided all the required information and documentation at the outset.

## 2.2.1 Building Code performance requirements

The Building Code sets performance-based requirements for all new buildings. Code compliance can be demonstrated in a number of ways, including through the use of Acceptable Solutions, Verification Methods or alternative methods. (Alternative methods become Alternative Solutions if they are supported by expert opinion and are accepted by a BCA as complying with the Building Code.) The Building Code, being performance-based, allows for innovation – applicants have the freedom to propose an innovative solution.

Acceptable Solutions are prescriptive guidelines outlining what works for what purpose. Verification Methods outline the testing and options for compliance necessary to meet the Building Code. If a building design/finished building fully complies with an Acceptable Solution or Verification Method, a building consent/Code Compliance Certificate must be issued by the BCA.

An alternative method differs, in part or wholly, from what is set out in an Acceptable Solution or Verification Method. There may be a number of reasons for the use of an alternative method in a consent application. There may not be an Acceptable Solution or Verification Method for the proposed construction. The building work may incorporate design features that fall outside the scope of an Acceptable Solution or Verification Method. The licensed building practitioner (designer, architect, engineer) may not want to use an Acceptable Solution or Verification Method. Therefore, the onus is on them to prove that their alternative method meets a particular part of the Building Code and to prove to the BCA that their approach is satisfactory.

Building and design professionals largely rely on their own experience for learning about and determining how best to move to a new or non-standard technique through the building consent process. They also rely on the experience of their peers. The Productivity Commission (2012) considered costs of using this process would be lower if there was more guidance about what is required for an alternative method to comply with the Building Code.

Changes are made to the Building Code from time to time to ensure that it reflects the latest research, knowledge and building practices. However, the Building Code itself has changed little over time. Recent changes, for example, have included the introduction of clause F9, Acceptable Solution and Verification Method information. These are provided for in standards referenced in the Building Code Acceptable Solutions and Verification Methods. Standards are documents that define materials, methods, processes and practices. Over 200 Australian and New Zealand standards are referenced, although few are actually cited, for example, NZS 3604:2011 *Timber-framed buildings* and NZS 4223.3:2016 *Glazing in buildings – Part 3: Human impact safety requirements*. New editions of many Acceptable Solutions and Verification Methods, with referenced standards, were introduced on 1 January 2017.

## 2.2.2 Civil actions

BCAs issue Code Compliance Certificates, which verify that the building work complies with the Building Code. If the building is subsequently found to be defective, the homeowner can take a civil action against parties for damages. Under tort law, a party can be held liable if:

- there is a duty of care to the claimant
- the failure to take care caused the damage

- the damage caused the loss to the client
- the loss was foreseeable.

All of these links need to be established for a claim to be upheld.

In New Zealand, the rule of joint and several liability applies to the costs of remediation where building work is subsequently found to be defective. Under joint and several liability, the plaintiff may collect from all or any one of the liable parties until the judgment is paid in full. If any of the liable parties do not have enough money or assets to pay an equal share of the award, the others must make up the difference. Territorial authority BCAs have the power to levy rates. They have deep pockets relative to other parties and are more able to meet claims for defective buildings, while the typically small firms in the building industry do not. As a result, BCAs often become “the last man standing” (New Zealand Productivity Commission, 2012).

BCAs will often respond in a conservative manner to providing approvals. This is in a context of potential for the liability. For some councils, liability costs have been significant in the wake of the leaky homes issue. Some developers who participated in this research held the view that legal liability was the likely reason for councils behaving in what some developers and architects consider to be an overly risk-averse fashion. This was reported on at least five occasions. It has also been mentioned by the Productivity Commission: “Building Consent Authorities face strong incentives to be risk averse, especially given the liabilities they have incurred in the wake of leaky homes” (New Zealand Productivity Commission, 2012, p. 163).

The New Zealand Law Commission investigated whether other approaches to liability should be adopted either generally or in relation to particular professions or industries, including the building and construction industry. Other approaches include proportionate liability or capping liability by statute. The Commission recommended that a system of joint and several liability should be retained with some minor modifications. The government has been considering the issue of liability in the building industry, including whether council liability should be capped (Law Commission, 2014, p. 54).

### 2.2.3 Pre-application meetings

The council may call, or the developer may request, a pre-application meeting before a resource or building consent application is made. This enables the designer and building control officer (BCO), council planner and other staff responsible for various aspects of the consent process to discuss aspects of a building and resource consent application. In these meetings, the BCO can identify areas of constructional concern related to Building Code clauses, and the council planner can raise any related concerns they may have.

All the councils spoken to confirmed that pre-application meetings are encouraged and regularly held and that this is particularly the case for MDH developments. The complexity of these projects, compared to those of stand-alone housing, dictates more council time and resources are going to be required. The potential value of such meetings is well understood by those spoken to as part of this study.

However, some councils reported that the value of such meetings should not be overstated. In their view, only a limited number of issues can be worked through during the course of such meetings, and they generally focus on particular subjects of



interests to the developer's agent. Not all the different areas of construction are able to be covered, so it is considered a limited window in which to exchange information.

## 2.2.4 Restricted building work (RBW)

Since March 2012, restricted building work (RBW) on houses and small to medium-sized apartment buildings has only been able to be carried out or supervised by licensed building practitioners (LBPs). RBW is design and building work that is crucial to the integrity of a house or small to medium-sized apartment building. RBW covers aspects of the primary structure, external moisture management and fire design (MBIE, 2014).

A small to medium-sized apartment building, for the purposes of RBW, means a building that:

- contains two or more residential units (apartments) or residential facilities (foyer, laundry, garage and so on)
- does not contain commercial units or facilities
- has a maximum height of less than 10 m – the vertical distance between the highest point of its roof (excluding aerials, chimneys, flagpoles and vents) and the lowest point of the ground.

Only some of the buildings in BRANZ's definition of MDH fall within this definition. MDH buildings that fall outside of this definition are not considered RBW, specifically:

Work will not be 'restricted building work' if one or more of the following circumstances apply:

1. If the work is not to a house or small to medium sized apartment building. For example, work to the following buildings will not be restricted building work:

- detached garages
- carports
- mixed use apartment (such as buildings with shops)
- any commercial building of any height
- any large apartment building (exceeding 10m in height)
- installing a domestic wind turbine
- installing a domestic swimming pool
- installing a cable car to a home. (MBIE, 2016b)

This work does not require LBP supervision. Instead, the consenting authority is satisfied of Code compliance by a series of producer statements, which are "professional opinion[s] based on sound judgement and specialist expertise" (MBIE, 2015). These can represent specialist work, such as engineering design, or where a proprietary system (such as a façade) is installed by appointed contractors.

## 2.2.5 Development contributions

Development contributions are a charge imposed on a developer by a council to recover some of the costs incurred by the council when providing infrastructure services for the new development. A council may consider a development contribution under the Local Government Act 2002 is payable by the owner. If so, it may attach a notice that advises the applicant for a building consent that a Code Compliance Certificate will not be issued until the contribution is paid.

Many developers mentioned development contributions during our research. Development contributions are important in relation to the MDH building consent process because they add to the cost of the overall development. This is particularly the case if a council requires that a development contribution is paid before a Code Compliance Certificate will be issued.

In 2013, the Department of Internal Affairs undertook a review of development contributions. The review found issues with the way development contributions were being used by councils (Department of Internal Affairs, 2014). This included variability in how councils apportion the costs of infrastructure and less than optimal transparency and accountability, particularly around the ability of developers to challenge development contribution charges. The review also found more creative and cost-effective ways of providing infrastructure for new development could be used if councils and developers entered into development agreements. The Local Government Act 2002 Amendment Act 2014 became law on 8 August 2014. Changes to development contributions were included. The changes involved clarifying and narrowing the range of infrastructure that can be financed by development contributions and improving the transparency of development contributions policies.



## 3. Consenting issues related to MDH

This part of the report describes issues related to resource and building consent for MDH in New Zealand as discovered in the literature review and as reported by participants in the research. The word 'issues' in this section is used as a catch-all for concepts such as barriers, constraints, difficulties and so on.

Our summary of these issues is informed by:

- a review of existing literature (which is limited in relation to MDH resource and building consent law and process)
- interviews with 15 council officials responsible for resource and building consent and a survey sent to all councils.
- interviews with 20 developers of MDH and their consultants, such as architects, and project managers
- interviews with three regulatory experts from MBIE, two Ministry for the Environment staff and Productivity Commission officials.

It is important to note that the issues identified above are not experienced by all those interviewed. As such, many issues cannot be characterised as common issues. Rather, what is set out here is a collection of issues from various sources.

In spite of the issues described here, MDH in New Zealand is still being built at an increasing rate. In describing issues, this report recognises and acknowledges that consent processes for building of MDH in New Zealand are functioning to ensure increasing numbers of MDH are being built. Participants in this research suggested areas where improvement could be made that would have significant impact on how MDH consents are processed in future.

In this section, we report issues with the resource consent process for MDH, issues with the building consent process and issues associated with applying for a resource consent and building consent simultaneously.

### 3.1 Issues with resource consent

#### 3.1.1 Uncertainty posed by RMA notification requirements

Several developers and architects remarked that uncertainty exists about when councils might decide to notify an application for resource consent. This creates issues for them in terms of planning and delivering their work.

The process that a consent authority must follow in coming to a decision on a consent application can involve:

- a decision on whether to notify the application, including drafting an officer's report and whether to undertake a hearing
- if the resource consent is granted, the setting of consent conditions.

A council may decide on limited or public notification.

The requirement for some developments to be notified is an important consideration for developers when it comes to planning and designing MDH. This is because it can significantly impact on the time it takes to issue a consent. The Productivity



Commission (2016) notes the following in relation to the notification of resource consents:

Although a small proportion of resource consent applications for land use are publicly notified (1% in 2014/15, according to the MfE's National Monitoring System), it has become clear through successive inquiries that the threat of notification weighs heavily on developers, and may discourage innovation. The possibility of delays, additional costs, and the risk of vexatious interventions, can lead developers to take more conservative approaches or undertake smaller developments than would be ideal. (p. 186)

The majority of developers interviewed for this report stated that the Productivity Commission's view reflected their own.

Auckland Council noted in its submission to the Productivity Commission (Auckland Council, 2015) that decisions about whether to notify can be very time-consuming. The council estimated that as much as 30–40% of the time spent on processing an average application is devoted to this assessment. To a large extent, this duplicates similar considerations associated with the substantive assessment of the proposal. Apart from being confronted with the time, effort and cost of making this determination, applicants are also faced with the uncertainty of outcome.

As described in section 4.1.1, the Resource Legislation Amendment Act 2017 addresses some of these notification requirements.

### 3.1.2 Uncertainty about the outcome of applications

As reported by participants in our research, the following aspects of council decision making introduce uncertainty.

#### Council culture and the exercise of discretion

There is a degree of discretion built into the resource consent requirements under the RMA. In some instances, councils' interpretation of the extent of that discretion can lead to inconsistent decision making within councils and between councils. This is particularly true for MDH applications because they are often more complex than other applications, and therefore these applications leave more room for variations in decision making. Perceptions reported to this research by developers included the view that, in any particular territorial authority, specific points of view may influence the council's response. Council planners are also seen by developers as being concerned about making mistakes or taking on risk on behalf of their council. This influences how they make decisions because it may mean they are more conservative in their approach.

MDH developers indicated to us that they often had a lack of clarity and certainty about whether an application or certain aspects of an application for resource consent would be approved. This is even though substantively similar applications had previously been approved by the same council or another council. Some of these variabilities in council requirements can be illustrated as follows:

- **Car parking requirements:** Traffic engineers are often unwilling to relax the rules due to what they consider to be already congested on-street parking. Some councils consider these requirements pragmatically and, on occasions, overrule traffic considerations based on the proximity to the CBD, for example. However,



some developers considered that the way the requirement is imposed was inconsistent.

- **Open space requirements:** In many cases, there is a requirement for open space to be provided as part of the development. MDH developments often take place in difficult topography (for example, Wellington) or may be at an inner-city site with little available land available to the construction team. In these cases, the usability of this open space comes into question. Councils practise wide discretion in terms of open space requirements, with some taking a conservative approach and others being more flexible.

Certainty of outcome is important for developers and the industry when making financial arrangements and construction decisions. It is also important for providing confidence to lenders that an MDH development will succeed and is worth the risk. Several developers remarked that the lack of certainty about what councils are likely to require made it difficult to fix the final costs of MDH buildings before lodging an application. This is because there could be costs associated with further changes to the building design to satisfy resource consent requirements. There may also be a substantial delay in satisfying those requirements so consent can be granted.

Grimes and Mitchell (2015) provided the results of interviews with developers of 21 developments in Auckland. The purpose of their report was broadly to understand the impacts of council planning rules, regulations and actions on the cost per unit of these rules. They focused specifically on understanding how delay and uncertainty affect developers' decisions to develop or not to develop a project. The report notes that all the surveyed developers stated that they had abandoned one or more projects as a result of expected project length and/or uncertainties. For affordable apartments, building height limits and balcony requirements (requirements that usually form part of resource consent applications) can each have cost impacts of over \$30,000 per apartment. Conforming to a council's desired mix of typologies and increased minimum floor to ceiling heights can each add over \$10,000 per apartment. Some of these apartments fall within the BRANZ definition of MDH.

Some developers indicated that cost pressures associated with meeting council expectations and requirements may force them to cut corners or at least reduce the quality of other aspects of the development.

#### Uncertainty around council design requirements

The view of the majority of developer and project manager participants in this research was that council-imposed urban design requirements are subjective. This means developers and their agents are often uncertain how many further requests for information or design changes they will receive. Each further request increases the length of time required to gain consent and increases costs. Some reported these cost increases to be, in their view, considerable.

Grimes and Mitchell (2015) note, in particular about Auckland Council, that overall developers' sentiment was that "Auckland Council did not cope well with the concept of development". The council was seen as wanting to preserve the existing environment, whilst at the same time wanting to increase the density of development. Grimes and Mitchell consider that these concepts conflict with each other, since development, by its very nature, alters the landscape, so explicit trade-offs are required. It appears that how these trade-offs are made can be subject to council culture, which can result in inconsistent decision making. This view has not been changed since the new Auckland



Unitary Plan has been in place, and developers participating in this research do not see it yet making a difference.

Another aspect relates to uncertainty in developers' minds about design elements contained in a council's district plan, design guides and manuals. They are uncertain whether these are intended to be for guidance purposes only or are in fact legal requirements as this varies between territorial authorities. Urban design codes may form part of district plans rather than sit outside of them. This is, however, not the case for all district plans. The variable legal status of such guides often creates uncertainty for developers about the extent to which such guidance must be complied with. For example, the council may point to such design issues in their communications (such as requests for further information made under section 92 of the RMA). There is a perceived lack of clarity for developers participating in this research about the extent of any council's discretion to approve or decline a resource consent application based on design guide principles.

Some architects who participated in this research consider that matters of MDH amenity will increasingly be demanded by consumers. Therefore, they claim more design decisions should be left to developers and architects.

### 3.1.3 Approaching the application process as a box-ticking exercise

Several councils interviewed considered that developers' agents appeared, in their view, to consider completing the application form for an MDH resource consent merely as a box-ticking exercise. They thought that not enough regard was given to the due diligence required in the consent application process. Councils indicated that delays in processing resource consents for MDH were often a result of developers not properly demonstrating that they were aware of the information requirements and had met them fully.

Some councils considered more effort should be put into the pre-application process, including clarifying aspects of the development at pre-application meetings. Several councils remarked that the RMA forces councils to behave in certain ways, particularly when it comes to the more complex nature of MDH projects. Because councils are required to process applications within a certain timeframe, they often chose to stop the clock if an application is incomplete. This extends total time taken for a consent to be processed. Given the complexity and scale of most MDH applications, an extended processing time is, according to developers, the most common scenario.

In order to stop the clock, a section 92 (request for further information) letter with a list of further requests and requirements is sent to applicants. This formal process may not be as effective as having further face-to-face meetings to clarify specific requirements. Some research participants felt that improving the quality of information provided would most usefully be effected by informal meetings rather than moving into a legal and performance process.

An incomplete application leads to a substantial further information request. It was reported by BCA officials that it will generally take developers and their agents up to 6 weeks to provide this. This typically involves getting all the specialists together, discussing aspects of the council's request, redesigning aspects of the building if required and collating a response.



A number of councils characterised the most common factor in issues arising from MDH resource consent applications as stemming from the tension between the developer and the council. The developers' motivation is to realise a profit, while the council has a vision for their city as described in the district plan.

Several councils felt that issues could be resolved faster if they were working with a developer that was open about their motivations and willing to listen to suggestions. In their view, willing developers who employ good teams tend to have a seamless process, especially if they were well prepared at the pre-application process. This meant minor details could be ironed out prior to entering the formal process.

Some councils reported distrust in some developers. Once a council gets suspicious about the developer, they are less likely to trust the developer's documentation. They are also less certain that the developer knows what they are doing and will comply with council consenting requirements.

### 3.1.4 Disputes between different parts of the council

A number of architects and developers noted that councils often fail to arbitrate contradictory demands between different parts of the council and council-controlled organisations when considering consents.

Some developers and architects noted that often the council staff attending pre-application meetings are not the ultimate decision makers. Attendees must report to decision makers who might have a different view than those expressed at the pre-application meeting. The result is that any disputed and unresolved issues within the council are left to the developer or the developer's agents to resolve or to mediate. The process to seek resolution causes delay, and agreement may be difficult (if not impossible) to reach.

Some developers suggested that dealing with a council was much easier in the case of a development where there is a single council manager who is able to make decisions. This is the case in the process provided by Auckland's Development Project Office for developments in Special Housing Areas.

### 3.1.5 Issues with the adequate provision of infrastructure

A number of architects and developers noted issues with the adequate provision of infrastructure in MDH zoned areas. The zoning of certain areas in Auckland does not seem to be supported by adequate infrastructure, in their view.

The zoning in some cases appeared to be the result of pressure being brought to bear on the council to make more such areas available. However, sometimes the cost to provide infrastructure can be prohibitive, and it is not put in place. Developers reported they often applied for resource consent and undertook a great deal of planning work without knowing that there was no adequate infrastructure to support the development.

The Auckland Unitary Plan Hearings Panel noted that it had heard and received submissions that there are funding constraints to service development with adequate infrastructure in Auckland. The panel heard that "there are funding constraints to service development with adequate infrastructure in Auckland and a legacy of



underinvestment over past decades”.<sup>6</sup> Evidence presented to the panel cited wastewater and transport systems that are at capacity and constraining development. This would appear to support the views expressed to this research by developers we engaged with.

## 3.2 Issues with building consent

Multiple issues with building consent are identified in existing literature, but it is not always clear how these issues relate to MDH.

The Productivity Commission's (2012) housing affordability report identified a number of issues with the building regulatory framework, including with the building consent process, specifically:

Many inquiry participants raised concerns about quality, timeliness, cost and consistency in their interactions with the building control system. Relationships between building practitioners and building consent authorities were poor in some areas. These tensions are likely to impede the effectiveness of the regulatory system. (p. 151)

It is clear from our conversations with councils and industry that many of these issues have not been fully addressed since that report was published and continue to hamper development of MDH.

This part of the report illustrates how some of the Productivity Commission's findings apply to MDH. All of the areas of comment in this section are taken from that report. When there was agreement from participants in this research, that has been added.

It is important to note that some issues do not equally apply to all MDH typologies. Façade or E2 issues, for example, tend to relate more to multi-storey buildings.

### 3.2.1 Delays and uncertainty about building consent requirements

The costs arising from slow and uncertain administration of building regulations and inspection services can be substantial and are largely passed on to home buyers. (New Zealand Productivity Commission, 2012, p. 151)

#### Delays and inefficiencies

As with resource consent, one of the primary complaints by developers participating in this research related to issues around uncertainty about the time and cost involved in councils' decisions. Developers felt that councils did not appreciate the commercial realities within which MDH projects were operating.

Substantial planning is required to deliver the end product on time and within budget because of the scale of many MDH projects (when compared to a consent for single detached house). This is particularly the case in terms of the level of financing required and the number of contracts and undertakings involved.

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<sup>6</sup> *Report to Auckland Council: Overview of recommendations on the proposed Auckland Unitary Plan*, p. 60.  
<http://temp.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/unitaryplan/Documents/ihprecommendations/ihpoverviewofrecommendations.pdf>.



Participating developers noted the following inefficiencies and delays:

- In Auckland, in particular, there have been some issues with the timing for the issuing of Code Compliance Certificates. One developer felt the delays were most likely a reflection of resourcing issues at Auckland Council, given the volume of other applications that they have to process. The resource and building consent processes may largely run efficiently. However, timeframes for processing the Code Compliance Certificate and section 224c application (related to a subdivision consent under the RMA)<sup>7</sup> were reported as presenting substantial issues for developers.
- Significant issues in obtaining a section 224c consent, due in part to issues between a council and a council-controlled organisation in Auckland as well as different arms of council not communicating with each other. This has resulted in completed homes being unable to be occupied due to council delays because settlement was dependent on the council processing the application. In one reported case, the consent was approved more than 3 months after the application was lodged.
- Some non-conformance issues were discovered in a Code Compliance Certificate inspection that were not picked up during earlier inspections. Some developers considered that these oversights may simply reflect human error as it is unrealistic to expect no mistakes will never be made. However, the possibility was raised that this may be a further consequence of councils having limited resources and being unable to deal with the large number of projects they are processing.

Grimes and Mitchell (2015) support the Productivity Commission's views by finding that the building consent process can impact on development costs in a number of ways:

- Delays around issuing the building consent can impact on building design as designs are unable to be finalised prior to consent being issued.
- Compliance inspections add delays because these inspections need to be booked in advance and builders need to anticipate the timing of the inspections. Inspections often need to be rebooked because of unexpected delays. This may add weeks to the build process and increase the overall costs.

The Controller and Auditor-General (2015) investigated how well Auckland Council and each of its council-controlled organisations provided services. One audit focused on how well Auckland Council provided building consent services, including inspections and Code Compliance Certificates through its Building Control department. The Auditor-General found that 70% of consent applications lodged go on hold pending further information. This suggests that "there is a large gap between what Building Control expects and what customers believe is expected of them" (Controller and Auditor-General, 2015, p. 4). The Auditor-General found the following:

- Auckland Council was technically meeting the statutory deadline for processing most building applications. The average time to process applications is 9–10 working days, much less than the statutory time limit of 20 working days. However, the statutory timeframe allows all territorial authorities to exclude the days that the application is put on hold.

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<sup>7</sup> Before certificates of title can be issued for the new allotments granted subdivision consent, applicants are required to submit a survey plan to the council for certification under section 223 of the Resource Management Act 1991 (RMA) and also apply for a certificate under section 224(c) of the RMA.

- The process of approving consent applications is largely paper-based at present. This is inefficient and costly for Auckland Council and applicants. Developers expressed frustration with some of the delays, costs and difficulties that arise due to the lack of adequate electronic information-sharing systems.

As discussed in section 4.1.4, Auckland Council is planning to make efficiency gains through its Consenting Made Easy programme.

Councils, by contrast, suggested that delays were due to other factors. Officials participating in this research gave examples of common process issues that caused delays for MDH building projects due largely to the lack of proper project management on the developer's part. The council officials stressed the importance of having experienced lead consultants or project managers to take direct responsibility for the coordination and oversight of projects to address delays. The lead consultant needs to be aware of the resource consent conditions/considerations and the building consent considerations and communicate these to all the parties involved.

The participating councils identified that drawings for MDH are often uncoordinated. The structural or construction drawings, for example, often differ from the architectural drawings. The BCA is not responsible for peer review of work done by design professionals, and they will not check and review plans. According to council officials, the lead consultant (project manager for the developer) should ensure that the architect is on site more often and that the architect and structural engineers, builders and designers communicate better. In councils' view, it is up to the lead consultant or project manager to ensure that the latest drawings are relied on, but this was not always the case. This would mean that the fire engineer, for example, might work out a fire safety strategy for an MDH building based on concept drawings not knowing that the drawings have changed and the strategy is no longer applicable. This causes delay and cost.

#### Inconsistency between councils when deciding applications

Developers noted many instances of council inconsistencies when considering MDH building consents. There were differences, for example, in what the North Shore and Central Auckland branches of Auckland Council expected in terms of the documentation that needed to be provided to grant an MDH building consent. This may reflect the different consenting approaches of the former councils that were merged to form Auckland Council. Auckland Council was considered by participating developers to be more efficient and process consents more quickly. Auckland Council was also experienced as being more specific about the documents and information required in order to receive a Code Compliance Certificate.

Many developers felt that different council inspectors had variable requirements. Some inspectors were felt to have requirements that would be more appropriate for commercial buildings than residential buildings.

Developers had to apply for determinations from time to time to get around the view of the technical advisor because of the variability in inspection outcomes. It did not appear, in these cases, that determinations were widely shared between councils, so a collective picture was not able to be formed. Having such a picture would be extremely helpful.



### Issues with providing the required documentation for products

Some council officials noted that they struggle with obtaining satisfactory documentation for products and materials that they are unfamiliar with. These officials pointed to section 14G of the Building Act, which makes a product manufacturer or supplier:

responsible for ensuring that the product will, if installed in accordance with the technical data, plans, specifications, and advice prescribed by the manufacturer, comply with the relevant provisions of the building code.

When developers provide new/unfamiliar products without robust documentation and information about how the products will perform, they are effectively asking the council to take on the risk that the product will perform. Council officials consider that a developer cannot simply say that there is a similar product to ones previously used or point to products that the council previously approved of. This leaves the council carrying unacceptable risk.

Council officials advised that information to corroborate product compliance is often not provided with applications. For example, to be granted a building consent in multi-unit development, documentation must be provided about how the inter-tenancy walls are to be constructed, including the intended materials. In Auckland, because of increased building activity in the last few years, there have been instances of a 6-month waiting period for precast concrete walls. Consequently, developers are considering other methods or other building materials that councils are unfamiliar with to build inter-tenancy walls. In these cases, adequate documentation may not always be provided.

Sometimes, even when the documentation is provided, it is not satisfactory. Council officials noted that it is often difficult for building control officials to compare products approved under European standards with those approved under New Zealand standards. They felt that industry should not automatically assume that the products will perform as required in New Zealand conditions. In many of these cases, councils are reluctant to accept documents on face value. Studies from universities about materials and their performance in buildings are also not necessarily reassuring to council.

Another issue with providing documents arises from product substitution. This is when a product that has been approved as part of the building consent process is substituted in construction by another. Reasons for this include cases where the consented product may not be available or a less expensive or better product has been found. Council officials remarked that a high level of product substitution is almost the norm. Proper records are often not provided. In some cases, correct processes are not followed, such as the council documenting that another acceptable product has been approved or is being used. The result is that the building might receive a Code Compliance Certificate that does not accurately reflect the as-built nature of the building.

Some council officials and developers consider it would be better not to require approval of all the products to be used before the building consent application is approved. The current Building Act requirement is for provision of full documentation at consent lodgement. However, the documentation provided may not match that actually used because MDH is often built using a tender process, and this commences after consent is issued. Tenderers might suggest the use of different products as part of their proposals.



Council officials suggested to us that buildings should be certified 'as built' when a Code Compliance Certificate is issued. This would reflect the actual materials used during the building process. Developers would only be required to demonstrate general compliance. Such an approach could save developers money and time.

### 3.2.2 Uncertain processes for Alternative Solutions to become Acceptable Solutions (i.e. adopted by MBIE)

[There is a] lack of clear pathways by which alternative solutions can become acceptable solutions. (New Zealand Productivity Commission, 2012, p. 151)

Developers and architects interviewed said the process by which alternative methods are deemed to meet the Building Code (when they become Alternative Solutions) is more costly and complicated than it needs to be. A simpler process would be cheaper and easier. They also consider that there is insufficient guidance about what is required for compliance. Tests and expert opinions are an obvious way of demonstrating compliance. However, the way a BCA decides how relevant and reliable that information is varies from place to place and time to time. This causes significant uncertainty and cost for applicants.

Developers felt that the consent process is not nationally consistent. This is particularly the case in relation to alternative methods/Alternative Solutions. Councils in different places can require different designs for some Building Code aspects of what is essentially the same building and is subject to the same conditions. Councils were also seen as having very different approaches to how alternative methods might be dealt with. Some councils, for example, had different allowances for using combined Acceptable Solution and Verification Method designs and even different interpretation of various Acceptable Solution and Verification Method clauses.

These different approaches and thresholds of acceptance for waivers and modifications were consistently reported as causing frustration in the design process for consultants, many working in different locations around the country. A common approach appeared in many cases to be impossible. Developers accepted that full consistency is perhaps not attainable because of the nature of a performance-based Building Code. However, many considered that some level of national consistency is crucial to facilitating alternative method design.

MBIE officials considered one reason why Alternative Solutions cannot become Acceptable Solutions is because developers or designers often use proprietary systems in MDH buildings and were unwilling to share that intellectual property.

### 3.2.3 A lack of pre-certification of material products and systems to enable applicants to use products with confidence

An alternative to taking a case-by-case approach to assessing compliance of alternative solutions is to have new materials or methods pre-certified for use by a central authority or system. This enables applicants and BCAs to have confidence in those products, without needing to seek further testing or expert opinions. (New Zealand Productivity Commission, 2012, p. 163)

The Productivity Commission suggested that CodeMark certification can give BCAs confidence in use of products. Under the CodeMark programme, a producer of a new building material can apply to an accredited assessor to have their product certified as Building Code compliant (if the product is used properly). Under the Building (Product



Certification) Regulations 2008, the product must then be treated by BCAs as Code compliant and consented as such. CodeMark focuses on the quality planning aspects of the manufacturing of a product. The quality plan has to meet ISO 10005. This is a rigorous and expensive process.

However, only a relatively small number of products have been certified in this way. Developers suggested to this research that it is not worth a developer's time or money to seek certification for a company's product each time they wish to undertake an alternative method of building. Product accreditation has, therefore, not provided a timely and cost-effective means for builders and developers to pursue alternative means of complying with the Building Code, even though the potential is there.

BRANZ does offer product appraisal services (BRANZ, 2017). This system has been in place since 1974. This process certifies that the product meets the relevant parts of the Building Code. It also assesses manufacturing quality. Construction site audits ensure the product being used is the certified product, and this is reassessed annually. These services are widely used throughout New Zealand. Consenting unappraised products is more difficult as there is less evidence that they meet Building Code requirements.

In addition, product technical statements are provided by suppliers. They define how a product should be used in a building. These are often used in cases where consenting can be approved on the basis of history of use where technical requirements are less rigorous.<sup>8</sup>

Auckland Council officials noted that a previous building consent for an MDH building using a certain material or method should not be a reason for granting an application for a different building. This is because materials will not necessarily perform in the same way in a different building. The same level of performance cannot be assumed.

Auckland Council does not wish to publish a register of products previously approved or accepted. The status of such a register could easily be misconstrued or misunderstood or be used in ways not intended. If Auckland Council were to publish such a register, other councils could decide to consider Auckland Council's endorsement as sufficient proof that materials are safe or appropriate. If this turned out to not be the case, those councils or developers could 'point the finger' at Auckland Council, with resultant liability issues. This is not a risk Auckland Council appears willing to take.

### 3.2.4 Difficulties with attracting and retaining council capability

[Building consent authorities] face challenges in acquiring, retaining and supporting the necessary skills, experience and technology to perform [their role]. (New Zealand Productivity Commission, 2012, p. 151)

The problem with attracting and retaining capability, particularly for consenting MDH buildings, was confirmed by a number of council officials spoken to as part of this study.

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<sup>8</sup> For a description of all product assurance options, see <https://www.building.govt.nz/building-code-compliance/product-assurance-and-multiproof/product-assurance/products-and-building-code-compliance/>



Some developers considered that council officials were overworked and, in many cases, not experienced enough or without the capability to make decisions on some consenting issues because they had inadequate knowledge.

In Queenstown, with its rapidly developing MDH market, council officials advised they had experienced difficulty in attracting the necessary capability to enable them to manage the volume and type of consents received. They attributed this partly to the high cost of housing in Queenstown as well as the relatively remote location.

Building control officers and inspectors require RES 2 or RES 3 competency levels.<sup>9</sup> Some council officials indicated that they had been forced to outsource consenting work, causing additional delay and expense for applicants. It was reported as being difficult for some councils to recruit building control officers and inspectors competent in understanding and evaluating specified MDH systems. These included those relating to fire, lighting, lifts and other systems.

### Industry competency to meet the demand for MDH

A number of council officials identified issues with industry competency due to the high demand for MDH in some locations. Inexperienced architects, designers and builders who are new to the MDH industry are undertaking work that is to some degree outside their capability or above their skill or experience level.

Some in the industry appear to be unfamiliar with the requirements of MDH typologies with which they are engaged. Some development companies were reported as using project managers to manage MDH work who were more familiar with stand-alone housing projects.

In some of these situations, mistakes were only noticed with building projects when inspectors arrived for the first time. Inspectors reported they often had to carry out an education role with inexperienced MDH project managers

A number of building systems now being used by the MDH industry are very complex to install. For example, installers often need a high level of competency or experience to install cladding systems according to specifications. If those systems fail, interviewees told us, the manufacturers often deny liability on the basis that the installation requirements were not followed, even if there are only minor differences in installation.

### 3.2.5 The impact of development contributions

Designing and implementing charges for infrastructure that accurately reflect incremental costs is difficult, and there is concern about the way these charges – particularly development contributions – are applied. (New Zealand Productivity Commission, 2012, p. 126)

The NZ Institute of Surveyors (2014) describes development contributions as essentially just another development cost or charge that raises the price of land.

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<sup>9</sup> Regulation 9 of the Building (Accreditation of Building Consent Authorities) Regulations 2006 requires a building consent authority to have a system for allocating its building control function work to employees or contractors who are competent to do the work. Under Regulation 10, a BCA must have a system for assessing competency. Also see MBIE guidance on national BCA competency assessment system levels: <https://www.building.govt.nz/assets/Uploads/building-officials/competencies/Competency-level-residential-3.pdf>.



Grimes and Mitchell (2015) estimate that the development contributions for multi-unit dwellings is normally between \$20,000 and \$40,000 per unit in a multi-unit building. Some developers told us they are unclear about what the amount of the development contribution is going to be at the time an application for a building consent is made. This impacts on their cost structures and financial management.

Some developers felt that they were often being asked to fund infrastructure beyond that directly related to their own project. Councils require developers to pay development contributions before a Code Compliance Certificate will be issued. Councils are required to issue a notice under the Building Act for the contributions to be paid. If a developer wishes to question or dispute the amount of development contributions set by a particular council's policy, they may be reluctant to do so. This is because they work under time pressure to obtain a Code Compliance Certificate. The council will generally not issue a Code Compliance Certificate until the development contributions have been paid. There have been instances reported in the course of this research where some developers chose not to wait for a Code Compliance Certificate. They chose to on-sell the development without having paid the development contribution to realise the profit – albeit reduced – from the development.

Dunbar and McDermott (2011) found that, in addition to costs imposed by development contributions, other costs may include:

- a developer having to purchase adjoining properties to overcome objections from neighbours
- funding for consultants to help resolve neighbourhood engineering issues
- funding a project manager within the local authority due to a shortage of resources.

### 3.2.6 Building Code-related issues

Some issues stem from applying aspects of the Building Code to MDH. There is a clear prevailing view amongst developers participating in this research that current requirements, solutions or methods do not include current MDH typologies. This is because the Code is focused on stand-alone housing.

Specific issues with the Building Code are associated with particular MDH typologies. For example, the issues with Acceptable Solution E2/AS1 do not present for MDH buildings under 10 metres in height. Auckland Council officials advised that around 80% of the MDH buildings consented in Auckland are for terraced housing, and most of those are single-level terraces. Therefore, it is likely that most of the issues experienced by this council on a daily basis will be associated with this type of MDH.

The list of issues is by no means exhaustive. It represents those aspects most often referred to in interviews with research participants.

The issues that arise mostly for MDH relate to clauses:

- *C Protection from fire*
- *G6 Airborne and impact sound*
- *E2 External moisture.*

We also provide an example of how recessed balconies might fail to comply. This is because they are common in MDH buildings.



### C Protection from fire

The primary section of the Building Code that deals with fire safety matters is clause C *Protection from fire*. While other clauses (particularly clauses D, E and F) also have an impact on fire safety matters, most of these are in some way referenced in the clause C Acceptable Solutions.<sup>10</sup>

The clause C Acceptable Solutions that are most applicable to MDH are:

- C/AS1 for typical houses, small multi-unit dwellings and outbuildings
- C/AS2 for other multiple-unit accommodation buildings such as apartments, hotels, motels and hostels.

The Building Code provisions for fire safety and the supporting Acceptable Solutions and Verification Methods were changed by the government in 2012. The aim was to provide designers, fire engineers and BCAs with better design criteria and methods so that fire design could be applied more consistently. The changes were significant in content and structure, and the developers participating in this research reported that their sector experienced issues in adjusting to them.

The list below indicates some of issues reported to this research in relation to complying with clause C:

- Council officials noted that compliance was not always assessed by a specialised fire engineer. This was often undertaken by designers whose plans often did not illustrate that they properly understood the Building Code requirements. A lack of understanding is apparent in relation to the design of floor slabs, the means of escape and passive fire issues.
- Council officials considered that some designers and developers were not familiar with designing fire solutions for MDH. Builders applied their knowledge of fire as it related to detached housing assuming it would be fit for purpose. This may often not be the case. For example, a façade that is suitable for use in detached housing might be combustible when used in an MDH building. The Building Code requires that each unit be fireproofed from the next in order to prevent the spread of fire to adjacent units. Developers and councils considered the Acceptable Solutions for fire codes are highly technical and fire engineers tended to interpret and apply them differently. Overall, it was considered difficult for councils to assess compliance due to the high level of technical knowledge required.
- Some builders were reported to be cutting corners by not sealing inter-tenancy walls properly or installing fire walls incorrectly and not according to the manufacturer's recommendations.
- Fire retardant systems were not properly installed when creating a fire cell so that it reached the underside of the roof, not just up to the ceiling. While architects showed compliance in this area, inspectors often found that builders moved away from the consented documentation, and it was quite common for inspectors to issue a notice to fix.
- MDH buildings often require horizontal fire separation. Both the building consent processor and inspector must be competent to be able to understand and evaluate fire-related systems, such as smoke detection systems, fire alarm systems and sprinkler systems. Building control officers and inspectors with RES 2 or RES 3

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<sup>10</sup> For more information, see BRANZ *Guide to the Acceptable Solutions: Protection from fire* [http://www.branz.co.nz/cms\\_show\\_download.php?id=c8a682f89f630ded2dfe9b3cf535053c80cd1491&collect=true](http://www.branz.co.nz/cms_show_download.php?id=c8a682f89f630ded2dfe9b3cf535053c80cd1491&collect=true)



competency levels are required (see section 3.2.4). Some councils are unable to retain staff with the required competency. This results in the work being outsourced, causing additional delay and expense.

- In general, fire engineers were comfortable designing buildings of 10–15 metres, but for taller buildings, peer reviewers were often required to check on the design. There is little guidance for who can peer review and no protocols around whether or not to accept their findings. In some instances, the council is not qualified to assess whether the Building Code has been complied with, given the complexity of the calculations required by the Acceptable Solutions and Verification Methods. This leaves the council open to liability, even if a peer review has been undertaken.
- Penetrations through a fire wall or through a ceiling are sometimes sealed and painted before they can be inspected or the suspended ceilings are already installed. Consequently, total compliance is not always able to be verified through observation by inspectors.

### *G6 Airborne and impact sound*

Building Code clause G6 protects occupants from neighbours' reasonable noise. This includes voice, entertainment and footsteps noise. However, this protection only applies to common building elements, such as the shared wall or the common floor or ceiling between apartments. Where adjacent dwellings are not connected, there is no requirement in the Building Code to achieve sound insulation performance. The requirements do not apply to external (or environmental) sound, which often affects apartment dwellers. Another area of common complaint is plumbing noise, and this is also not dealt with adequately in the Building Code provisions.

G6 requirements were devised in 1992, and this clause was last amended in 1994/95. Since then, the number and variety of MDH being consented and built has greatly increased. Participants expressed the view that Acceptable Solutions have not kept pace with the industry, and there is a lack of information and advice for designers or builders on how to apply G6 to modern MDH buildings (Halstead, 2016).

According to regulatory experts participating in this research, developers generally must design above the performance requirements set out in G6 to respond to the needs of modern buyers. In the current market, where consumers pay well for quality MDH, particularly in Queenstown and Auckland, consumers expect a better acoustic environment than is prescribed by the Building Code. The developer is responsible for undertaking the careful design required to achieve good performance between units to meet those needs if they are to sell at prices they want to achieve.

Some additional issues were noted by regulatory experts and council officers:

- The Building Act 2004 and Resource Management Act 1991 have different functions in relation to noise, and neither has primacy over the other. Some noise-mitigating design requirements might be a condition of the resource consent (such as double glazing), but it is not a Building Act requirement. Requirements for noise-mitigating materials to be installed are often not followed through in relation to the building consent, according to some council officials. Designers and architects must take into account the differing requirements in the Building Code and RMA in order to come up with good solutions.
- There are different soundproofing issues related to inter-tenancy walls, floors and ceilings. Some current building solutions, such as use of concrete slabs combined with sound insulation panels, can sometimes, counterintuitively, exacerbate the amount of sound that travels through the wall instead of lessening it. According to



council officials, there are now many new products on the market claiming to meet the Building Code but that have not been used before in any residential construction in New Zealand – stand-alone, multi-storey or MDH. It is often difficult to know how they will perform in a particular MDH building.

- Many developers follow the GIB® Noise Control System, but this system is limited to certain types of design in terms of its application. Many MDH designs are outside the system. This means developers and designers must apply for an Alternative Solution, and proving compliance with the Building Code can be a lengthy and costly process as specialists need to be engaged to advise on design.

## E2 External moisture

This clause requires buildings to be constructed to provide adequate resistance to penetration by, and the accumulation of, moisture from the outside. The clause contains requirements for roofs, wall claddings and external openings to:

- prevent water entry
- prevent water absorption and transmission
- prevent the accumulation of water
- allow for dissipation.

The Acceptable Solution to clause E2 *External moisture*, E2/AS1, is widely used for weathertight design. Verification Method E2/VM1 provides calculations and tests for cladding systems, including junctions with windows, doors and other penetrations. It provides for pitched, skillion and commercial/industrial roofing.

Acceptable Solution E2/AS1 and Verification Method E2/VM1 are often used in MDH building consents. This is only where building designs are up to 3 storeys (measured from lowest ground level adjacent to the building to the highest point of the roof) or 10 metres or less. MDH designs are therefore typically based on E2/AS1 and E2/VM1 cladding system designs stacked on top of one another.

Designers are also inclined to use Acceptable Solution AS/NZS 4284:2008 *Testing of building facades*. AS/NZS 4284:2008 covers testing of building façades for high-rise residential and commercial buildings (typically greater than 25 metres). AS/NZS 4284:2008 testing is often cited as a basis for compliance for building designs beyond the scope of E2/AS1 and E2/VM1. However, AS/NZS 4284:2008 does not address water management testing or wetwall testing for water leaks reaching less durable materials such as timber framing, as required by E2/VM1.

The consensus was there is a need for a new compliance path to fill the gap between E2/AS1, E2/VM1 and AS/NZS 4284:2008 such as a new Acceptable Solution, Verification Method or standard.

According to a number of council officials, the industry appears to lack an understanding of the limitations of E2/AS1 and E2/VM1 – for example, the 10-metre height limitation. Façade design documentation for medium-rise buildings is typically only supplied to a council after a request for further information has been made and is often ambiguous as to how compliance is achieved.

Some council officials consider the industry lacks an understanding of what constitutes a cladding system. The Building Code Handbook defines a cladding system as:

the outside or exterior weather-resistant surface of a building; including roof cladding and roof underlays, wall cladding and wall underlays, and cavity



components, roof lights, windows, doors and all penetrations, flashings, seals, joints and junctions.

However, façade design documentation typically does not illustrate understanding of what 'system' implies and often does not account for:

- interaction between different façade systems
- structural behaviour of the external envelope
- material suitability/products being fit for purpose
- building movements
- geometric complexity
- façade wind pressure design requirements.

Some council officials consider that clarification is needed on cladding system definitions such as barrier cladding, rainscreen cladding and curtain wall. This system terminology is often perceived as being muddled and is consequently misunderstood.

Auckland Council now requires a façade engineer, as a default position, to review the façade for mid-rise buildings – 4–8 storeys in Auckland (Ross, 2014). This is because of the many E2 issues that occur. There are reportedly not enough people with the capability in New Zealand to undertake this task. Building work is often delayed because it is difficult to get the appropriately qualified engineers at the right time. According to some council officials, it is often difficult to ensure that the peer reviewers are impartial. If they are somehow associated with the company or developer undertaking the MDH project, they may be unable to be or appear to be impartial.

Some Auckland developers noted that they have made a decision to do façade peer reviews as a matter of course. This is because they anticipate what the council will require. It may also be to avoid liability.

#### Issues with recessed balconies

A number of council officials and industry participants indicated there are issues that arise from the design of recessed balconies, where they are used, for MDH. Multiple Building Code clauses apply simultaneously, including E2 *External moisture*, E3 *Internal moisture*, F4 *Safety from falling* and H1 *Energy efficiency*.

Councils do not offer design solutions because it will expose them to potential liability. The BCA checks for Code compliance and can offer guidance and direction to where the right information can be found to enable a good design to be completed. The BCA can assess an MDH application, and if they deem there will be an issue, they can send the agent a request for information asking for clarity. This would normally involve seeking provision of details as to how the issues will be mitigated. However, this may not always happen.

### 3.3 Issues with managing applications for resource consent and building consent simultaneously

Councils and industry shared some issues that commonly arise because developers lodge building consent applications before all resource consents are granted.

It is only when the resource consent is decided that the developer finds out the conditions that have been set for the design of the building. Architects, engineers and



designers may then have to redesign aspects of the building and request a variation for the purpose of obtaining a building consent.

A developer who applies for a building consent before a resource consent is granted would have made some assumptions about ground conditions that had not yet been verified by the council. Typically, no geotechnical report will have been provided to the council or be available. A building consent must then be granted in the absence of certainty about the ground conditions. Where a subdivision consent sets conditions, the developer must then spend time and money to obtain a new building consent and modify the application to take into account resource consent conditions.

Other approvals, such as engineering approvals or approvals from council-controlled organisations (such as Watercare Services) might be required as part of the resource consent process before a building project can proceed. Project managers working on behalf of building companies or developers may get their timing wrong in anticipating when those consents will be issued. In these cases, they cannot proceed with construction even though a building consent has been issued.

When developers apply for a building consent, they also generally apply simultaneously for a Project Information Memorandum (PIM). Such a report might not have previously been created because it was not deemed necessary by the developer at the time of their application for a resource consent. If they do not apply for a PIM, the council will, in due course, generate a development report, which essentially fulfils the same function and contains the same information as a PIM. The PIM or development report will sometimes point to the fact that there is a relevant natural hazard affecting the design. This is particularly pertinent in Christchurch following the Canterbury earthquakes but could be an issue anywhere in New Zealand. The PIM or development report could contain information about the likelihood of hazards such as rockfall or flooding.

Section 37(2) of the Building Act provides that, until the resource consent has been obtained (if one can in fact be obtained):

- The territorial authority must issue a certificate, in the prescribed form, to the effect that until the resource consent has been obtained—
- (a) no building work may proceed; or
  - (b) building work may only proceed to the extent stated in the certificate.



## 4. How can the issues be addressed?

This part of the report discusses:

- changes to the legislation and processes applying to resource management and building consent, some of which will have a bearing on issues identified with MDH consent processes identified in this report
- proposals made by councils, developers and regulatory experts to improve resource and building consent processes for MDH
- initiatives and approaches to building MDH in Australia related to resource and building consent that could be adopted by the regulatory framework under which MDH is consented
- changes to the resource and building consent legislation and processes.

### 4.1 Changes to the resource and building consent legislation and processes

It is clear that some of the issues related to resource and building consent described in this report have been recognised by central and local government. Both levels of government are responding to these issues.

#### 4.1.1 Changes to the Resource Management Act

The impact of local authority decision making on development and control of land use through district plans is considered to be a major issue influencing house prices and higher-density housing development. The current central and local government focus on MDH is informing that discussion and is shaping changes made to planning-related legislation.

The government has been reforming the RMA over several years with the aim of reducing uncertainty, time and cost associated with RMA requirements and processes.

Reform has been undertaken in stages. The first phase sought to improve the resource consent regime, including setting a 6-month time limit for processing consents for medium-sized projects that proceed to a hearing.

The Resource Legislation Amendment Act 2017, which became law on 18 April 2017, made significant changes to five different Acts, including the RMA (Ministry for the Environment, 2017):

- The RMA has a new section that requires councils to treat boundary activities as permitted if written approval is given by the relevant neighbour(s) and certain information is supplied to the council. Examples of boundary activities include yard set-backs, recession planes/height planes or fence rules where these relate to the boundary.
- Councils now have discretion to exempt activities from needing a resource consent for “marginal or temporary” rule breaches if certain criteria are met. This includes any adverse effects of the activity on a person being “less than minor”.
- There is a new fast-track process for resource consent applications that are district land use activities with controlled activity status if an electronic address for service has been provided. Fast-track applications must be processed in 10 working days. Previously, all non-notified resource consent applications were subject to the same 20-working-day process, regardless of how simple the proposal was.



- There is a new step-by-step process to determine whether to notify resource consent applications.
- Regulations may preclude notification of certain activities or limit who may be considered affected.
- Decision makers on resource consents or notices of requirement must have regard to any measures proposed to achieve positive effects on the environment to offset or compensate for any adverse effects.
- RMA public notices must be clear and concise and available on publicly accessible websites.
- Subdivision of land is permitted unless it contravenes a rule in a National Environmental Standard or district plan.
- Councils have new functions to ensure that there is sufficient residential and business development capacity to meet expected demand.

These changes come from recommendations of a number of commentators such as the Minister for the Environment's Urban Technical Advisory Group (UTAG, 2010). The Productivity Commission (2015) noted, in relation to resource consent notification, that a future notification system should focus requirements on those directly affected by a proposed development or highly likely to be. The Commission suggested that limited notification should be the standard approach, with opportunities to use public notification only in exceptional cases. It is unclear from participants in this research whether that has happened or not.

#### 4.1.2 National Policy Statement on Urban Development

The National Policy Statement on Urban Development Capacity (NPS-UDC) (Ministry for the Environment, 2016a) came into effect from 1 December 2016. The purpose of the NPS-UDC is to ensure regional and district plans provide adequately for the development of business and housing. It is also intended to enable urban areas to grow and change in response to community needs. The NPS-UDC directs local authorities to provide sufficient development capacity in their resource management plans for housing and business growth to meet demand.

The NPS-UDC compels a council to consider how its existing plans, policies and rules enable or restrict development capacity. A council must also consider how long-term demand for housing will be met, whilst reducing the likelihood of negative externalities such as traffic congestion. Councils will have to model demand-side information around typologies in their area to meet demand. Enabling the building of more MDH will be very much part of some territorial authorities' answer, particularly that of Auckland Council, to meet demand.

#### 4.1.3 Urban development authorities

There has been much media discussion about government's proposed use of urban development authorities (UDAs) to facilitate supply of land. UDAs are also intended to ease some restrictions or legislative impediments on the supply of housing. In February 2017, the government released a discussion document on proposed legislation to establish UDAs and facilitate urban development projects (New Zealand Government, 2017).

The legislation, if implemented as proposed, would allow nationally or locally significant urban development projects to be built more quickly through publicly controlled urban development authorities. Potentially, this would be in partnership with private



companies and/or landowners. MDH forms part of the intention behind these proposals.

Enabling powers that could be used to streamline and speed up projects could include, for example:

- powers to assemble parcels of land, including existing compulsory acquisition powers (under the Public Works Act 1981)
- powers to override existing and proposed district plans and regional plans and streamline consent processes.

In appropriate cases, development plans (the mechanism to give practical effect to development projects) could override existing and proposed district or regional plans. A development plan might contain different requirements where there is inefficient housing density or there are height restrictions within the project area.

The planning and resource consenting proposals include that:

- the consent decision maker must first have regard to the strategic objectives of the development project before having regard to other matters in the RMA
- an urban development authority can be granted the planning and consenting powers of a regional council and territorial authority
- an application for development consent must contain an assessment of environmental effects. However, the application is non-notified, apart from in some limited cases such as where the applicant requests notification or notification is required by a National Environmental Standard.

It is possible that the legislation could be introduced during 2017 or 2018.

The Productivity Commission (2015) recommended establishing UDAs in response to the 'housing crises', and it appears the government has broadly followed the Commission's recommendations with proposals for urban development legislation. If the Productivity Commission's recommendations were fully implemented through urban development legislation, a development plan created under the auspices of the legislation would be able to, for example:

- allow the removal of district plan balcony and private open space requirements for apartments
- override minimum apartment size rules in district plans
- remove district plan minimum parking requirements
- lift building height limits.

#### 4.1.4 Council process improvements

##### Auckland Council

Auckland Council is the largest accredited building consent authority in New Zealand. Its Building Control group has about 550 staff. It processes more than 23,000 building consent applications each year (Controller and Auditor-General, 2015). In 2017, Auckland Council is undertaking a programme of change called the Consenting Made Easy programme. Its purpose is to enable faster, easier, higher-quality consenting and higher-quality building. The programme is intended to address breaking the 'silos' at the council. This is particularly those related to its resource and building consent functions and between the council and council-controlled organisations to provide a more seamless service to the customer.



The initiative will be delivered in 2017 and will include:

- enabling online consent processing and payment, reducing paper-based processing
- enabling multiple specialists to process a consent (for both resource consent and building consent) at the same time
- triaging consents into specific types and process these with specialised teams, including more of an account management approach to more complicated consents such as for MDH. Such an approach could be invaluable for development companies. Several development companies participating in this research indicated that having a dedicated contact to call when there have been issues or matters to discuss or disputes between different parts of council to resolve has been invaluable.

A premium service would also be available for those willing to pay for it. In some particular instances, there may also be fixed fees for all council involvement up to Code Compliance Certificates being issued.

### Wellington City Council

Wellington City Council with the support of MBIE introduced the GoShift initiative. This is a “partnership between central and local government to improve performance, consistency and service delivery across the building consent system” (Wellington City Council, 2016). The programme will standardise and simplify the building consent process. More than 20 North Island and top of the South Island councils had signed up to GoShift by mid-2017, including the Bay of Plenty and Nelson.

The GoShift website<sup>11</sup> provides a comprehensive guide to applying for a building consent. If an applicant applies to a council that is part of GoShift, they will use the same forms, templates and checklists. Because participating councils are sharing information, this will be available no matter what council customers are dealing with (McCarthy, 2016).

### Christchurch City Council

Christchurch City Council provides information on its website for those seeking a multi-residential building consent (Christchurch City Council, 2017b). The council provides a comprehensive checksheet of the information that must be provided.

It also provides a Practice Note (Christchurch City Council, 2015). This is to provide clarity around Christchurch City Council’s requirements under the Building Act 2004 for accepting multiple buildings (residential and commercial) and/or multiple building consent application.

## 4.1.5 Building Code improvements

There are some changes and/or additions to the Building Code being considered that might bring clarity to the way the Building Code should be interpreted. They would give more specific direction when seeking to understand how it should be applied to MDH. These include changes and or additions to clauses:

- *C Protection from fire*
- *E2 External moisture.*

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<sup>11</sup> <http://www.goshift.co.nz/>



## C Protection from fire

MBIE instigated its fire programme in 2014, reviewing the fire regulation changes made in 2012, with advice from representatives across the sector. This included fire engineers, architects, scientists, BCAs, the New Zealand Fire Service, industry representatives and MBIE staff. A discussion document with four proposals was developed, addressing areas where the clauses and Acceptable Solutions and Verification Method for fire safety might be improved (MBIE, 2016a). The discussion document was released for public consultation in May and June 2017. Once settled, changes may be introduced in 2018.

### E2 External moisture

As noted in section 3.2.6, when identifying the problem of the gap between, E2/AS1 and AS/NZS 4284:2008, it was suggested that the industry needs improved compliance pathways for MDH.

BRANZ is investigating quality issues relating to weathertightness of medium-rise buildings and is expanding this work as part of its MDH research programme. This research will learn from real-life failures of existing medium-rise medium-density buildings. It will also involve testing wall systems above 4 storeys and the possible development of a new Verification Method. The solution might include increasing the scope of E2/AS1 or a new Acceptable Solution E2/AS4. There is an increased amount of field testing or commissioning that could also be relied upon.

Failing the availability of a clear compliance path at present, Auckland Council suggests a guidance document may be useful to outline some key factors why E2/AS1 and E2/VM1 are not suitable. This would cover reasoning for E2/AS1 and E2/VM1 height limits/restrictions and risk associated with increased building heights.

## 4.2 Proposals by councils, developers and regulatory experts

Those interviewed for this report made many suggestions for change.

### 4.2.1 Better guidance, education and information

The suggestion most often heard was that there should be better guidance and education about how to interpret MDH requirements in the RMA and district plans and the Building Act and its regulations.

A centre of excellence to foster consistency in policy and practice across councils was also mooted by a few. Mechanisms could be established to provide feedback to government, in an organised way, about emerging deficiencies in MDH building practice. These issues could then be diagnosed, and prompt solutions or advice could be provided to improve the performance-based regulatory system. Some considered MBIE to be falling short in performing its stewardship and oversight role with respect to MDH. They considered that there were areas where a neutral player could provide guidance and further support, information and education to councils and the industry.

Councils felt that more workshopping would be helpful. Workshops are often arranged by BRANZ or the Building Officials Institute of New Zealand, but these workshops were ad hoc, and there appears to be no well coordinated approach to educating and involving the industry.



Auckland Council's proposal for improvements to the resource consent process could be seen as national guidance about what planning policy should be for cities. It should set out a view of what government considers should be achieved in terms of MDH.

While there is a reasonable amount of information on government agency and sector group websites, there are inconsistencies in the information available and no definitive source of reliable information. Councils and industry commented that changes are often made to the Building Code without adequate industry consultation or warning. When changes were published, it was often not accompanied by helpful explanatory material. They suggested that the timely dissemination of information could be better managed.

#### 4.2.2 An Acceptable Solution for MDH

One proposal to assist MDH builders in the future would be to have an MDH Acceptable Solution similar to the Simple House Acceptable Solution for a single-storey framed construction. The Simple House Acceptable Solution:

- compiles design solutions within its scope into one document
- covers all the relevant Building Code clauses
- provides a deemed-to-comply route for the building consent process
- is suitable for the majority of New Zealand locations.

It does not include site-specific items such as sitework, plumbing connections to the network utilities or district plan requirements.

As is the case for the Simple House Acceptable Solution, the Acceptable Solution for MDH could be combined with other specifically engineered options. Users would need to prepare additional documentation of their changes and alternatives for the BCA to consider.

### 4.3 The Australian experience

Resource and building consent processes are practical mechanisms to implement New Zealand law, and it is not straightforward to simply import mechanisms used by other countries to improve law and practice. Nonetheless, it is instructive to consider the approaches in Australia to make the building of MDH more effective and ultimately more affordable.

Two legislative changes have been identified by this research as being potentially useful in the New Zealand context. On the basis of what is being done in Australia via legislation to address issues that have been identified in New Zealand in relation to MDH, consideration might be given to:

- creation of an MDH code similar to that employed in New South Wales
- establishment of urban design panels such as those employed in Western Australia.

#### 4.3.1 Medium-density housing code – New South Wales

The proposed medium-density housing code for New South Wales, if agreed to by state government during 2017, will be introduced through amendments to the Environmental and Assessment Act 1979. The purpose of the code is to provide an efficient mode of delivery for low-rise medium-density housing across New South Wales in areas zoned for such housing (Planning and Environment, 2016b). Low-rise



MDH in New South Wales is defined as “housing characterised by the entry and private open space being at ground level” (Planning and Environment, 2016b, p. 6).

The code will essentially be a design guide on housing described in the report as “the missing middle” (Planning and Environment, 2016a). The guide is to provide design guidance for MDH typologies, including low-rise examples such as dual occupancies, manor homes, townhouses and terraced houses. The aim is to make approvals for these housing types more efficient and provide greater consistency with approvals. Requirements related to lot size, set-backs, building height and design controls and impact on adjoining properties would be specified.

Councils will have the option to adopt the code. If they do, the typologies of MDH referred to above will be deemed to be complying developments and be subject to a fast-track approval process. Provided the application meets specific criteria, it can be determined by a council or accredited certifier without the need for a full development application.

The aim of the code is very much focused on standardised buildings with ‘predictable outcomes’ and minimal impact on adjacent properties.

#### 4.3.2 Development assessment panels – Western Australia

In Western Australia development assessment panels (DAPS) were introduced to improve the planning system (Department of Planning, 2017). DAPS provide more transparency, consistency and reliability in decision making on complex development applications. The Planning and Development (Development Assessment Panels) Regulations 2011 determine the types of applications and the legal role of DAPS.

Each DAP consists of five panel members – three are specialist members and two are local government councillors. Under the DAP regulations, each DAP will determine development applications that meet set type and value thresholds as if it were the responsible authority under the relevant planning instrument.

One of the advantages of the process is that the more complex types of applications will have the benefit of being determined by experts with technical knowledge alongside local elected representatives. The process is designed to help balance local representation and professional advice. This ensures that decisions made by DAPs are based on the planning merits of the application and not, for example, the views of the constituency or public representatives.

Such panels could be used in New Zealand so that subjective decision making does not influence decisions whether to allow for applications to be approved or not. Larger projects would also benefit from expertise. Auckland Council uses a similar mechanism – the Auckland Design Panel – but this panel does not have the same legal status. The Auckland Design Panel is a mechanism whereby advice is given, and it does not determine applications as DAPS do but simply makes recommendations.

## 5. Case studies

Part of the approach to this research has been to conduct two case studies that describe the consenting processes for MDH. They illustrate how resource and building consent processes were undertaken and completed for two specific building projects. They highlight the experience of developers, project managers, consenting authorities and builders. They were selected as examples that are reasonably typical, according to our research participants, of the MDH consenting process.

They are based on participation of those involved at each site via several interviews. In both cases, they are reflections of those involved at the end (or near end) of the project. They are a retrospective narrative on the experience.

### 5.1 Fleming Street Apartments, Onehunga, Auckland

Tall Wood Limited recently received resource consent to construct a 6-storey building in Fleming Street, Onehunga, Auckland. The developer had only applied for resource consent to date.

The developer made the following general remarks about the company's experience of the resource consent process:

- The fact there is a precedent for a building being constructed does not necessarily help to demonstrate compliance with the RMA or Building Code when applying for a new consent. This is despite the fact there are similarly constructed buildings or that the same Alternative Solutions were used in constructing those buildings. Efficiencies cannot necessarily be achieved by referring to similarly constructed buildings. Many buildings, particularly those by Tall Wood, are one-offs. This makes it hard for the developer to point to similar buildings (or using similar design solutions) and get councils to agree to accept Alternative Solutions used in other projects.
- The biggest reason for delay was associated with giving certainty to Auckland Council in the face of designs, methods and approaches that the council was unfamiliar with. Delays are common given the relatively narrow range of innovative MDH buildings (especially tall timber-framed buildings) currently in Auckland and New Zealand.
- The façade for the building is to be above 10 metres but below 25 metres. A solution would have to be found based on E2/AS1. Testing of the façade will be required and will be expensive. It is expected to cost anywhere between \$30,000 to \$100,000, so innovation can be an expensive exercise. A peer reviewer will likely be required by the council, and since the building is proposed to be a tall timber-framed building, a peer reviewer might not be available in New Zealand.

#### 5.1.1 The resource consent process

After lodging the application for a resource consent, Tall Wood received a section 92 letter under the RMA from Auckland Council. This included a list of further information requirements that needed to be satisfied before the council could decide the application. The amount of further information requested was somewhat in contrast to the impression created by the minutes and mood of the pre-application meetings. At these meetings, the applicant was left with the impression that the resource consent application included most of the necessary information and would substantially comply with the requirements.



The section 92 letter outlined matters that needed to be responded to before the assessment of the application could proceed. The letter states that the council planner had undertaken a preliminary planning check of the application. The letter requests further information to enable an appropriate understanding of the proposal and assessment of its effects. This includes an acoustics report to address the internal noise requirements because the building with its residential units is in the Business Mixed Use Zone.

The letter also asks for:

- existing neighbouring context, including streetscape character, movement and urban structure
- site analysis, including design constraints and opportunities
- how the proposed development fits within the local and wider area context
- how the proposed bulk, mass and layout is appropriate for the site and the neighbouring sites, including visual (height) relationships between the development and direct neighbours
- the development's interaction with the street and the neighbouring properties including active edges, pedestrian and vehicle entries, visual connections etc.
- design intention of the proposed buildings, including façade treatment, materiality etc.
- further information regarding the proposed façade treatments, materials and colours for the entire development.

The council suggested that Tall Wood refers to the parts of the district plan and the Auckland Design Manual for guidance and examples.

Further meetings were held with the council to discuss aspects of the further information requests. Following further meetings and exchanges between Tall Wood and the council, the design was refined and reissued in January 2017 and included the following changes:

- The corner of the building at street level has an increased level of glazing and treatment that allows for a higher degree of visual interaction at street level.
- A unit was reconfigured to be a 1-bedroom studio apartment.
- Further refining of the ground level corner occurred, as well as reconfiguring the internal access ways.

The whole process to have the resource consent approved took about 6 months.

### Height considerations

There were issues associated with height matters that were considered in the resource consent. The building was originally designed to be a 5-level building.

After making an initial application, Tall Wood provided a design with an additional level (a 6-level building) because a building of this height was permitted by the Unitary Plan – Decisions version. The Unitary Plan had come into effect after the original consent was lodged.

Tall Wood designed the roof to be accessible to provide for communal amenity for the building. To do so extended the lift and stairs to exceed the 21-metre height limit by 2.275 metres. Tall Wood noted that its planning advice was that building height limit relates to the overall height of the roof. The advice was that the extension of the stairs and lift beyond the 21-metre limit is provided within the exclusions under the definition



of height. The height limit is calculated using the average height method measured as the vertical distance between the highest part of the building or structure and the average ground level.

The council was not satisfied with Tall Wood's interpretation of the law and rules with respect to the height of the building. The overall building height was finally reduced to under 21 metres by lowering the floor-to-floor height.

### Analysis

Some of the requests in the section 92 letter are related to design requirements not in the district plan. It is unclear what consequences would follow were the developer not to comply with those non-legislative requirements.

The extent of the council's further requests appears to show a mismatch in expectations. What Tall Wood and its consultants initially considered was required and necessary to provide to the council to satisfy the resource consent requirements differed from what Auckland Council expected them to provide. Further meetings and discussions meant extra time and money to agree to a final design that all parties could be reasonably satisfied with.

This case study demonstrates the:

- interaction, time and cost required between the developer, the developer's agents and the council to agree on aspects of the design of an MDH building the council is not familiar with
- the number of design elements that need to be taken into account to reach final agreement – this may well reflect the council's lack of capability to respond to some specific technical details.

It is important to note that this case study reflects the experience of one development company in relation to one project. It was not possible to get a consenting authority view on this particular development. It is recognised that they may have a different point of view to that presented here.

## 5.2 5-storey apartment building, Auckland

This case study is about the resource and building consent processes for a 5-storey apartment building in Auckland.

Before a resource consent application was lodged with Auckland Council, staff with responsibilities for various aspects of the consent process attended a number of pre-application meetings. This included resource planners, building control officials and those responsible for stormwater and drainage and assessments of environmental effects. These meetings were considered to be useful by the architect, because the different aspects of the development could be discussed simultaneously with council staff, and issues could be worked through.

The architect observed that, in his experience, council staff attending pre-application meetings were not the ultimate decision makers for their respective parts of the consents. Council staff at pre-application meetings often have to report to decision makers who might hold different views of where and whether trade-offs and accommodations could be made. Often, various disputed and unresolved issues within the council are left to the developer or their agents to resolve or mediate when



different parts of the council are unable to agree. The process to seek resolution causes delay and results in further costs.

### 5.2.1 Resource consent

A geotechnical report was required by the council as part of the resource consent application. The extent of information required as part of the geotechnical report changed when the Unitary Plan came into force. Additional information relating to the ground conditions needed to be provided under the Unitary Plan. The additional information requirement resulted in a delay of a number of months.

The building was originally intended to be a 6-storey building, which was above height controls at the time. One neighbour objected and indicated that he would seek a judicial review of the decision to approve the consent. As a result, the council planner indicated that the application would be transferred to a commissioner to determine the application.<sup>12</sup> Consequently, to avoid the possibility of judicial review proceedings, the developer decided to amend the application to a 5-storey building to comply with the applicable rules and height controls. Further costs were incurred to redesign the building. The developer notes that, if developers decide to go beyond what the rules provide (even though the council might approve the applications), “you do so at your peril”. The developer indicated that the consequences that might follow are not always clear and might cause much delay and unforeseen complication.

Because the building is in a mixed-use zone (commercial and residential), some acoustic requirements (sensitivity issues from an existing use) had to be met. Some of the requirement to address acoustic insulation from the exterior were considered to be quite stringent and took considerable time and effort to address. This was because a solution for fresh air supply to habitable rooms (when windows were closed) had to be incorporated. Also, aluminium windows and the installation assembly are usually not tested for acoustic insulation properties. Acoustic consultants have to make an estimate of their efficacy from previous experience and then test on site once they have an example installed. If they are not achieving the required acoustic insulation, installation details have to be amended until they do.

### 5.2.2 Building consent

The building design provided a solution for insulation to be used on the outside instead of within the structure. The intention is for the whole structure to be kept warm. Providing for insulation on the outside is a relatively unusual way of insulating a building in New Zealand. There are not necessarily tried and tested building methods for every type of building using this approach to insulation. The architect had to consider the use of materials and products that the council was not familiar with and use methods that were not specifically provided for as there was no Acceptable Solution. The wall build-up from interior to exterior was 70 mm brick veneer, 50 mm cavity, 60 mm Aridon polystyrene insulation and 200 mm (varies) precast concrete structural panels. Specialist brick ties to attach the veneer through the insulation were untested in New Zealand. The insulation supplier’s engineer designed a structural batten that could be used on the exterior of the insulation with standard New Zealand-certified brick ties.

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<sup>12</sup> A commissioner is a person appointed by a council to carry out statutory decision-making duties on the council’s behalf or to serve as an independent advisor to the council in the making of those statutory decisions.

During the building consent process, there was quite a considerable turnover of council staff. The building control officer responsible for building consent matters was present at the pre-application meeting was not the person responsible for processing the application and liaising with the architect and the client. The architect also had to apply for variations of the original consent, and because of further turnover of staff, a third council officer was responsible for processing the application for the variations. Every time another council person became responsible, it took time and effort to rebuild relationships and achieve continuity. It also took time for the building control officers to familiarise themselves with the building and get up to speed with previous conversations.

### 5.2.3 Phasing of consents

The building contains a penthouse. Initially, the plan was to build the apartments and the penthouse unit at the same time. However, because of changing circumstances (mostly upgrade of penthouse finishes), that part of the building needed to have a different timeframe for completion.

The issue was that a Code Compliance Certificate had to be attached to building consent for the whole building, including the penthouse apartment. Because the developer wanted to finish the penthouse at a separate time, there was no way to get a Code Compliance Certificate for the main building without total completion. The architect therefore had to apply for a building consent variation to remove the penthouse and then another new building consent for the penthouse.

The architect advised that, in their view, it would have been better if the building consent process provided more flexibility to adjust the scope of the consent. This architect considered that more building in the future will be of mixed use and that flexibility should be provided as part of the building consent process to save time and money.

## 6. Conclusions and recommendations

A number of broad conclusions and recommendations can be made to address the issues identified. These also consider how future potential pitfalls can be avoided and how consent processes for MDH could be improved.

### 6.1 Conclusions

Conclusions are summarised by theme below.

#### Building Code

- Building Code-related issues stem, to a large extent, from the fact that aspects of the Code were not necessarily designed with the current range of typologies of MDH in mind. Lack of clarity about how the Code should be applied has left architects and designers to design alternative methods, and councils are unwilling to approve applications for consent due to uncertainty about the potential risks.
- Building Code issues with MDH relate mostly to clauses:
  - G6 (which is seen as out of date and not going far enough to protect consumers)
  - E2 (which does not apply to mid-rise MDH buildings over a certain height)
  - C (where the clauses are seen as overly complex, confusing and expensive to comply with).
- Costly alternative methods are often required in the face of a developing MDH market. There is a lack of a clear pathway by which Alternative Solutions can be shared or can become Acceptable Solutions.

#### Regulatory and legislative context

- There is a range of industry and local government views about whether consent issues mostly relate to the legal framework (primarily the Resource Management Act and the Building Act and its regulations). While some research participants felt this was the case, others thought that the issues mostly relate to the way the law is implemented by councils and understood by industry (a competency and system issue). There were a number of positions between these two.
- The government has made substantial changes to resource management-related legislation to ease the way for industry to build more MDH and increase supply. This includes taking away unnecessary notification requirements in specific UDA areas and directing councils to tidy up the variability in setting resource management requirements.

#### Consenting processes

- Some resource consent issues stem from a lack of clarity relating to the extent of a council's discretion to approve or decline applications.
- Some councils are responding with process initiatives to deal with building consent issues and are increasing their resourcing to respond to the demand for MDH.
- The issues identified by the Productivity Commission in 2012 related to building consent (delays and uncertainty about council requirements, inconsistency, lack of information sharing, issues with competency) have not been adequately addressed. Many apply to a greater or lesser extent to MDH consent applications.
- Many timing and process difficulties arise because MDH developers often apply for resource consent and building consent simultaneously to save time. The outcome of either application may have a significant bearing on the other.



## Demand

- Councils, architects, designers and developers are still trying to catch up with the challenges of building quality MDH given the level of current demand and New Zealand's historical preference for stand-alone housing.

## Information and advice

- There are significant calls from councils and industry for better guidance and information relating to MDH. There appears to be a major gap where useful, accessible, centre of excellence type information could be more readily provided. Many see the government as needing to better fulfil its stewardship role.
- There is a lack of understanding at councils and within industry about the implementation of some parts or aspects of the Building Code as identified in this report. This is another opportunity for central government to provide advice and leadership. While MBIE, BRANZ and others have already begun to address some of these issues, councils and industry are clearly struggling with implementing and interpreting these clauses.

## 6.2 Recommendations

Further research and education and information sharing are recommended.

### 6.2.1 Further research

It is clear that there is little research available on issues that the industry and councils face in consenting MDH. There is also a lack of research on the effect those issues have on the MDH market. New Zealand's experience of resource and building consent for MDH is somewhat lagging in terms of maturity of the industry when compared to the history of MDH development in other countries. New Zealand's resource and building consent processes are largely products of New Zealand law. However, it is reasonable to assume that other countries, particularly those with comparable legal systems, have developed solutions and processes to address common issues with resource and building consent. The industry in New Zealand will increasingly face these issues as demand for MDH continues to be strong.

Further research into this topic is likely to produce results that will help central and local government and the industry to understand how to:

- address current issues and avoid making the same mistakes that have been made in other countries
- employ useful and innovative processes and solutions employed elsewhere.

This study has highlighted additional consenting-related questions that could be answered by research (and that overlap in this regard with other BRANZ research):

- How is the quality and complexity of MDH buildings being affected by the nature of resource and building consent processes? For example, architects have remarked that they are often reluctant to design buildings that are outside the scope of council expectations. This is to avoid buildings that will either be notified or are likely to involve time-consuming requests for further information. It would be helpful to understand to what extent resource and building consent stifles innovation. It is useful to understand the effect requests to modify the building to satisfy council requirements have on the quality of other aspects of the building as developers seek to offset costs.

- What is the impact of resource and building consent processes on the price or affordability of MDH? Some researchers, particularly Grimes and Mitchell (2015), have shed some light on this question. However, there appears to be no research that adequately estimates the cost of consent processes specifically on the overall price of MDH. Research could shed light on the cost effects of overly prescriptive or unnecessary requirements as they relate specifically to the consent process.
- What is the extent of the shortage of skills and competency in councils to carry out their resource and building consent functions, and what are the impacts? Conversely, where in the industry is there a shortage (architects, designers, developers, project managers) to meet the demand for MDH? What is the extent of risk posed by this shortage in guiding projects through the consent process in meeting the demand for MDH?

### 6.2.2 Education and information sharing

Industry professionals, government, researchers and councils were asked for their suggestions to improve MDH resource and building consent law and process. There was a general call for government (central and local) to provide better education and information about how resource and building consent processes apply to MDH and facilitate information sharing. Consequently, the following next steps are recommended:

- Councils, in particular, called for more workshops to discuss resource and building consent for MDH. Such workshops should be arranged by government (central and local) so that issues and solutions can be discussed on a regular basis, projects could be initiated and feedback provided.
- Government should consider the issues identified in this report as they relate to systems for product certification and the use of alternative methods/Alternative Solutions where building materials or methods are unfamiliar to councils. Better product certification systems and clearer pathways for Alternative Solutions to become Acceptable Solutions will mean more products and methods used in the industry will not have to be continuously retested. Clearer guidance for acceptance of alternative methods may reduce the cost of building. As the Productivity Commission noted in its 2012 housing affordability report, building and design professionals are still largely reliant on their own experience and those of their peers. This experience is drawn on when creating a new or non-standard solution.
- There is a need to ensure that information is shared between councils and across industry. This would ensure that a growing base of knowledge is built up for all involved in MDH to use as a resource.

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## Appendix A: Research methodology

To write this study report, the following research methodology was employed:

### Literature review

As a starting point, a literature review was undertaken to discover whether there was any research and information available about issues or barriers associated with MDH consent processes in New Zealand. The literature review focused on domestic research. Issues experienced by the industry with consent processes were considered to be likely a result of New Zealand law and the implementation of processes stemming from the applicable legislation.

The results of the literature review made it clear there was no research directly applicable to the subject of this report. The subject of available research was issues with consent processes generally (as it applied to all housing), and a particular focus was impacts on affordability of housing and the cost of building. The following was the most useful and applicable research:

- Inquiry reports by the Productivity Commission, most notably the Commission's inquiry report *Housing affordability* (New Zealand Productivity Commission, 2012). This report contained a good description of issues with the building consent regulatory framework and system overall.
- The Productivity Commission's inquiry reports *Using land for housing* (New Zealand Productivity Commission, 2015) and *Better urban planning* (New Zealand Productivity Commission, 2016). These reports provided a basis for understanding general issues with the resource consent and planning system.
- The Motu report *Impacts of planning rules, regulations, uncertainty and delay on residential property development* (Grimes & Mitchell, 2015). This provided an indication of those factors that might impact on resource and building consent for MDH and the costs faced by the industry as a result of those factors.

### Interviews

Using the information from the literature review, the study team then met with officials from the Ministry for the Environment (responsible for the RMA) and MBIE (responsible for the Building Act 2004). We asked whether government was aware of and, if so, undertaking policy work to understand the issues or barriers associated with consent processes for MDH. These ministries indicated that there were no particular work programmes directly considering the impact of law and process on MDH. However, it was clear that some thought had been given to various areas of concern, mostly stemming from anecdote. Both ministries were also very aware of the demand for MDH and the importance of such housing to New Zealand and were supportive of the research.

The Ministry for the Environment discussed the aspects of RMA reform that would likely have a future effect on alleviating some issues with housing.

We then had some preliminary discussions with two developers to understand issues from their perspective. We questioned them about the extent to which the general issues with consent identified in research applied to MDH.

Using the information about the issues with consent generally and those identified by central government and developers, two questionnaires were developed – one related



to building consent and one to resource consent. These were sent to all the major councils in New Zealand. The questions were comparatively open-ended. They asked councils to elaborate on their experience with how issues identified with consent processes related to the building of MDH buildings specifically (using the BRANZ definition for MDH). We also asked councils about how they intend to address the issues identified and how they considered improvements could be made to current systems. All the councils participated in the research.

We held face-to-face interviews with Auckland Council, Christchurch City Council and Wellington City Council officials to answer some further questions and give council resource and building consent staff an opportunity to elaborate. We held phone interviews with officials from Hamilton City Council and Queenstown Lakes District Council. The answers from councils provided a very good basis to describe issues, and there were many commonalities in their response.

We then tested the information we received from councils with a group of 20 developers, architects and project managers to see whether they agreed with the issues identified by councils or had a different perspective. We also asked developers, architects and project managers about how they thought consent processes could be improved.

We undertook brief research on whether the issues identified as part of this report had been experienced in Australia. We investigated whether there were any lessons about how various Australian states had reacted to growing MDH demand and markets. Some of this research is contained in the report

Finally, we met with officials from the New Zealand Productivity Commission to discuss the report's conclusions and recommendations and obtain the Commission's perspective.

The interview guide used is appended below.



## Questions about Medium Density Housing projects resource and building consent processes

### Resource consent

What are some of the difficulties, in general terms, that developers of medium density housing projects encountered with obtaining resource consent from the Council?

What aspects of the way in which resource consent applications are made that could be improved?

### Building consent

What, in general, are some of the difficulties that those seeking to build MDH encounter with obtaining building consent?

What are some of the difficulties between receiving a code compliance certificate?  
What aspects of the application process could be improved?



What aspects do you consider could be improved about the overall process not covered by the answers to the other questions? Are there shortcomings in current law and regulation, e.g. the Building Act, its regulations and the Building Code as it relates to MDH?

Did you encounter any issues related to your development contributions policy?

Are there any other comments you would like to make not covered by the above questions?