

Submission to the Productivity Commission's Housing Supply Regulation inquiry

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Recommendations

1. Alongside land-use reform, which the Commission's own interim analysis suggests has the larger effect on supply, the Commission should recommend statutory maximum timeframes (or deemed approval on lapse) for standard residential development applications. Approval delay is not the primary lever, but it is a lever the Commission can pull directly and quickly, and it compounds whatever gains land-use reform delivers by letting supply respond to it faster.
2. The Commission should recommend a proportionality test for approval and compliance requirements, placing the burden of proof on the regulator to demonstrate a safety or public benefit commensurate with the delay or cost imposed, rather than on the applicant to justify why a requirement should not apply.
3. Any new or retained approval requirement should be assessed for its differential impact on small and new entrant builders/developers relative to large incumbents, given that compliance cost is inherently easier for larger firms to absorb.
4. The Commission should commission a pilot and evaluation of an alternative to sole council approval for standard residential building certification: individually-registered, individually-liable private certifiers whose professional liability cover is selected and paid for by the builder themselves, not the developer commissioning the work. Liability and registration should attach to the individual who exercised substantive control over the work, not to whatever corporate entity built the project, so that winding up a project-specific company does not reset the record the pricing model in Argument 3 depends on. This is proposed as a design worth testing, not a proven reform; see Argument 3 for why the evidence base is mixed and what the pilot would need to get right.

Argument 1: Compliance cost is regressive, and this entrenches incumbent builders

Fixed and semi-fixed regulatory compliance costs, the cost of navigating a planning approval, meeting a code requirement, or holding a licence, do not scale down proportionately with the size of the firm or project. A large, established developer can spread this cost across a large

pipeline of dwellings and can more readily sustain compliance and government-relations overhead. A small or new-entrant builder cannot spread the same fixed cost the same way, and any delay in approval carries a proportionately larger holding-cost burden relative to their balance sheet.

The practical effect is that regulation intended to protect consumers or the public instead protects incumbents from competition, by raising the fixed cost of entry and reducing the number of independent, small-scale, and new-entrant suppliers active in the market. This works against, not for, housing supply and affordability.

This holds at two separate points in a builder's lifecycle, on evidence from two separate sources. At entry, Master Builders Australia told the Commission directly that "for smaller builders and developers, who represent 98 per cent of Australia's construction businesses, commissioning this suite of consultants represents a material financial commitment with no guarantee of approval" (Master Builders Australia submission 74, quoted in the interim report, p.64). At the growth stage, the Commission's own 2025 research paper *Housing construction productivity: Can we fix it?* states that because "building regulation tends to be project-based rather than firm-based... if a builder does scale up, their regulatory costs scale up proportionally, reducing or even negating the benefits of expansion" (p.27). The two are not in tension: one describes a fixed cost that a small firm cannot yet spread, the other describes a cost that never stops scaling even once a firm tries to grow. Together they describe the same regressive structure at two different sizes, not a single incumbent-versus-entrant divide.

Note on sourcing: neither citation is a numbered PC finding in the interim report itself. The Master Builders quote is a stakeholder submission the report reproduces, and the growth-disincentive claim is the Commission's own statement, but from a separate 2025 research paper, not this inquiry's interim report. Both are legitimate to cite, and should be labelled in the submission as what they are (a quoted submission; a separate Commission paper) rather than presented as findings of this inquiry.

Argument 2: Approval delay blocks productive activity without proportionate benefit

This argument addresses the current system, where council performs the substantive assessment. If Recommendation 4's competitive certification model is adopted, this argument's scope narrows considerably; see Argument 3 for why.

Every day a development application sits in an approval queue is a day of forgone housing supply and a real holding cost to the applicant, with no inherent safety or public benefit attached to the delay itself. Whatever benefit exists comes from the substance of what is being assessed, not from the time taken to assess it. Where approval timeframes are long relative to the complexity of what is being approved, or where equivalent classes of development are approved faster in other jurisdictions, that is evidence the delay is not buying a proportionate

benefit and should be treated as a supply constraint to be removed rather than a safeguard to be preserved.

This submission accepts the Commission's interim finding that land-use reform (zoning and land availability) is likely to matter more for supply than approval speed. That does not make approval delay irrelevant. It is a constraint the Commission can address without waiting on the harder, slower work of land-use reform, and it directly affects which builders can respond to whatever supply land-use reform unlocks: a small or new-entrant builder facing an 84-day (or longer) approval queue is slower to act on newly available land than a large developer with the balance sheet to hold several applications in train at once. Cutting approval delay does not substitute for land-use reform. It is a lower-cost, faster-to-implement complement to it.

NSW's own reporting under its Statement of Expectations Order shows the observed statewide average gross assessment time for development applications (all DA types combined) improved from 115 days to 84 days between 1 July 2024 and 31 May 2026, with further targets of 90 days by FY2026-27, 80 days by FY2027-28, and 65 days by FY2028-29 (NSW Planning Portal, Statement of Expectations Order reporting). That a government's own reform program treats 65 to 84 days as the standard to move away from is itself evidence that current timeframes are not calibrated to a specific safety benefit; if they were, the target would not keep shifting downward.

The more relevant New Zealand precedent for this submission isn't the speed of its 20-working-day statutory processing timeframe for non-notified resource consents on its own; a shorter permission gate under the same control-based structure isn't, by itself, a reform worth pointing to. What's relevant is what New Zealand attaches to that timeframe: under the Resource Management (Discount on Administrative Charges) Regulations 2010, a council that exceeds the timeframe must automatically discount its processing fee by 1 per cent per working day late, up to 50 per cent, with no discretion to withhold the discount and no requirement for the applicant to request it (RMA s36AA; Regulations 2010, reg 9). The council keeps full discretion over the substantive decision; only the fee is penalised, so this falls short of the deemed-approval-on-lapse mechanism this submission recommends in Recommendation 1. But it is a working precedent for the underlying principle: making the regulator bear an automatic, non-discretionary cost for its own delay, rather than relying on the applicant to absorb that cost with no recourse. Recommendation 1's deemed-approval mechanism is the stronger version of the same idea, and this precedent shows the weaker version is already functioning government policy elsewhere, not a hypothetical.

Note on scope: the NSW figures above are all DA types combined; a dwelling-type breakdown (single dwelling versus multi-unit) was not found in any source checked, including the PC's own interim report page, which offers only a single anecdotal case of a Melbourne growth-corridor project delayed more than three years. The argument above does not depend on that granularity, it rests on the aggregate timeframe shifting downward over successive targets, so this is a disclosed limitation of the evidence, not a gap that blocks the argument. Victoria and

South East Queensland approval-time figures were deliberately left out of this submission; the only sources found were secondary lead-generation sites, not primary government publications, and were not reliable enough to cite.

Argument 3: A council monopoly on approval removes the price signal that would otherwise drive quality up

A single gatekeeper is part of the over-regulation problem independent of how fast it processes applications. Where council is the only approver, an applicant has nowhere else to take their business, so there is no competitive pressure on council to improve cost, turnaround, or service quality. A competitive market of certifiers gives builders a choice, and gives certifiers a commercial reason to be good at their job, not just compliant with a checklist.

Under this model, Argument 2's approval-delay problem is largely superseded rather than solved, because the substantive quality assessment moves from council to the competing certifier. Delay only still matters for whatever residual administrative role the state retains, for instance registering or logging that a valid private certification exists before construction can proceed. If any such step remains, it should carry the same accountability mechanism Recommendation 1 proposes for approval generally: a no-response auto-approval rule, so that a state agency's failure to act within a set time results in automatic approval, conditioned on a valid certification already being held. That condition is what makes the automatic approval safe rather than reckless: the substantive check has already happened in the competitive market before the state's step, so a missed deadline there is an administrative failure, not a quality failure, and should not be allowed to recreate a second, redundant chokepoint behind the first.

Insurance pricing is the mechanism that would make this work, and it is also a diagnostic worth taking seriously in its own right. If a builder's or certifier's liability premium rises because their underlying defect or claims risk is genuinely high, that price rise is the market correctly reporting that the quality behind it is too risky to underwrite. The right response to that signal is to fix the quality driving the price up. Australia's actual response, on the evidence below, was closer to the opposite: government absorbed the risk that private insurers stopped being willing to carry, rather than letting the price signal force a quality fix. That does not remove the risk. It moves who bears it, from the builder or certifier whose behaviour created it onto the state and, eventually, the taxpayer or a future homeowner, while removing the individual accountability that would otherwise have pushed quality up.

NSW's own building certification structure shows the individualised-accountability half of this argument already exists in practice: certifiers are registered individually, and professional indemnity cover attaches to the named individual, not the employing firm (Building and Development Certifiers Regulation 2020). That part of the model is sound.

The competitive-insurance half is not yet demonstrated, and this submission sets out that limitation directly rather than overstating the case. Two Australian precedents show the underlying assumption, that risk-based pricing can isolate and price out specific bad actors,

breaking down in practice, for reasons that look structural rather than incidental. When cladding-related risk emerged, professional indemnity insurers responded by withdrawing cover or imposing blanket exclusions rather than pricing individual certifiers on their track record; the Insurance Council of Australia said the risk "critically undermines the ability for an insurer to rely upon the safety and performance of the building," meaning insurers had lost the ability to verify what they were pricing at all, a market where the same non-compliant product was present across many buildings and certifiers at once, not a case of a few bad actors that individual pricing could isolate. Separately, NSW's home warranty insurance was never pricing individual builder competence to begin with. It is last-resort cover triggered by builder insolvency or death, insolvency risk that correlates with the construction cycle rather than any individual builder's skill, and by 2010 every private insurer had exited that market, leaving the state as sole provider.

France's *décennale* and *dommages-ouvrage* scheme is the closest working comparator, and it partially supports the proposed model without fully proving it. French builders buy their own ten-year liability cover directly, and the owner or developer separately buys no-fault cover for the works, a genuine structural difference from Australia's arrangement, where the developer selects and pays the certifier assessing the developer's own project. French insurers do assess track record, specialisation, claims history, and financial capacity before quoting, real individualised risk assessment, which Australia's home warranty scheme never attempted. But the French market is not a clean success story either: in 2018-19 several insurers writing this cover under EU cross-border rules collapsed, leaving an estimated 100,000 construction professionals without valid cover, and the market relies on a compulsory state-backed insurer of last resort (the Bureau Central de Tarification) that can force an insurer to write a policy for a builder others have refused. That mechanism guarantees access to cover regardless of risk, which weakens rather than supports the claim that competitive pricing alone disciplines bad actors.

The pilot this submission recommends should treat two design questions separately rather than as one package. The first is who buys and holds the policy; France's structure, the builder buys their own cover directly rather than the developer commissioning them, is worth adopting for the same reason it works in France, it gives the party doing the work a direct stake in keeping their own premium down. The second, independent question is how the insurer calculates that premium once someone holds the policy. This submission proposes underwriting on three inputs, with a direct analogue to how motor insurers price individual drivers: a builder's or certifier's profile (firm size, trade, specialisation, comparable to a declared vehicle use), the specific project's materials and design (comparable to a vehicle's make and model), and the builder's own claims and defect history over time (comparable to a driving record). This is a proposal about underwriting methodology only. It is unrelated to, and should not be confused with, the standard building or home warranty insurance a property owner separately purchases to cover their own asset; that is a different product covering a different risk. The three-factor pricing model applies regardless of how the who-buys question above is resolved, and whether

an insurer can actually observe and verify quality at that granularity at the time of underwriting is itself the open question. Neither Australian precedent achieved that granularity, and even the French market's 2018-19 crisis suggests it is harder to sustain than it looks. A pilot should be evaluated specifically on whether it can produce that granularity of pricing before being extended, rather than assumed to work because the underlying economic logic is sound.

The three-factor pricing model above assumes a continuing, identifiable entity whose history accumulates the way a driver's record does. That assumption fails for a spec-built project sold after completion if the entity holding the policy is a company set up for that one project and wound up once it sells: there is no accumulated history to price against, and the entity can dissolve before a ten-year structural liability period even runs its course. This is a documented pattern in Australian construction specifically, not a hypothetical: ASIC identifies construction as one of the industries most exposed to illegal phoenix activity, the Commission's own 2018 Shergold-Weir report lists "high levels of illegal phoenix activity" as evidence of sector failure, and the NSW Government's reform material describes builders and developers "shutting down their companies to avoid their responsibilities then setting up to do it all over again." Whether defect-liability evasion specifically, as opposed to the more commonly documented motive of avoiding unpaid subcontractors and creditors, is the dominant driver of this pattern was not established in the sources reviewed for this submission and should not be overstated.

The fix is not to price around this risk; it is to stop the record from being erasable in the first place. NSW's Design and Building Practitioners Act 2020, s37, already creates a statutory duty of care that attaches to the individual who exercised substantive control over the work (a director or supervisor, not the company), extends to every subsequent owner of the building, and survives the dissolution of whichever corporate vehicle carried out the project. Recommendation 4's requirement that liability and registration attach to the individual, not the corporate entity, extends this existing NSW mechanism to the certification model proposed here, so that a project company's dissolution does not erase the practitioner's track record along with it. Separately, France's *décennale* insurance gives the owner a direct right of action against the builder's insurer that survives the builder's liquidation, meaning the claim can still be paid against a vanished company, which is part of what compulsory insurance is actually designed to achieve. Both mechanisms solve the problem of a claim or a record surviving the entity's disappearance; neither solves the separate problem raised above, that an insurer still cannot observe a genuine track record for a brand-new project company at the time of underwriting. That second problem is addressed by attaching the pricing history to the individual practitioner rather than the company, which is why Recommendation 4 proposes registration and liability at the individual level as the foundation the pricing model in this argument depends on.

Response to the interim report (2026-07-27)

The interim report's Reform directions 3.1 to 3.4 already move in the direction of Recommendation 1 above: front-loading approval trade-offs into strategic planning, expanding

fast-track and deemed-to-comply pathways, a state-significant pathway for complex developments, and better coordination and reporting between approval bodies. The Commission stops short, though, of proposing a statutory maximum timeframe or deemed approval on lapse, which is the sharper mechanism this submission recommends and which the NSW data above (a moving target rather than a fixed guarantee) suggests is still needed.

The interim report states directly that reducing regulatory burden through faster approvals is likely to have less effect on overall housing supply than relaxing land-use controls (zoning and land availability). This submission accepts that ranking rather than contesting it. No supply-elasticity evidence was found or sourced that would support disputing the Commission's own analysis, and Recommendation 1 has been reframed accordingly: approval-timeframe reform is proposed as a fast, low-cost complement to land-use reform, not a substitute for it or the primary lever.

Separately, the inquiry's terms of reference explicitly exclude construction costs, the National Construction Code, labour supply, and taxation. This submission's arguments are confined to approval/compliance process, consistent with that scope, and should not stray into construction-cost or NCC territory even where the reasoning might otherwise extend there. Argument 3's certification and insurance model concerns who approves and how, not the substantive building standard being assessed, so it stays inside that scope; the interim report materials reviewed for this submission did not address certification or insurance-based accountability models directly, so Argument 3 is not responding to an existing PC position on this point, only introducing it.

Summary

Land-use reform will do more for housing supply than any of the process reforms proposed here, and this submission does not dispute that ranking. But process reform is faster to implement, cheaper, and addresses who can act on the supply land-use reform eventually unlocks. Three changes to approval and compliance settings would help: statutory maximum timeframes with deemed approval on lapse, so a stalled application does not stay stalled indefinitely; a proportionality test that puts the burden on the regulator to justify a requirement's cost, not on the applicant to justify its absence; and scrutiny of any new or retained requirement's differential impact on small and new-entrant builders, since compliance cost currently falls hardest on the firms least able to absorb it.

A fourth, more structural change is worth piloting rather than legislating outright: a competitive market of individually-liable private certifiers as an alternative to sole council approval, with liability following the individual practitioner rather than whatever corporate vehicle built the project. The evidence for this is mixed. Individualised liability already works in NSW's certifier registration; the competitive-insurance discipline half of the model has not been demonstrated by any real-world test to date, in Australia or in France's closest comparable scheme. A pilot with clear evaluation criteria, not a wholesale replacement of council approval, is the appropriate next step.