

Contents

CONSTRUCTION

Government and regulatory 1

Industry 3

INFRASTRUCTURE 5

Contacts 8

Big Build is a quarterly publication tracking legislative and regulatory reform and other developments affecting the construction and infrastructure sector.

You will be aware that there has been a lot of noise around KiwiBuild since the Minister acknowledged that the build is running well behind target. We are monitoring these developments for the March quarter publication.

CONSTRUCTION

Government and regulatory

Contestable fund for Health and Safety (H&S) initiatives

Construction is on the priority list for a \$22m contestable fund set up by ACC which businesses can bid for to improve workplace H&S.

[Announcement](#)

Housing and Urban Development Authority (UDA) to have big tool kit

Housing New Zealand, its subsidiary HLC, and the KiwiBuild Unit are being merged to form the UDA, responsible for leading the Government's large scale housing projects. The Authority will be given large powers, including to:

- repurpose Crown-owned land and compulsorily acquire private land (landowners may be compensated through an equity share in the development)

- “resume” land transferred to a private developer where the developer doesn't deliver to the agreement
- build, alter or remove any building or infrastructure in the project area
- the same powers as Auckland Transport in relation to land transport (except for state highways), and as a territorial authority in relation to the three waters
- override, amend or suspend by-laws and Resource Management Act (RMA) planning documents
- set a targeted rate inside the project area, and
- charge development contributions or enter development agreements.

Legislation will be introduced in 2019. The UDA is expected to be up and running in early 2020.

[UDA overview](#)

NZ Green Investment Finance Ltd (NZGIF)

NZGIF is a \$100m fund created by the Government to provide start-up capital to support new private sector investment in low emissions industries.

The aim is that the returns on the loans will enable NZGIF to become self-supporting. It is expected to operate as an independent commercial entity and has been established as a company under the Public Finance Act.

Potential opportunities for investment include electric vehicles, manufacturing processes, energy efficient commercial buildings and low emissions farming practices.

The Board will be chaired by Cecilia Tarrant, who has significant finance and governance experience.

[Statement](#)

Contents

CONSTRUCTION

Government and regulatory 1

Industry 3

INFRASTRUCTURE 5

Contacts 8

Action plan for construction sector

The Government has released a six part, six Minister Action Plan to address the construction sector's skill shortages and to put the sector onto a stronger footing. The strategy follows a series of workshops held in June and July. Initial priority areas are:

- government procurement
- establishing additional jobs and skills hubs
- growing construction careers and credentials
- expanding skills for industry
- mana in mahi (strength in work), and
- further changes to immigration settings.

[Announcement](#)

Government procurement to reward skills training

One element of the Action Plan is to encourage chief executives in the public sector to add skills and training components as requirements in new construction contracts. Minister David Parker said that, although central government contracts only made up about 18% of construction activity, the Government should take a leadership role in promoting a sustainable industry.

[Statement](#)

Integrity of set-off rights restored

An Australian decision last year which overturned the accepted view that set-off rights were effective against a receiver has now been successfully appealed. This restores the status quo and will be a relief to those letting construction contracts and to parties in derivatives transactions.

[Chapman Tripp commentary](#)

PM unamused by Twyford flip

Housing Minister Phil Twyford failed to consult the Prime Minister before reducing the forfeit for flicking a KiwiBuild house within three years of purchase from 100% of the sale price profit to just 30% – and the PM is unamused. She will keep the situation under review and will reverse the change if she finds that it is being abused.

[Article](#)

Larger review of Overseas Investment Act

Treasury has prepared Terms of Reference (TOR) for a review next year of the Overseas Investment Act aimed at:

- providing a clear pathway for consent where applications will support a productive, inclusive and sustainable economy and create opportunities for regions and businesses to grow and connect internationally
- ensuring appropriate protections against risks to New Zealand created by the overseas ownership of sensitive assets, and
- ensuring compliance and administrative costs (as distinct from fees and other direct outlays in relation to applying for consent) are proportionate to the risks associated with overseas investments.

The Government's objective is that any changes will:

- improve predictability and transparency around the application process and decision-making by both Ministers and the Overseas Investment Office, and
- ensure the discretionary powers available to decision-makers appropriately balance the need to create certainty for investors with the ability to decline investments that are not beneficial to New Zealand.

Consultations are scheduled to begin early 2019.

[TOR](#)

Contents

CONSTRUCTION

Government and regulatory 1

Industry 3

INFRASTRUCTURE 5

Contacts 8

Industry

More flexible employer-assisted temporary work visa rules

The Government is consulting on a new framework, features of which will include:

- sector agreements, under which businesses will be pre-qualified to hire in temporary workers so long as they agree to employ and train more New Zealanders, and
- replacement of the Essential Skills in demand list with Regional Skills Shortage lists.

The new structure will be employer-led rather than migrant-led. To prevent abuse, employers will be accredited and migrants will be identity, health, character and capability tested.

[Fact sheet](#)

Moves to reduce high suicide rate in construction sector

Site Safe New Zealand has been given funding from the Building Research Levy toward a study into why the suicide rate in the construction sector is so high. The initial results are expected in 2019.

[Article](#)

Mixed report in H&S survey

The construction sector has got a “could do better” assessment in the Health and Safety Attitudes and Behaviours Survey 2017 of the five high risk sectors (the other four being forestry, agriculture, fishing and manufacturing).

Areas identified for improvement in the construction industry are:

- reporting hazards, near misses and accidents all the time
- ensuring communication is two-way
- ensuring employees do not work when sick, injured or overtired, and
- checking and maintaining equipment regularly.

[Survey](#)

Commerce Commission appeals Steel & Tube sentence

The Commerce Commission has appealed the record \$1.885m fine imposed by the Auckland District Court on Steel & Tube for breaching the Fair Trading Act in relation to its steel mesh products, arguing that a more severe penalty was needed given Steel & Tube’s size, the gain it stood to make from the conduct and the knowledge of a manager in the company.

Steel & Tube has also lodged an appeal, arguing that the fine is excessive given the breaches were unintentional and both the Ministry of Business, Innovation and Employment (MBIE) and the Structural Engineering Society of New Zealand have indicated that there is no risk to homeowners from use of the product.

[Commerce Commission statement](#)

Contents

CONSTRUCTION

Government and regulatory 1

Industry 3

INFRASTRUCTURE 5

Contacts 8

Retentions regime wilts under scrutiny in first court case

The retentions regime wilted under the scrutiny of its first court case - an application by the receivers for Ebert Construction Limited (Ebert) to be appointed to manage the company's Retention Account in order that they could distribute the monies.

The Court found that the claims of 131 of the 152 subbies were "clear and not contentious". At issue for them was not whether they would be paid but how much they would get. The problems for the remaining 21 stemmed from two factors:

- a progressive breakdown in Ebert's approval and payment mechanisms over the last few months before its collapse, and how the fund should be allocated.
- a software glitch which meant contracts entered into after the regime, that came into force on 31 March 2017, were not recognised as being subject to the Act.

These created four sets of contested claims on which the Court had to rule. Due to the weaknesses of the Act, it had to rely on the rules applying to conventional trust law in reaching its decisions - although recognising that "the type of trust created by the Act differs in many important respects from normal trusts".

The Judge commented on the "imprecise language" and "gaps" in the legislation. We think the Government should consider appointing an expert panel to provide recommendations on how to improve the regime.

[Chapman Tripp commentary](#)

Crane spotting

The latest Rider Levett Bucknall quarterly survey has a record 140 long-term cranes across the skyline, 90 of them in Auckland. The number would have been higher except for a shortage in crane operators.

[Article](#)

Housing credit squeeze in Australia

The squeeze on housing credit resulting from the Royal Commission into the finance sector will flow through to the share prices of building material suppliers, according to Craigs Investment Partners.

[Article](#)

Upgrade for CodeMark Scheme

MBIE is strengthening the Building Code (Product Certification) Regulations 2008 following recommendations by Deloitte that the Codemark Scheme was not achieving its objectives because of design flaws and that more stringent competency requirements were needed for carrying out product accreditations.

All six of the aluminium composite panel Codemark certificates suspended in July after audits found they contained insufficient documentation to support fire safety claims have been removed from the Codemark register.

Two were withdrawn by the manufacturer and the remaining four have been revoked by MBIE. Two of the four have been superseded by new certification under new numbers after manufacturers addressed the issues raised by MBIE. Work is continuing on the other two.

[MBIE website](#)

New WorkSafe guidelines on precast concrete

WorkSafe has released new guidelines for the sale handling, transport and erection of precast concrete elements. The guidelines run to 148 pages and are highly detailed. They make the point that everyone working with precast concrete has health and safety duties and needs to "clearly understand their roles and responsibilities".

[Guidelines](#)

Combined Building Supplies Cooperative (CBS) Co-op goes national

The CBS, created in Christchurch in 2018 to allow small and medium sized construction companies to access big company prices has gone national. It now has special rates deals with more than 14 national suppliers.

[Press statement](#)

Contents

CONSTRUCTION

Government and regulatory 1

Industry 3

INFRASTRUCTURE 5

Contacts 8

INFRASTRUCTURE

Interim Infrastructure Transactions Unit (ITU)

An interim ITU has been created within the Treasury to lift transactional capability in advance of the independent infrastructure body to be incorporated from mid to late 2019. The unit's priorities are to:

- act as a "shop front" for the market and publish a pipeline of projects
- provide best practice guidance in infrastructure procurement and delivery, including standardised procurement processes and documentation for major projects, and
- support agencies in the preparation of business cases, including through embedded commercial and procurement expertise.

It will also be responsible for coordinating the Public Private Partnership Programme.

[Treasury announcement](#)

State of the art deal

A Government Special Purpose Vehicle (SPV) created by Auckland Council (Council), Crown Infrastructure Partners and Fulton Hogan Land Development will fund \$91m of roading and wastewater infrastructure to support a 9,000 home development in Wainui, North of Auckland. The money, and margin, will be repaid partly by Fulton Hogan and partly by section owners through an "infrastructure payment" collected on rates bills.

The deal is structured so that the debt will not sit on either the Council's or the Crown's balance sheet – a financing model Twyford wants more widely used to speed new house construction in high growth areas.

[Statement](#)

New Zealand Superannuation Fund wants tax breaks for nationally significant infrastructure

The NZ Super Fund has asked the Tax Working Group to consider tax incentives to encourage investment in nationally significant infrastructure projects. The Fund says such regimes are offered in other jurisdictions, including Australia, with which New Zealand competes for capital. Criteria could include:

- project size
- a public utility test
- demonstrated capability to deliver
- a commitment to contribute project expertise, and
- alignment with the Treasury's living standards framework.

[Submission](#)

Contents

CONSTRUCTION

Government and regulatory 1

Industry 3

INFRASTRUCTURE 5

Contacts 8

Infrastructure pipeline getting thicker

The latest Infometrics Infrastructure Pipeline Profile projects that infrastructure investment across the country over the next 10 years (2019 to 2029) will be around 28% higher than for the previous decade.

More than three quarters of the \$129b projected expenditure will be in the North Island and just over half of it will be allocated to land transport.

[Statement](#)

Water plan

The Government has announced a detailed plan which it promises will deliver “a noticeable improvement in water quality within five years” with an initial focus on at-risk catchments.

Components include:

- accelerating the implementation of Good Farming Practice Principles and identifying options for tree planting through the One Billion Trees programme
- a new National Policy Statement for Freshwater Management by 2020 to ensure that all aspects of ecosystem health are managed and to provide greater direction on how to set limits for resource use and how to better protect estuaries and wetlands
- a new National Environmental Standard for Freshwater Management by 2020 to regulate activities such as intensive winter grazing, hill country cropping and feedlots
- amendments to the RMA within the next 12 months to more quickly implement water quality and quantity limits and to strengthen enforcement tools, and
- decisions on how to manage the allocation of nutrient discharges.

The changes will be developed in consultation with a network of specially appointed advisory groups – Kahu Wai Māori, the Science and Technical Advisory Group and the Freshwater Leaders Group.

[Statement](#)

Timeline for three waters review

The Government has set a firm timeline for the three waters review with decisions by the end of 2019, and aggregation of suppliers is definitely on the table, despite strong opposition from Local Government New Zealand.

June 2019: detailed recommendations to Cabinet on a stronger regulatory framework, including a new risk management regime for drinking water; targeted changes to lift environmental performance for wastewater, and greater transparency in the operation of wastewater and stormwater systems.

Late 2019: detailed recommendations to Cabinet on service delivery arrangements, including no change; a three waters fund to support voluntary change, and the creation of an aggregated system of dedicated, publicly owned providers.

Later 2019: report to Cabinet on any economic changes to support the decisions made in the previous two rounds.

Later again in 2019: proposals to change oversight and stewardship across the new regime.

[Cabinet paper](#)

Contents

CONSTRUCTION

Government and regulatory 1

Industry 3

INFRASTRUCTURE 5

Contacts 8

Two step plan for RMA reform

A Bill to undo some of the National Government's 2017 changes to the RMA will be introduced early next year. Provisions will include:

- repeal of measures preventing public notification and appeals in residential and subdivision consent applications – Environment Minister David Parker cited the impacts a housing development near facilities such as ports, airports, quarries and electricity networks could have on the facility operator's future development options, and complaints from subdivision developers that they had lost their appeal right against unreasonable conditions imposed by councils

- removing the broad regulation making power passed last year which allowed central government to override councils, or substituting it with a narrower power tied to urban development, and
- at the request of regional councils, creating an ability to upgrade groups of consents in line with updated standards (to speed river clean ups).

The second stage – a comprehensive review of the RMA system – is now being scoped and is expected to start in 2019. It will build on the Government's priorities across the urban growth strategy, climate change and freshwater management.

[Parker statement, includes links to the relevant cabinet papers](#)

Upper North Island Supply Chain review underway

The Upper North Island Supply Chain Strategy Working Group (*Group*) has begun meeting and is expected to report to Cabinet in February – and Auckland Mayor Phil Goff is getting nervous.

The Group, which is chaired by former Far North Mayor Wayne Brown, has yet to engage with Auckland Council – a situation Goff has likened to “being a patient with the doctors talking over you, while you lie there as if you're already dead”.

[Article](#)

Big Build

Contents

CONSTRUCTION

Government and regulatory 1

Industry 3

INFRASTRUCTURE 5

Contacts 8

Chapman Tripp offers market-leading expertise and a seamless service for all your project needs – from financing, planning and consenting through to all stages and facets of the construction process.

Contacts

Auckland



BRIAN CLAYTON – PARTNER
T: +64 9 357 9011
M: +64 27 436 0395
E: brian.clayton@chapmantripp.com



MATTHEW CARROLL – PARTNER
T: +64 9 357 9054
M: +64 27 473 2244
E: matthew.carroll@chapmantripp.com



HAMISH BOLLAND – PARTNER
T: +64 9 357 9055
M: +64 27 225 2246
E: hamish.bolland@chapmantripp.com



JOHN MCKAY – PARTNER
T: +64 9 357 9064
M: +64 27 494 9312
E: john.mckay@chapmantripp.com



EDWARD SCORGIE – PARTNER
T: +64 9 357 8989
M: +64 27 256 4601
E: edward.scorgie@chapmantripp.com



PAULA BROSNAHAN – PARTNER
T: +64 9 357 9253
M: +64 27 216 3952
E: paula.brosnahan@chapmantripp.com

Wellington



GREG WISE – PARTNER
T: +64 4 498 2404
M: +64 27 285 1943
E: greg.wise@chapmantripp.com



MATTHEW YARNELL – PARTNER
T: +64 4 498 6325
M: +64 27 441 6365
E: matthew.yarnell@chapmantripp.com

Christchurch



ANDREW WOODS – PARTNER
T: +64 3 353 0025
M: +64 27 436 0208
E: andrew.woods@chapmantripp.com



JO APPELYARD – PARTNER
T: +64 3 353 0022
M: +64 27 444 7641
E: jo.appleyard@chapmantripp.com



FIONA BENNETT – PARTNER
T: +64 3 353 0341
M: +64 27 209 5871
E: fiona.bennett@chapmantripp.com

If you would like to be removed from the mailing list, please send us an email at subscriptions@chapmantripp.com.

Every effort has been made to ensure accuracy in this newsletter. However, the items are necessarily generalised and readers are urged to seek specific advice on particular matters and not rely solely on this text.

© Chapman Tripp