

MEMORANDUM

Date: 16 September 2015

File ref:

To: **Mayor Wade-Brown; Councillor Lester**

From: **John McGrath**

Cc: **Kevin Lavery; Gunther Wild**

Subject: **Options and recommendations for rental WOF issue**

1. Purpose

The purpose of this memorandum is to:

- Provide background information on the Council's work to date on the rental housing Warrant of Fitness (WOF) issue.
- Summarise the Government's proposed changes to the Residential Tenancies Act 1986 relating to rental housing quality
- Summarise the other private members' bills on the ballot relating to rental housing quality
- Summarise what other metro cities are planning in relation to rental housing quality
- Outline options for Council and officer recommendations, and in particular that the Council constructively engages landlords to increase housing quality in Wellington.

2. Background and context

2.1. Council's work to date

The Council requested officer advice on the development and potential implementation of a rental housing WOF in May 2013. To progress this work, officers worked with a range of stakeholders (Auckland, Tauranga, Christchurch and Dunedin City councils; ACC; NZ Green Building Council and the University of Otago) to field test a WOF. The purpose of the field test was to determine whether a WOF tool was a practical, cost effective way of improving housing quality and tenant health, and would work for landlords. The 'draft' WOF provides a comprehensive assessment and covers a broad range of household public health determinants such as hygiene (eg. food preparation, water heating, toilet and shower/bath), safety (eg. the ability to secure hazardous substances out of the reach of children, electrical safety, smoke alarms, entrance lighting and handrails), as well as lighting, insulation, ventilation, mould, weather tightness, structural integrity and maintenance.

The field test (conducted Feb through May 2014) was a success despite only eight of 144 houses passing the WOF. Key results include:

- Landlords were satisfied that the draft WOF provided a "fair and accurate" assessment of their house and had a positive overall experience
- Landlords supported the implementation of a WOF under certain conditions¹
- Landlords said that they were going to undertake work to resolve issues identified in the assessment

¹ Two-thirds of the landlords interviewed supported the introduction of a WOF to improve housing quality, protect the vulnerable and increase tenant knowledge. However, most landlords' support depends on factors such as the potential cost and frequency of a WOF, whether a WOF is voluntary or mandatory and the exclusion of some items on the draft checklist.

- While 94 percent of homes failed at least one WOF item, 36 percent of homes would have passed with minor improvements (\$50-\$150 worth of maintenance).

Since the field trial, the metro councils have worked together to advocate for the Government to show leadership in this area and introduce mandatory quality standards for rental properties. Wellington led advocacy efforts and earlier this year, Mayor Wade-Brown sent letters (co-signed by the mayors of Auckland, Dunedin, Christchurch and Tauranga) to Minister Smith and Minister Bennett.

In addition, Auckland Council began preparing options for how a voluntary roll-out of a WOF system might work if the Government decided against taking any action for mandatory standards.

2.2. Government Proposals

In July, the Government announced proposed amendments to the Residential Tenancies Act 1986 (RTA) aimed at improving rental standards and tenancy services. The proposed changes are:

- **Smoke alarms:** A new requirement for smoke alarms in all residential rental properties from 1 July 2016.
- **Insulation:** New requirements for ceiling and underfloor insulation in residential rental properties (with specific exemptions), by 1 July 2016 for Housing New Zealand and Community Housing Provider tenancies where tenants pay an income-related rent, and by 1 July 2019 for all remaining tenancies. Cabinet also agreed to include a regulation-making power in the RTA to prescribe standards for insulation for different classes of residential rental accommodation in regulations, including the ability for exclusions.
- **Retaliatory notice provisions:** Strengthened “retaliatory notice” provisions, to increase tenants’ confidence in exercising their rights, together with strengthened enforcement provisions for the Ministry of Business, Innovation and Employment (MBIE) to act in the most serious cases.
- **Tenancy abandonment:** changes to enable faster resolution of tenancy abandonment cases, to allow rental properties to be re-let more quickly.

MBIE officials are now working on a discussion document to stakeholders about the proposed changes. Stakeholders will have the opportunity to make a submission through the Select Committee process, and also the opportunity to make a submission to MBIE on the discussion document. MBIE intends to release the discussion document on the content of the regulations as soon as possible after the introduction of a bill in Parliament to amend the RTA, expected late October.

2.3. Private Members’ Bills

There are two Private Members’ Bills on the Ballot relating to rental housing quality:

1. **Residential Tenancies (Warm, Safe, and Secure Rentals) Amendment Bill** – This Bill, introduced to the Members’ Ballot by Green Party co-leader Metiria Turei, introduces seven changes to the RTA. One of the changes is the introduction of minimum standards that all properties for rent in New Zealand must meet. New Zealand rental houses should have to meet basic structural, safety and energy requirements so that “they do not endanger the health of the people who pay to live in them.” The criteria will need to be met by all state-owned properties within two years of the law coming into force, and all privately owned properties within four years.
2. **Healthy Homes Guarantee Bill (No 2)** – This Bill, introduced to the Members’ Ballot by Labour Party leader Andrew Little, is the same Bill that did not pass the first reading of Parliament in May 2015 (which was then introduced by Phil Twyford). The Bill would amend the RTA to require the Ministry of Business, Innovation and Employment (MBIE) to set minimum standards

for heating and insulation in rental properties within six months of the Bill passing. The Bill also amends the Act to require all landlords to meet the standards. The requirement to meet the standards would apply to all tenancy agreements within a year of the Act coming into force. The natural process of tenant turnover will see most tenancy agreements containing the requirement by the end of five years. At that point, all residential tenancies must meet the standard.

2.4. What the other metros are doing

Dunedin – Dunedin City Council is actively considering whether to introduce a Local Bill that would require additional criteria over and above the Government's insulation and smoke alarm standards. Though nothing has been approved by the Dunedin City Council at this stage, it is understood the additional standards would focus on heating, ventilation and ground vapour barrier. Dunedin's Mayor, Dave Cull, is championing the concept of a Local Bill. Housing quality has been identified as a major issue in Dunedin following the flooding in South Dunedin this last winter.

Auckland – Auckland Council is taking a much different approach to Dunedin. Auckland Council is working with MBIE and other Government agencies on a package that would provide incentives and information to landlords that will lead to improvements in rental housing in Auckland (as well as helping landlords achieve the new Government standards). Auckland Council has no plans to develop a Local Bill.

Christchurch – Christchurch City Council is following a similar approach to Auckland Council and looking at options increase the amount of insulation retrofits taking place in the Canterbury Region through the introduction of the voluntary-targeted-rate (VTR) financing mechanism (the VTR has been in place in the Wellington Region since 2011).

3. Options for Council and recommended approach

With the Government's recent announcements, the Council needs to consider its response to the Government's announcements, and its general approach to addressing housing quality in Wellington. The Council could consider the following options:

- 3.1. **Advocacy during the consultation:** The Government will be consulting on its proposed changes to the RTA. The Council could work alone or in cooperation with its other metro partners (officers' advise we attempt to work in partnership with the other metro councils to demonstrate consensus on the issue). Considerations for our submission could include:
- **The required quality standard and the timeframes for achieving the standard:** MBIE has not released details on the insulation standard. There has been speculation that MBIE would require landlords to install insulation equivalent to the 1978 building regulation standards. There are also the issues of:
 - Whether the standards go far enough to address tenant health, particularly in respect to heating, ventilation and addressing the presence of black mould
 - The timeframes.
 - **Opportunities for councils to be given new powers to set higher standards:** The Council can also explore an advocacy position requesting that Government put in place regulations that would give metro councils the ability to set higher standards (over and above the Government's proposed minimum standards).
 - **Proposed implementation structure** – MBIE has not released the implementation structure for the minimum standards so it is hard to say what impact they will have on Council (if any) or whether the implementation structure will be effective.

- 3.2. **Work with rental sector to improve housing quality:** The Council can explore how we can work with Government and other partners to boost housing quality improvements for landlords and tenants (in the lead-in to the changes). We already have existing programmes aimed at both housing quality and safety. For example the VTR, free home assessments (Sustainability Trust), Home Energy Saver and Warm Up Wellington, plus the work of the Building Resilience team to help people earthquake proof their homes. Much of the feedback from landlords in the field trial was also positive. We could build on this constructive approach and look to develop an attractive package of options targeted at the rental sector and landlords, and giving recognition to landlords providing quality and affordable housing in Wellington.
- 3.3. **Advocate for steady improvements over time:** There will always be laggards who need to be shifted with regulation. This is primarily the domain of the Government. The Council would continue to advocate for updates to the regulations to steadily enhance the minimum standards over time. This option would view the current standards as the first step towards improving rental housing quality over an extended period.
- 3.4. **Investigate the use of existing powers under the Local Government Act 2002 and the Housing Improvement Regulations 1947:** In cooperation with other metro councils, we can explore whether it would be feasible to create local bylaws² or enforce the Housing Improvement Regulations 1947 (the Regulations). The Regulations now sit under the Health Act 1956 and have been largely forgotten. Though dated, it might be feasible to use these to shift the most reluctant landlords or remove the poorest quality accommodation from the rental market. The Regulations include provisions such as:
- Every bedroom shall have a minimum width of 1.8 m
 - Every house shall be free from dampness
 - Every living room shall be fitted with a fireplace and chimney or other approved form of heating.
- 3.5. **Draft a Local Bill** – The Council can seek to have a local MP sponsor a Local Bill to develop rental housing Warrant of Fitness for Wellington.

4. Analysis of the Local Bill option

The Council sought legal advice from DLA Piper on the process of developing a Local Bill, whether a Wellington WOF would meet the acceptance criteria, and costs, risks and benefits of this approach. As follows, the advice was not favourable, and the Government would have multiple opportunities to shut or water the bill down. The summary points from this conversation with DLA Piper are:

- 4.1. **It is unlikely that this Bill would be accepted by the Clerk** - Local Bills are supposed to cover issues unique to an area and Wellington is not the only city with poor quality rental housing. On the contrary, our rentals would probably be in better condition than most New Zealand cities. To pursue this option the first step would be to approach the Clerk of the House to seek guidance on whether it would meet the criteria.
- 4.2. **Local bills are not supposed to be controversial** – Parliamentary convention is that Local Bills should not be controversial (though this is not standing law). If we put a Local Bill through this would (1) not reflect well on that Convention, and (2) could impact on our relationship with the Government at a time where the Council is trying to secure significant funding and policy changes in other areas.

² Territorial Authorities can make bylaws under the Local Government Act 2002 for “protecting, promoting, and maintaining public health and safety” (s.145).

- 4.3. **Government would control the drafting of the Bill through Select Committee** - Assuming the Council can get this accepted as a Local Bill (which is unlikely); there are multiple risks and issues for the Council:
- a. Before the Council can submit the draft bill to the Clerk we must first advertise to affected parties (i.e. Government Departments, MP's etc). At this point the Council could come under significant pressure not to submit the Bill.
 - b. Also before submitting, we would need to draft, consult and redraft the Bill (i.e. the legal bills would probably be in the order of \$30-\$40k plus staff time). We would then apply to the Clerk's office to have the Local Bill accepted onto the Order Paper.
 - c. Should the Bill pass the first reading and proceed to Select Committee, The Council then loses control of the drafting. The Select Committee could make changes without any input from the Council. The risk is that after all the work to get to this point; the Bill going back to Parliament bears no resemblance to the original. Under this scenario our options would be to (1) pull the Bill (wasting officer time, and Council money and political capital) or (2) proceed with a Bill that bears little resemblance to the original.
- 4.4. **Reliance on Peter Dunne's support** – The Local Bill option relies either on Peter Dunne sponsoring the Bill or ensuring his vote is secured. Given he is in a confidence and supply arrangement with Government (and they have a no surprises policy) he would have to notify Government of his intentions. They could then apply significant pressure to get him to withdraw his support.

5. Recommendations

Officer advice is:

1. Build on our constructive approach and work with stakeholders such as EECA and MBIE, landlords and tenants to find solutions to increasing rental housing quality.
2. To not progress the local bill option. This option presents a high risk of failure, a high financial/resource cost to the Council, and carries a foreseeable and avoidable risk to our relationships and work priorities in other areas, including the Government.
3. Work with other metro sector local authorities to make a joint submission to the Select Committee on the proposed legislation. Through the submission, the councils can advocate for:
 - a. Enhancement to the standards (if there is agreement)
 - b. Explicit delegation of powers to councils to add extra standards that would be applicable to each council area
4. Advocate for steady improvements to the minimum standards over time.

6. Next steps

1. Talk to stakeholders to seek input on a solution or programme landlords would support.
2. Draft a submission on the Government's proposed changes to the RTA, and a response to the discussion document.
3. Investigate options to address 'laggards' through existing powers.
4. Make use of available opportunities to advocate for steady improvements over time.