



COVERSHEET

Minister	Hon Chris Penk	Portfolio	Building and Construction
Title of Cabinet paper	Government Response to the Petition of Christian van der Pump: <i>Remove Building Act 2004 restriction of access to the District and High Court</i>	Date to be published	29 May 2025

List of documents that have been proactively released

Date	Title	Author
March 2025	Government Response to the Petition of Christian van der Pump: <i>Remove Building Act 2004 restriction of access to the District and High Court</i>	Office of the Minister for Building and Construction
13 March 2025	Government Response to the Petition of Christian van der Pump LEG-25-MIN-0031 Minute	Cabinet Office
20 March 2025	The presented Government response is available on the New Zealand Parliament website at: https://bills.parliament.nz/v/4/cd973019-6b8a-4a81-fd4f-08dd66725519	Office of the Minister for Building and Construction

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister for Building and Construction
Chair, Cabinet Legislation Committee

Government Response to the Petition of Christian van der Pump: *Remove Building Act 2004 restriction of access to the District or High Court*

Proposal

- 1 I am seeking approval for the Government's response to the Petition of Christian van der Pump: *Remove Building Act 2004 restriction of access to the District or High Court* (the Petition). The response is required to be presented in the House of Representatives (the House) by 25 March 2025.

Background

- 2 On 5 December 2024, the Petitions Committee (the Committee) referred the Petition to me as the Minister for Building and Construction (the Minister) under Standing Order 380, as the Committee believed it was pertinent to work currently underway on liability in the building system. This petition has received one signature.
- 3 The Petition, dated 21 May 2024, seeks the amendment of the *Building Act 2004* (the Act) to remove section 182, the requirement, when it applies, to seek a determination on determinable matters from the chief executive of the Ministry of Business, Innovation and Employment (MBIE) before commencing proceedings in the courts. Determinable matters are mostly about decisions by building consent authorities related to building work outlined in the Act and the Building Code.
- 4 Under Standing Order 380, the Minister must present the Government response to the Petition to the House of Representatives as a parliamentary paper and respond to the petition within 60 working days.

The Petition has received one submission, from Local Government New Zealand

- 5 While Local Government New Zealand (LGNZ) agrees the determinations process is not perfect, it opposes the Petition. LGNZ believes any changes to the current system must occur as a part of broader reform, which would need to include addressing the role of councils as the 'last person standing' under joint and several liability.
- 6 I have asked MBIE to progress work to identify the best way to deliver consenting services, including looking at the building consent authority structure, the scope of building work exempt from a building consent, liability settings and the role of private insurance in the consent system.

- 7 LGNZ disagree that removing the requirement to seek a determination would support the uptake of performance-based building design. Instead, the change would likely exacerbate the cautious approach of building consent authorities, slowing the building consent process.
- 8 LGNZ also feels that determinations provide MBIE with a valuable source of information on the performance of building consent authorities, and it would prefer to see the system improved rather than removed.

Comment on the Government's response

- 9 The proposed Government response provides the Government position on the Petitioner's arguments.
- 10 The Petitioner is correct that the timeliness of the determination system has been an issue historically, which is being addressed. Average wait times of 111 days in November 2024, have already reduced by 80 per cent from a high of 516 days in September 2023. MBIE is continuing to seek operational improvements and can progress further system changes when Government priorities and resources allow.
- 11 However, the Petitioner's other arguments are overstated or inaccurate, and the perceived benefits of the change are not supported.

Petitioner's Argument	Government Response
Section 182 is inconsistent with the rights guaranteed under the <i>New Zealand Bill of Rights Act 1990</i> (BORA), specifically section 27 (access to judicial review), and that the threshold for justified limitations under section 5 are not met.	While section 182 does introduce a procedural barrier to filing proceedings with the courts, appeal and judicial review is still available. The requirement comes with the benefit of resolving issues at low cost and with specialist expertise. We consider the requirement to seek a determination is justified for the purposes of BORA section 5.
Persons including architects, builders, and engineers are not considered parties, a requirement to apply for a determination. With no access to determinations they cannot access the courts, denying their right to access the courts.	Registered architects and chartered professional engineers are automatically considered Licensed Building Practitioners, and as such per section 176(d) considered parties for the relevant building work, therefore they can apply for determinations. Additionally, while it is a matter for the Courts should a proceeding be brought, our position is that section 182 applies to people who can seek a determination, namely a party as set out in section 176 of the Act.
Determinations are not made in a timely manner, effectively	This has been an issue in the past, however in November 2024 wait times had reduced by 80

denying justice.	per cent to 111 days, from their September 2023 peak of 516 days. MBIE continues to seek operational improvements and will progress further system changes when priorities and resources allow.
It is a conflict of interest for MBIE's chief executive to both issue guidance and make determinations.	The powers of the chief executive are devolved to separate teams and the Ministry of Business, Innovation and Employment manages and mitigates this conflict of interest. Determinations are not bound by guidance, rather they can require guidance be amended. Additionally, the determinations team regularly engage external technical experts and referees to ensure the standard of decisions.
The determination system's evidence standards are too weak, and its procedural standards are too limited.	The Act requires the chief executive avoid unnecessary formality and admit any relevant evidence, which helps keep the process accessible and lower cost. Quality is still assured as the determinations system is governed by the Act which includes adhering to the principles of natural justice. Decisions are subject to appeal in the District Courts, review by the Ombudsman, and judicial review by the High Court, providing parties further assurance.
The requirement contravenes Legislation Design and Advisory Committee (LDAC) guidelines on restricting access to the courts.	Section 182 is not inconsistent with LDAC guidelines. Point 4.6 of the 2021 guidelines state that the principle of access to the courts "does not prohibit a mandatory requirement to attempt a resolution by alternative dispute resolution".
Immediate access to the courts would enable the use of performance-based building design, which the Petitioner alleges building consent authorities suppress in favour of Acceptable Solutions and Verification Methods.	The Government disagrees. The Petitioner's proposal risks the threat of legal action creating new financial pressures from the risk of litigation which building consent authorities would need to account for when performing their functions under the Act. Determinations have criticised building consent authorities for being too reliant on Acceptable Solutions and Verification Methods, facilitating the use of performance-based building design.

12 I seek Cabinet's approval to the Government's response, attached as Appendix One.

- 13 I recommend that the Government does not remove section 182 of the *Building Act 2004* as requested by the Petition.
- 14 In the meantime, MBIE is progressing work to identify the best way to deliver consenting services, which includes looking at the building consent authority structure, liability settings and the role of private insurance.

Timing of the Government response

- 15 The deadline for presenting the Government's response to the House of Representatives is 25 March 2025.

Consultation

- 16 The Ministry of Justice and Department of Internal Affairs were consulted on this paper.

Financial implications

- 17 There are no financial implications associated with the proposed Government response to this petition.

Proactive Release

- 18 I propose to release this paper proactively, subject to any redactions as appropriate under the *Official Information Act 1982*.

Recommendations

The Minister for Building and Construction recommends that the Cabinet Legislation Committee:

- 1 **note** that on 5 December 2024, the Petitions Committee referred the Petition to *Remove Building Act 2004 restriction of access to the District or High Court* to the Minister for Building and Construction for response;
- 2 **note** that one submission was received from Local Government New Zealand, which does not support the Petition;
- 3 **approve** the Government response, attached at Appendix One, noting the Government does not intend to implement the Petition's recommendations;
- 4 **note** that the Government response must be presented to the House by 25 March 2025;
- 5 **invite** the Minister for Building and Construction to present the Government response to the House in accordance with Standing Order 380.

Authorised for lodgement

Hon Chris Penk

Minister for Building and Construction