

**Audit, Finance & Risk Committee
6 June 2019**

Report for Agenda Item | Rīpoata mot e Rāraki take 6

Department: Planning & Development

Title | Taitara Review of the Ministry of Building Innovation and Employment (MBIE) Report into the Tauranga District Council's Building Consent Authorities Failures which contributed to the Bella Vista Development Failure

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

- 1 The purpose of this report is to provide the Audit, Finance and Risk committee an assessment of the risk to Queenstown Lakes District Council of the causative factors resulting in the Bella Vista development being present within the Queenstown Lakes District Council's Building Consent.

RECOMMENDATION | NGĀ TŪTOHUNGA

- 2 That the Audit, Finance & Risk Committee:
 1. **Note** the contents of this report in conjunction with the Ministry of Building Innovation and Employment report, Appendix A.

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20/05/2019

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23/05/2019

CONTEXT | HORPOAKI

- 3 The Bella Vista housing development is a 21-lot subdivision in Tauranga, located within the Tauranga City Council boundary. Initially larger lots (11), Bella Vista purchased the lots and subdivided them into 21 smaller lots. The development was built on challenging sloping ground.
- 4 During the early period of the development, the owners of Bella Vista Homes Limited made numerous complaints to elected members, Council senior management and senior building services staff about the perceived treatment they were receiving from the building services team. Bella Vista asserted that the building services team were deliberately being obstructive, were causing unnecessary delays to the builds and were trying to ultimately put Bella Vista out of business.
- 5 Council responded to these complaints by Bella Vista Homes Limited and others (although primarily Bella Vista) by engaging BDO to undertake a review of the Council's building services unit in 2017. The BDO report made a number of observations and recommendations. One unintended outcome of the report was that the building services staff became sensitised to further criticism of not being customer focussed or engaged with the building industry. Staff came to understand that they were to facilitate the Bella Vista development to proceed to an extent that policies, processes and systems that were designed to safeguard the integrity of the building control function were largely disregarded. A culture of enabling poor building practise by Bella Vista Homes Limited developed.
- 6 Of note is that, in 2016, there were a significant number of similarities between the Tauranga City Council's Building Consent Authority (BCA) and Queenstown Lakes District Council's Building Consent Authority. Both were struggling to cope with unprecedented growth which created significant pressure due to; staff and contractor under-resourcing in the face of the growth, inexperienced staff, the BCA not engaged with or communicating with the building industry (a them and us mentality), ineffectively managed, poor staff morale, poor consenting timeframes and poor decision making. In the case of QLDC, the 2016 IANZ assessment, which very nearly resulted in the loss of accreditation and therefore ability of the BCA to process and issue building consents, was a catalyst for significant investment and change in the BCA which addressed those issues. These included:
 - Increasing the full time equivalent staff count of the BCA from 25 in 16/17 to 41 in 19/20
 - Actively engaging with and communicating with the building industry, which included; leading workshops in Wanaka and Queenstown on topical issues, drafting a quarterly newsletter that goes to a comprehensive building industry data base, attendance and presenting to Registered Master Building meetings, every two years personally meet with the principals of the large building companies operating in the Lakes District
 - Employment of a full-time quality assurance staff person to be responsible for the quality management system

- A complete review of the consent application process was undertaken so that the quality of the consents and information being received increased significantly. A new Consent Checking officer role was also created to ensure applications are complete and of required quality.
 - Significant investment in staff training. The BCA won the Building Officials of New Zealand award in 2018 for commitment to training.
 - Employment of two full time compliance officers to ensure the building warrant of fitness building system had integrity.
 - Sourcing and engaging a number of experienced and capable external contractors to ensure that the growth of consent numbers could be managed within satisfactory timeframes, while the upsizing and upskilling of the BCA internal staff could continue.
- 7 In the Tauranga City Council BCA's case, however the necessary changes were not implemented in time to avert the Bella Vista failure. Following the failure, which resulted in the 21 homes being declared dangerous buildings and Council ultimately purchasing the homes, the Ministry of Building Innovation and Employment conducted a review of the conduct and practises of the Tauranga City Council's BCA to determine the BCA's contributory factors to the Bella Vista failure. This report focusses on the outcomes of that review.
- 8 The review's subsequent report has nine conclusions, which identified the failures and actions of the Tauranga City Council BCA, which were contributory to the failure of the development. This report discusses each of the conclusions and provides an assessment of the risk to QLDC of each of the conclusions.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

9 **Accepting and processing building consents**

MBIE found that Tauranga City Council's BCA was accepting and processing poor quality building consents from Bella Vista. Following the BDO report, a single processing building control officer was made responsible for processing the Bella Vista building consents. This individual felt pressure from management to accept and process poor quality consents (they state they were forbidden to reject any Bella Vista consent applications). The poor quality of the applications resulted in average consent processing timeframes for homes in the Bella Vista development of 135 calendar days.

- 10 Two years ago, the issue of QLDC accepting and processing sub-standard consents was also real. Previously, builders and designers practice was to just 'throw everything into the application and let QLDC sort through the paperwork'. That process has now changed, a new checklist has been developed which is working well and gives very clear guidance to applicants on the information required and on the information the application will be assessed against. Applications that do not comply with the checklist are rejected.
- 11 An additional safeguard for QLDC is the creation of a Checking Officer role. This person is the administration and technical gatekeeper for applications and ensures applications are of good quality via compliance with the checklist and that applications contain all the required information.

12 Staff are under no pressure to accept sub-standard applications, management has no input into whether or not any application is accepted or rejected.

13 Advice: QLDC risk is assessed as low.

14 Conditions on the building consent

At Tauranga City council's BCA it was found that site inspection conditions on the building consent were generally not site specific but generic, particularly in regard to verification of works from 3rd parties (CPENG for example). This resulted in there being not enough clarity about who was going to undertake which inspections and what verification evidence was required. This is an area where previously QLDC was very poor but there have been significant improvements over the last 2-3 years. The comment from the processing Team Leader was 'we are better than we were but could do better'.

15 The processing and inspections team leaders will work on ensuring the inspection regime on consents is more site specific and building control officers have more input into writing their own building consent conditions as opposed to using generic conditions. They will also be very clear about which inspections QLDC staff will undertake and which inspections require engineering input, such as through producer statements, and what verification evidence is required.

16 Advice: QLDC Risk is assessed as low/medium

17 Single point of contact

The BDO report recommended that Tauranga City Council's BCA have one single point of contact for the Bella Vista development to streamline processes and inspections. A single processing officer and inspections officer were designated as the 'single point of contact' for their respective areas, processing the consents and inspecting the buildings for compliance.

18 As mentioned in 9, the single contact-processing officer felt that management had forbidden them from rejecting or not processing Bella Vista applications. The other BCA staff perceived that they could not question or challenge any decision made by the inspections officer selected as the single contact. The reporting lines for the inspections officer were also blurred, with their direct line manager (team leader) being cut out of the reporting line and thinking they could not question the inspectors' decisions due to pressure from management.

19 There was also a perception of a conflict of interest in that the single contact inspections officer was having a home built by Bella Vista in a neighbouring development.

20 QLDC has a conflict of interest register, which staff are aware of and are aware that if they are undertaking a build, which requires a consent, they must enter the details into the register. They are then no longer involved in the consent process.

21 We have also stopped the practice of building companies bringing/having sent to the office coffees, cakes, and beer, etc., as this has the potential to be seen as an inducement to get favourable treatment from QLDC staff.

- 22 There is a difference between having a single point of contact for liaising with larger projects and having a single processing officer and a single inspections officer as Tauranga City Council's BCA implemented for Bella Vista. At QLDC, the most common primary point of contact for larger projects is the team leader. Having a primary point of contact can result in efficiencies and issues being resolved in a timely manner. At QLDC, during the inspections phase we ensure that at least two inspectors have carried out inspections on every build. Although there may be efficiency benefits of a single inspector being allocated a build there is also risk, getting too close to the builder/developer, getting tunnel vision, succumbing to pressure from the builder/developer etc.
- 23 There is also no management input into technical decisions or pressure to change a technical decision. Technical team leaders oversee and monitor technical decisions by building control officers and have autonomy around this. Team leaders and the building services manager do come under pressure from developers and builders/designer to expedite their consents and to change decisions. These pressures and communications are dealt with by team leaders and the building services manager and not passed down to building control officers, although they also get direct communication when on site and via phone/email. Building control officers are aware that there is no pressure on them to agree to any such requests and to escalate to their team leader or building services manager if they become uncomfortable with the interaction.
- 24 Advice: QLDC risk is assessed as low
- 25 **Managing construction sequencing**
At Bella Vista, this issue primarily relates to retaining walls not being built prior to the build progressing. The earthwork cuts at Bella Vista were deep and high and posed serious risk to people working on the site and the builds both below the cut and on the top of the cut.
- 26 Ideally, the retaining walls should be consented and built by the developer prior to subdivision and title being issued, however this is not a requirement and can be costly for developers, as if the drop is over 1m then fencing also needs to be undertaken. The risk is when, as in Bella Vista, it falls on the individual owner to get consent and build the retaining walls ad hoc. This can cause sequencing to be unaligned.
- 27 Through mentoring and training, QLDC staff are aware of the risk of allowing the build to progress without either a consent to build a retaining wall or the wall not being completed at an appropriate stage. This is becoming increasingly important as builds in the Queenstown area are being constructed on more challenging terrain.
- 28 Advice: QLDC risk is assessed as low/medium
- 29 **Minor variations and amendments**
Changes (some significant and structural) to the consents were being undertaken by way of minor variations and not amendments to the original consent. This resulted in some significant structural changes not having the appropriate engineering oversight or approval. Pressure from management and the developer to ensure work continued resulted in staff approving minor variations on site when an amendment was required. The report also concluded that retrospective approval was provided to changes to the

building without proper technical assessment of whether the changes met the Building Code or as a result whether the building itself would comply with the Building Code.

30 It is acknowledged that, as with most BCAs, QLDC has some work to do on this matter. This is due to there being some subjective judgement required by the building control officers on site when the change to the consent is observed or requested. Inspections building control officers need ongoing training on whether a change to a consented plan made after the build start is a minor variation or an amendment. Building control officers do come under pressure to treat changes as a minor variation as there is a quicker resolution and no requirement to apply to the BCA for an amendment to the consent. Minor variations can be approved on site if the building control officer is within their competency.

31 In the past, some structural changes to plan have been treated as minor variations instead of amendments. Team leaders are aware of the inconsistency and are actively providing guidance and training to staff to clarify when a minor variation should be considered and when a change is significant enough to warrant a formal amendment.

32 Advice: QLDC risk is assessed as medium

33 Keeping adequate records of decisions

MBIE found that the Tauranga City Council BCA was poor at recording decisions, which had some serious ramifications such as non-compliant work not being correctly recorded and work continuing. This was compounded by the BCA changing its software systems from GoGet to Alpha at the time, which created real difficulty for staff during the transition period.

34 QLDC has made significant progress on this area of work over the last two years. Both IANZ and MBIE have stressed the need for technical decisions to have evidence and rationale behind the decision and those decisions and evidence to be adequately recorded. Team Leaders are actively providing mentoring and guidance to their staff on this matter.

35 Advice: QLDC risk is assessed as low

36 On-site inspections

On the Bella Vista development, the inspections regime failed in a number of areas:

- Failed inspections were allowed to remain unresolved with work continuing
- Inspections, inexplicably, did not identify non-compliant building work
- Building work proceeded without inspections
- The failure of 3rd parties to identify non-compliant work

37 Decision making by inspections building control officers is an area that QLDC has been actively working on over the last two years. Staff are being mentored and trained to ensure that when they do on-site inspections, they do not proceed with future inspections when there are a number of outstanding failed inspections recorded on the site. Staff do not accept verbal assurances that issues will be resolved following an inspection. Decision-making is also recorded on the BCOs digital devices at the time of the inspection.

Inspection information is then available to the builder and owner via QLDC's information platform eDocs.

- 38 Empowerment of building control officers to make a decision on whether an inspection is to continue or not has improved significantly, while still maintaining a customer focused approach.
- 39 There was a recent example of QLDC taking action on a project that had numerous failed inspections but work still proceeding on the project. The building control officers attending the site raised their concerns with their Team Leader who discussed the issue with the building services manager. A decision was made to stop inspections on the site until the failed inspections were rectified. The building company engaged a new project manager who worked with BCA staff to have all the failed inspections resolved and work continued.
- 40 Advice: QLDC risk is assessed as low
- 41 **Enforcement – Notices to fix**
The Tauranga City Council BCA did not issue the developer Notices to Fix (NTF) or infringement notices. Pressure on staff due to the conclusions reached in the BDO report, may have been a contributing factor not to issue NTF when they were clearly justified.
- 42 At QLDC's BCA there has been a clear culture change in this area evidenced by the fact in 2016/17, three NTF were issued. Already in the four months of 2019, twenty NTF have been issued.
- 43 The building unit and enforcement team has also initiated three legal cases against owners for breaching the Building Act in 2019, one leading to a conviction and two still active.
- 44 There is also good communication between the enforcement team and the BCA, including monthly meetings of senior staff from both teams at which ongoing and potential enforcement action is discussed.
- 45 Advice: QLDC risk is assessed as low
- 46 **Issue of Dangerous Building notices**
- 47 This is an area where QLDC has limited exposure. The responsibility for dangerous buildings lies with the Territorial Authority as opposed to a Building Consent Authority function, however still a council building services responsibility.
- 48 If a potential dangerous building issue came to the Territorial Authority's attention it would be assessed against QLDC's policy and the Building Act to determine whether it reached the threshold for a notice to be issued.
- 49 Staff are unaware of any Dangerous Building notices being issued
- 50 Advice: QLDC risk is assessed as low

51 CONCLUSIONS

There are areas in the MBIE report that highlight activities that the BCA has identified previously as areas that need ongoing work. This is occurring through the Continuous Improvement process, which is a regulatory requirement.

52 The non-technical factors which MBIE identified as major causative reasons for the failure of the development; single point of contact for consent processing and inspections, conflict of interest and pressure exerted on BCOs from developer and senior TDC staff, is not a risk to QLDC BCA due to the factors mentioned in paragraphs 17-23.

53 Cost of Bella Vista failure

\$14.5m for Council to purchase the properties.

Insurance paid \$10m of this and ratepayers \$4.5m.

\$2.8m in additional costs such as legal, engineering, geotechnical etc.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

54 This is a report advising the Committee only. No consultation was undertaken with outside parties or was required in preparing the report. As noted above, Building Services do consult with the industry on a regular basis about general Building Act and related requirements.

SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA:

55 This is of high significance, as determined by reference to the Council's Significance and Engagement Policy because although the risk of a similar failure occurring is low, the financial and reputational impact on Council of such a failure would be significant.

56 The persons who are affected by or interested in this matter are residents/ratepayers of the Queenstown Lakes District Council, developers and building owners.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

57 This matter relates to the Regulatory/Legal/Compliance risk category. It is associated with 00033 Failure to retain Building Consent Authority Accreditation or poor IANZ Result within the QLDC Risk Register. This risk has been assessed as having a Low inherent risk rating due to the significant investment Council has made to improve the BCA's performance.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

58 There are no financial implications for Council

ATTACHMENTS | NGĀ TĀPIRIHANGA

A	Review of Tauranga District Council – Performance of statutory functions under the Building Act 2004 with respect to the Bella Vista development
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