

29. REPORT BY THE CHAIRPERSON OF THE REGULATORY AND PLANNING COMMITTEE 2  
FEBRUARY 2011



PART A - MATTERS REQUIRING A COUNCIL DECISION

1. WEATHERTIGHT HOMES RESOLUTION SERVICES (FINANCIAL ASSISTANCE PACKAGE)  
AMENDMENT BILL

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Environmental Policy & Approvals Manager
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PURPOSE OF REPORT

1. The purpose of this report is to present to the Council a draft submission (**Appendix 1**) on the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill (**Appendix 2**) and outline further details on the operational design and process framework for the Government's Financial Assistance Package for Leaky Homes.

EXECUTIVE SUMMARY

2. The Council has previously considered the Financial Assistance Package from the Government, in response to the leaky buildings issue, on 27 May and 23 September 2010. The key information has been repeated in this report and the 23 September 2010 report (**Appendix 3**).
3. The Council agreed in both May and September to become a party to the package, provided 25 per cent of the remediation cost would be met by each of the Government and Territorial Authorities, leaving homeowners to fund 50 per cent of the remediation costs with access to loan funding and the ability to make further claims against builders, developers or other parties.
4. The Council resolution passed in September included:
  - *Agreeing to participate in the financial assistance package for owners of leaky homes, conditional on the Government passing legislation to address the litigation risk for Councils by third parties, or, if legislation is not able to be passed, that an alternative method to "cap" council liability is found, and agreed by the Council.*
  - *Noting that the decision did not require a special consultative procedure as it did not come within section 97(1)(d) of the Local Government Act 2002, for the reasons outlined in the report.*
  - *Agreeing that the Council will not apply for assistance to repair any Council owned leaky homes under the financial assistance package.*
  - *Agreeing to advise the Government of its decisions*
  - *Delegating the Chief Executive to continue to work with Government officials and the Local Government sector to agree any final details of the financial assistance package including on the litigation risk, insurance issues and lobbying further to exclude commercial retirement villages from eligibility under the package*
5. The Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill largely addresses the issues previously raised by the Council by amending the Weathertight Homes Resolution Services Act 2006 to facilitate the delivery of a financial assistance package to eligible owners of leaky homes (eligible homeowners). The financial assistance package aims to help improve eligible homeowners' access to finance required to repair their homes and to divert litigation costs toward repair costs. The high-level design parameters of the financial assistance package are:

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- The Crown and the participating territorial authority will each provide a 25 per cent direct payment to agreed repair costs. However, the participating territorial authority will only make a direct payment if it signed off the work.
- If an eligible homeowner opts into the scheme, the homeowner must agree not to sue the participating territorial authority and the Crown (eligible homeowners will still be able to pursue legal action against other parties).
- The Crown will provide assistance to eligible homeowners in accessing bank finance for the remaining agreed repair costs by offering credit support to banks (by way of a limited Crown guarantee or indemnity) for loans made to eligible homeowners who can meet the banks' lending criteria.

The key features of the Bill include:

- Capping the liability of participating territorial authorities (in accordance with a contribution agreement) and the liability of any other contributing parties (for instance, other solvent defendants) for claims being addressed through the financial assistance package. This will help ensure that the financial assistance package diverts litigation costs toward repair costs. If participating territorial authorities or other contributing parties are joined to litigation where they have paid a contribution through the financial assistance package, they will face both the cost of the package and potential ongoing costs of litigation, if any.
  - Removing the Crown's liability for the failure of repairs made under the financial assistance package and any losses suffered as a result of the actions of the Department of Building and Housing or the Crown under the financial assistance package process. The amendment recognises that the Crown is making a significant contribution to solving the leaky-home problem where it has no liability to do so.
  - Authorising the appropriate Minister to give a Crown guarantee or indemnity in respect of loans for repairs made under the financial assistance package.
  - Limiting the period in which eligible homeowners may apply to enter the financial assistance package to five years from the time the financial assistance package becomes operational
6. The Chief Executive and Council staff have worked closely with the other major Metropolitan Councils, Local Government NZ and the Department of Building and Housing on developing the draft operational design and process framework to support the financial package. The Bill addresses the key issues and the operational design and process framework documents contain the detail. A flow diagram from the operational design and process framework documents (**Appendix 4**). This shows critical points in the process where Territorial Authorities agree the eligibility of the claim, reviews the repair plan, agrees to contribute (if appropriate), issues a building consent and inspects the repairs.
  7. Submissions on the Bill close on 18 February 2011. The attached draft submission (**Appendix 1**) proposes that Council supports the Bill. It identifies that the Council does not support the package being made available to large commercial "retirement villages" and includes a number of legal points which, if changed, would help to clarify aspects of what is proposed.

#### FINANCIAL IMPLICATIONS

8. This report principally presents a draft submission on the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill. It remains extremely difficult to provide a reliable estimate of how much extra budget might be required, if any, if the Bill is passed into law. The proposal has ongoing financial implications for the period the scheme will be in force, five years from the passing in law of the Act (expected to be effective from 1 July 2011).

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9. The Council currently has \$1 million per annum in its 2010/11 to 2015/16 budgets to meet weathertight homes claims. This figure of \$7 million overall has been based on the Council's previous history of resolving claims under the Weathertight Homes Resolution Service Act 2006 and provides for claimants that would up until now utilise the existing Weathertight Homes Resolution Service (WHRS).
10. The status of existing claims is that we have 94 claims registered with the WHRS and three in the District Court. The Council has already settled 134 claims. More recently, since June 2007 - 56 claims, concerning 135 property units have been settled. Of these, 51 were WHRS claims, four District Court and one High Court claim. The average settlement amount paid by the Council or its insurers was \$64,649 which included legal expenses. This coincidentally represents 25 per cent of the claimed amount but the claimant only received an average of \$39,805 (15.6). The balance was paid in legal expenses.
11. The initial Government proposal estimated that the Council will incur \$20 million over the next five years if 50 per cent of claimants take up the scheme. If 70 per cent take up the scheme then the Council will incur \$28 million over the next five years.
12. Council staff have previously analysed the Government projections. Their estimates at that time were that there could be between 20-30 per cent take up of the Government scheme. This could require a further Council contribution of between \$8-12 million in the next five years. For the balance of the homeowners of 'at risk' homes, the Council does not expect to get any claim. In summary, the reasons are that owners are in denial, have already made or will make repairs, or cannot afford to contribute themselves.
13. Under the scheme, the Council may require a further contribution, in addition to the \$7 million already included within the LTCCP. This is not certain and it is extremely likely that the settlement of claims will be spread over the remaining five years and therefore the additional annual commitment is not material and will not trigger a section 97(1)(d) consultation requirement.
14. A report received from Melville Jessup Weaver, Actuaries, who work for major metropolitan councils including Wellington and Auckland, suggest that there are likely to be further savings for the Council for existing claims where claimants opt into the Financial Assistance Package (FAP) proposal. Their expectation is that the cost of existing claims will reduce from \$6,772,000 to \$4,241,000. This represents a reduction of \$2,531,000 for existing claims and would partially offset new claims under this scheme.

#### **Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?**

15. Yes. The Financial Assistance Package may require Council to make some extra provision in its 2009-19 LTCCP and 2011/12 to 2015/16 Annual Plans for extra funding to meet the potential increase in claims. The projections are uncertain as the majority of extra claims are presently unknown and Council is only receiving 14-15 extra claims per year, at present.

#### **LEGAL CONSIDERATIONS**

16. The Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill has been reviewed by the Legal Services Unit. The provisions of the Bill are effective in facilitating the delivery of financial assistance to eligible owners of leaky homes while protecting the contributing parties from subsequent litigation.

#### **Have you considered the legal implications of the issue under consideration?**

17. The legal review identified a number of legal points which, if changed, would help to clarify aspects of what is proposed in the Bill. These have been included in the proposed submission (**Appendix 1**).

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#### ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

18. Aligns with LTCCP page 89, administration of laws around building and development leading to safe buildings and reduction in environmental hazards plus page 187 of the LTCCP, developing our urban environment and sustainable use of buildings.

#### Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

19. Yes.

#### ALIGNMENT WITH STRATEGIES

20. The Council has historically provided for claims and has an ongoing legal responsibility imposed by the Weathertight Resolution Service Act 2006.

#### Do the recommendations align with the Council's strategies?

21. Yes.

#### CONSULTATION FULFILMENT

22. There has been extensive consultation with the other major Metropolitan Councils and the Department of Building and Housing, to address issues of concern and give effect to the Council's previous resolution to participate in the package subject to the resolution of these issues. There has also been the development of the draft operational design and process framework with these parties, to support the package.

#### STAFF RECOMMENDATION

That the Council:

- (a) Note that the Council agreed previously to participate in the financial assistance package for owners of leaky homes, conditional on the Government passing legislation to address the litigation risk for Councils by third parties
- (b) Note that the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill generally addresses the key issues previously identified with the scheme.
- (c) Note that the Chief Executive and Council staff have worked closely with the other major Metropolitan Councils and the Department of Building and Housing on developing the draft operational design and process framework to support the financial package.
- (d) Forwards the submission on the Weathertight Homes Resolution Services (Financial Assistance Package) Amendment Bill, (as amended) attached as **Appendix 1** to this report.
- (e) Reserves the right to address the Council submission during the Select Committee hearing process.

#### COMMITTEE RECOMMENDATION

That the staff recommendation be adopted.