

BUILDING ADVISORY PANEL – TERMS OF REFERENCE

Purpose

The purpose of the Building Advisory Panel (BAP) is to provide independent and specialist advice to the Deputy Secretary¹ responsible for the Ministry of Business, Innovation, and Employment (MBIE)'s building regulatory system functions. The Panel is appointed under section 172 of the Building Act 2004.

Background

MBIE is the lead policy advisor to the Government on the building regulatory system. It is responsible for advice on legislation and regulations, and for providing stewardship of the building regulatory system as a whole. As the central regulator, MBIE manages the system that regulates building work. It is responsible for, without limitation:

- the Building Act 2004 and related legislation;
- the New Zealand building code;
- occupational licencing of some professions;
- monitoring the performance of accredited bodies (including building consent authorities and product certification bodies);
- investigating complaints about building consent authorities;
- making determinations about matters of doubt or dispute to do with building work.

MBIE works alongside building practitioners, other government agencies, other regulators and the construction industry to understand what matters to the sector and to improve the building regulatory system.

Role of the Panel

The BAP supports the Deputy Chief Executive of Building, Resources and Markets by providing independent, specialist and evidence-based advice on strategic issues facing the building and construction sector. It does this by:

- identifying emerging risks and opportunities to the performance of the sector, and advising on the nature of the regulatory response;
- providing strategic advice on current and emerging trends in building design, building technologies and other factors that may affect the building and construction system;
- providing sector leadership on building regulatory matters;
- sense checking MBIE's work programme and priorities with a view to ensure they create a regulatory environment that supports, and drives innovation in the sector;
- providing a channel for constructive dialogue between MBIE and the sector; and

¹ The Chief Executive's powers have been delegated to the Deputy Chief Executive of Building, Resources and Markets.

- identifying critical stakeholders for engagement on specific initiatives.

In undertaking these functions, the Panel is expected to:

- have a collective voice and build and maintain a network of leaders who have an interest in the building and construction sector;
- consult;
- provide support for active communications between MBIE and the sector;
- participate in an annual stakeholder survey and a self –assessment process;
- provide input on the activities of the Panel for MBIE’s annual report; and
- be aware that the Deputy Chief Executive is not bound by the advice given by the Panel, but must consider it.

Composition and membership

The Panel consists of a Chair and not less than five other members. Members are appointed for a term of up to three years and may be appointed to one further term. They represent a broad range of interests, rather than the interests of a particular group. Also, the Members have a breadth of experience and expertise in the building and construction sector. Members are not employees of MBIE or the Crown.

The Deputy Chief Executive may, at any time, co-opt other suitable persons onto the Panel if doing so is necessary for acquiring a board range of interests, experience and expertise.

Where members are unable to attend a meeting, it is the role of the Chair to obtain their input in advance of the meeting.

Key skills of a BAP Member

- Understanding of regulatory frameworks and the building regulatory system
- Ability to put aside individual interest(s) and provide constructive advice across a range of matters
- Proficient at building and maintaining effective networks and relationships
- Able to confidently ask questions to test assumptions around decisions from a strategic perspective.

Guiding Principles

- Members will be frank and open in discussions, and the Chatham House rule will be observed;
- The Panel will apply collective judgment to identify what is most important to the sector;
- The Panel’s advice will represent the view of the Panel as a collective (rather than any individual or organisation).

Authority

Confidentiality

Members are required to not disclose or make use of information that would otherwise not be available to them, except in agreed circumstances.

Conflicts of Interest

The BAP Secretariat will first do a risk assessment of the papers for BAP meetings using the register of conflict as the basis. Then the Secretariat will send the meeting agenda to all BAP members before the applicable BAP meeting documents are sent out. Upon receipt of meeting agenda by BAP

members, each member will advise the Secretariat if there are any perceived, potential or actual conflicts in relation to any of the items that are listed in the agenda.

If the Secretariat identifies a potential conflict of interest, the Secretariat will contact the relevant BAP member to discuss a possible mitigation approach. Possible approaches will include:

- a) The BAP member confirming that there is a known conflict(s) to the Secretariat before the applicable BAP meeting documents are sent out (about two weeks before each meeting). They will not receive the relevant documents, and will recuse themselves from any associated BAP discussions at the meetings.
- b) For BAP members with a practising certificate, they obtain consent from their relevant clients agreeing (as per Rule 7.3(a) of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008) that the practising certificate holder is not required to disclose to that client confidential information received by virtue of their BAP membership.

Also, it is a requirement that BAP members who hold a practising certificate advise any new clients for whom work presents a potential conflict with the member's BAP obligations, of the need for that client to agree to allow the BAP member to retain confidentiality of BAP information, as a condition of taking instructions from that client.

When a plan for managing the conflict of interest is agreed between the Secretariat and the member, the Secretariat will advise the BAP Chair and the General Manager of Building System Performance accordingly. The Secretariat will advise the General Manager of Building System Performance about a conflict of interest involving the BAP Chair after it is agreed between the Secretariat and the Chair.

Meeting arrangements

Meetings are held quarterly with ad hoc meetings held when required.

MBIE will aim to circulate the papers for the meeting 10 days prior to it.

Fees and expenses

The Panel is a statutory board for the purposes of the Fees and Travelling Allowances Act 1951. In accordance with that Act, the following fees have been agreed for the Panel:

- Chairperson - \$810 per day or an hourly pro-rata rate as required, up to a maximum of \$24,300 excluding GST per annum.
- Panel members - \$540 per day or an hourly pro-rata rate as required, up to a maximum of \$16,200 excluding GST per annum.

It is expected that there will be 1 or 2 days' preparation required for each Panel meeting for which fees are payable.

Actual and reasonable costs incurred in travelling or other expenses in performing duties as a member of the Panel will be met, up to a maximum of \$5,000 excluding GST per annum.

Payment of fees and expenses

Fee payments for members appointed to boards are governed by the Fees Framework outlined in Cabinet Circular CO 19(1) and the Income Tax Act 2007, Schedule 4, Part B, Paragraph 1B.

Your fees for time spent as a representative of the board and reimbursement of individual expenses are treated differently from a tax perspective. Withholding Tax is only applied to your fees and does not apply to the reimbursement of expenses. Therefore MBIE has requested that you submit separate invoices.

Members must provide either an IR330C form or an exemption certificate for the payment of fees. If these are not received, MBIE will be required to deduct tax at 45% from member fees paid.

An invoice must be issued to the Ministry for payments of fees and expense reimbursements and must meet the following requirements.

- is addressed to the Ministry of Business, Innovation and Employment (not MBIE);
- has the name of the contact person at MBIE. Please put Building Advisory Panel (BAP) Secretariat;
- includes the members name;
- includes the word 'invoice';
- includes an invoice number;
- includes a description of goods/services that have been provided as prescribed by your board secretary.

Members should not deduct the withholding tax on fees on the invoice – the tax will be deducted in accordance with the IR330C when the payment is made.

A separate invoice should be issued for expense reimbursements. This should meet all the requirements outlined above and have the relevant tax invoice (receipt) attached where GST is part of the cost reimbursed. There is no GST on mileage reimbursements.

Please email all invoices and relevant tax invoices (receipts) to the BAP Secretariat (BuildingAdvisoryPanel@mbie.govt.nz) as soon as possible after the relevant BAP meeting has occurred.

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

ANNEX 1 – RELEVANT SECTIONS OF THE BUILDING ACT 2004

171 Chief executive may seek advice from building advisory panel

- (1) The chief executive may, at any time, seek advice from a building advisory panel appointed under [section 172](#) on—
 - (a) current and emerging trends in building design, building technologies and other factors that may affect—
 - (i) the building code and compliance documents:
 - (ii) any warnings issued, or bans declared, under [section 26](#) in relation to any building method or product:
 - (iii) any guidance information published by the chief executive under [section 175](#):
 - (b) whether this Act or the regulations are achieving their purpose:
 - (c) building issues that are not covered by this Act, but which the panel considers should be dealt with by legislation:
 - (d) any other matter that the chief executive considers appropriate for the panel to advise on.
- (2) The chief executive must consider, but is not bound by, any advice given by the panel.

172 Appointment of building advisory panel

- (1) The chief executive must appoint a building advisory panel that—
 - (a) consists of experts in the building sector; and
 - (b) has the following members:
 - (i) 1 person to convene and chair the panel:
 - (ii) no less than 5 other members.
- (2) The chief executive must,—
 - (a) before appointing a member, publicly notify a vacancy in a manner that enables suitably qualified individuals to apply for appointment; and
 - (b) in appointing a member,—
 - (i) take into account the need for members of the panel to have among them a breadth of experience and expertise, and knowledge of, or experience in, matters that come within the panel's function (including, without limitation, matters that relate to consumer, cultural, disability, energy efficiency, health and safety, heritage, or sustainable development issues); and
 - (ii) ensure that there is an appropriate balance in the membership of the panel so that the members represent a broad range of interests, rather than the interests of a particular group; and
 - (iii) consult, as the chief executive considers appropriate, persons who have an expertise or interest in matters that come within the panel's function.
- (3) The chief executive may, at any time, co-opt suitable persons onto the panel if doing so is necessary for the purposes of subsection (2)(b)(i) and (ii).
- (4) The terms on which a member of the panel is appointed are the terms set by the chief executive when appointing the member.
- (5) A member must not be appointed for a term that exceeds 3 years, but may be reappointed for 1 more term.

- (6) A member of the panel may resign by written notice to the chief executive.
- (7) The panel is a statutory board for the purposes of the [Fees and Travelling Allowances Act 1951](#).
- (8) There may be paid, out of public money to the members of the panel, remuneration by way of fees, salaries, or allowances, and travelling allowances and travelling expenses in accordance with the [Fees and Travelling Allowances Act 1951](#), and the provisions of that Act apply accordingly.

173 Function of panel

- (1) The function of the panel is to provide independent and specialist advice to the chief executive on any of the matters referred to in [section 171\(1\)](#).
- (2) It is not the panel's function to advise the chief executive on the performance of the chief executive's functions or duties, or the exercise of the chief executive's powers, under this Act.
- (3) Subsection (2) does not apply if the chief executive seeks the panel's advice on the matters referred to in that subsection.

174 Chief executive must report on panel's operation

- (1) The chief executive must ensure that information about the operation of the panel is, in each year, included in the annual report of the Ministry.
- (2) For the purposes of subsection (1), the chief executive must, without limitation, include information about—
 - (a) who the members of the panel are; and
 - (b) the number of times that the panel met; and
 - (c) the fees and other expenses paid to members of the panel; and
 - (d) a summary of the matters considered by the panel and whether the chief executive followed the advice of the panel on those matters.

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