

9. BUILDING ACT 2004

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PURPOSE OF REPORT

1. To inform the Council that the majority of the Building Act 2004 came into force on 31 March 2005.

EXECUTIVE SUMMARY

2. The new Building Act 2004 aims to improve control of, and encourage better practices in building design and construction, so that buildings are designed and built right first time.
3. The Act has introduced requirements that are designed to achieve the following:

- (i) More clarity on the standards we expect buildings to meet.

To achieve this objective the Department of Building and Housing (DBH) is required to review the building code within three years. The Code has to be reviewed against an extended list of principles that apply to the Act.

- (ii) More guidance on how these standards can be met.

To achieve this objective the DBH has been authorised to publish guidance documents to assist compliance with the Act. Guidance documents will include codes of practice for consent reviewing and inspection which will set minimum standards for areas such as drawings and specifications which form part of the consent application. The Department is also able to provide determinations where there are areas of the Code which need interpretation.

- (iii) More capable people undertaking building design, construction and building inspection.

To achieve this objective the Act provides for licensing of people involved in the industry. A licensing board is to be set up and the system will be fully in operation by 2009. The DBH has started consultation with industry to establish the parameters of the registration system. When the system is fully established, work that is prescribed by regulation will have to be done by a licensed building practitioner. The Department is also facilitating the development of a National Diploma qualification for building officials. The Diploma will set a recognised standard of qualification for building officials.

- (iv) More scrutiny in the building consent and inspection process.

To achieve this objective an accreditation system run by an independent accreditation organisation is to be set up and the building consent function of a Territorial Authority (TA) will have to be registered as a Building Consent Authority (BCA) and will have to gain accreditation within three years and maintain the accreditation through regular audits. It is proposed that there be two or three levels of accreditation ranging from standard single storey structures to complex buildings such as a sports stadium.

TA's will have to have procedures to deal with all types of applications and smaller TA's may use consultants or request assistance from other TA's. The Christchurch City Council may be asked by adjoining councils to provide assistance with specialist areas. Some preliminary discussion at officer level has taken place. When options have been developed a report will be made to Council. The DBH is encouraging consideration of shared resources as a way of meeting the requirements of accreditation. We expect that when the accreditation system is set out in regulations and TA's have been able to consider the implications of the accreditation system that we will need to consider requests for assistance.

- (v) Better protections for homeowners through the introduction of mandatory warranties.

From 30 November 2004 warranties are implied in all building contracts relating to household units (houses, apartments etc), to provide consumers with an opportunity for redress if work is not done properly.

The new DBH is much larger than the Building Industry Authority (BIA) that it replaced and numbers of employees has gone from less than 20 to 80 people. The cost of the increase is to be met by an increase in the Building Levy from 65 cents to \$1.97, which is charged per \$1,000 where the value of the work exceeds \$20,000. For a building costing \$250,000 the levy increases from \$163 to \$493. This increase applies to consents issued from 1 April 2005.

An important new requirement in the Act is that TA's must develop a policy on dangerous, earthquake-prone and insanitary buildings. The policy must be adopted in accordance with the special consultative procedure in section 83 of the Local Government Act 2002 and has to be completed by 31 May 2006. The policy must state the approach the territorial authority will take in performing its functions, the TA's priorities in performing these functions and how the policy will apply to heritage buildings. Preliminary work on drafting the policy is underway and a Council seminar has been arranged for late May. Guidance information from the DHB will be available shortly.

FINANCIAL AND LEGAL CONSIDERATIONS

4. The increased cost of processing consents will be recovered from fees which are charged at an hourly rate. Longer term the costs of obtaining accreditation and the costs of audits by the accreditation company may result in an increase in the hourly rate charged. The likely costs are as yet unknown.

STAFF RECOMMENDATIONS

It is recommended that the Council receive the information.

BACKGROUND

5. In summary, the Building Act 2004 does not significantly change the philosophy of building control but puts more emphasis on the front end of the process ie at Project Information Memoranda and building consent stage, and strengthens the importance of the completion and the final sign off of a project (Code Compliance Certificate). The Building Code does not change but the emphasis is put on complying with the approved building consent. The importance of the approved consent becomes paramount throughout the process. Other provisions have been introduced such as the Certificate of Acceptance and existing provisions have been strengthened (eg the Building Warrant of Fitness). The time frame for processing has been extended from 10 to 20 days and there is a requirement for the Fire Service to be involved in some applications.
6. Now all building work is required to be completed or a decision made to allow an extension of time within a two-year period from issue of building consent. New public buildings cannot be occupied until the issue of a Code of Compliance Certificate or the issue of a certificate of public use, if it is safe to do so.

(i) **Project Information Memoranda (PIM)**

A Project Information Memoranda (PIM) provides information about land and about the requirements of other Acts that might be relevant to proposed building work. A territorial authority issues a PIM.

A PIM is expected to have a more important role under the Building Act 2004 than it did previously.

- The PIM must be issued within 20 working days of receiving an application.
- A PIM can be reissued where a territorial authority considers that an error or omission has occurred within the original processing time frame.
- A PIM must notify the requirement to obtain an evacuation scheme under the Fire Service Act 1975, where necessary.
- New Zealand Historic Places Trust must be notified (where applicable) that a PIM application has been received.
- A territorial authority may attach a development contribution notice to a PIM.
- A certificate noting Resource Management Act requirements must be attached to the PIM. (This was required to be attached to the building consent under the Building Act 1991, not the PIM.)

The previous requirements for PIM content continue to apply, and include:

- Heritage status and special features (eg natural hazards)
- Relevant information from other Acts that has been notified to the territorial authority.
- Storm water and waste water utility systems.
- Details relevant to a network utility operator (eg Transmission line clearances.)

(ii) **Building Consents**

A Building Consent is the formal approval, under section 49 of the Building Act 2004, for an applicant to undertake building work. Building work includes work in connection with the construction, alteration or demolition or removal of a building.

A person cannot carry out work except in accordance with a building consent. There are some exceptions to when a building consent is required but Section 17 still requires building work to be carried out in accordance with the Building Code even if no building consent is required.

The building consent provisions in the Building Act 2004 are relatively similar to those under the Building Act 1991. Advice from the DBH is that "the changes should only require building consent authorities and territorial authorities to amend current systems and processes, rather than introduce completely new procedures."

The main change is that a code compliance certificate is issued against the building consent documents; therefore the applicants must ensure the consent documents accurately describe what they want. Changes during construction will require amendments to the consent.

Another significant change will be the need to consult the New Zealand Fire Service Commission on some building consent applications. This will require a system to identify and separately process application which have to go to the New Zealand Fire Service Commission for comment so that the time frames within the Act are not exceeded.

- **Staged Consents**

An owner may apply for building consents for stages of the proposed building work. It will be important to stage work under the Building Act 2004 as under the new Act it will be an offence to use a public building that does not have a Code Compliance Certificate. This is discussed in more detail below.

- **Producer Statements**

Although no longer expressly referred to in the Building Act 2004, these could still be accepted and considered as part of the plans and specifications. This will assist the building consent authority in deciding whether it is satisfied on reasonable grounds that the provisions of the Building Code will be met if the building work is completed in accordance with plans and specifications. A formal procedure for the acceptance of Producer Statements is to be developed.

- **Amendments to Building Consents**

Amendments to a building consent must be applied for in the same way as an application for a building consent. It is important that any changes to the building consent are properly dealt with by an application to amend the building consent. This is because the CCC is issued by a building consent authority if the building work complies with a building consent.

- **Processing Time**

A building consent authority now has 20 working days to refuse or grant an application, unlike the 10 days under the previous Act. Requests for information may be made in this 20-day period and the consent can be put on hold until this information is submitted. This time is not suspended if the application has to go to the Fire Service Commission who have 10 days to comment on the application.

- **Future Considerations**

From 30 November 2009, if an application for a building consent relates to restricted building work the name of the Licensed Building Practitioner carrying out supervision of that work must also be stated. From that date, any plans and specifications used in an application related to restricted building work must be prepared and certified, or under the supervision of, one or more Licensed Building Practitioners.

(iii) **Code Compliance Certificates**

A Code Compliance Certificate (CCC) is a formal statement that building work carried out under the building consent application complies with that building consent.

Major changes in the new Act include that:

- The CCC is issued if the building work complies with the building consent.
- Only the building consent authority that granted the building consent can issue a CCC (unless agreement is made between the BCA and owner).

- At the expiry of 2 years from the date the consent was granted, a territorial authority must decide on whether to issue the code compliance certificate. The decision must be made within 20 days of the expiry (or a further agreed period).
- Interim CCCs can no longer be issued.
- It is an offence to use a building intended for public use that does not have a CCC or for a residential property developer to transfer a household unit without a CCC, unless under written agreement on the prescribed form that the residential property developer and purchaser agree to the sale before the issue of a CCC.

When undertaking a final inspection for a CCC, a building consent authority will need to ensure the building consent documents accurately reflect the work on the site.

The DBH warns that building consent authorities will need to be proactive in the way they handle the issuing of CCCs. This will include establishing clear expectations with applicants who apply for a building consent, and developing a clearly documented and transparent process for managing CCCs. The BCA has 20 working days to grant or refuse a CCC. A fee may be charged for the work done by the BCA.

Building owners and lessees will need to ensure any work undertaken in a building intended for public use has a CCC before any part of the building that is affected by the work is used. This provision of the new Act was introduced in response to the Cave Creek incident but the implications were not fully thought through.

Amendments have already been made to the Act and these became effective on 15 April 2005. In summary the amendments to section 363 of the Act are:

- A clear articulation that the section is to protect the safety of members of the public who are using premises intended for public use.
- Clarification that section 363 applies only to premises in a building that are intended for public use.
- Clarification that section 363 applies only to the parts of premises intended for public use that are affected by building work.
- Allowance for an owner of premises intended for public use to apply for a new safety-based certificate, called a certificate of public use, so premises intended for public use can be used or occupied prior to the issue of a Code Compliance Certificate, if it is safe to do so. This addresses issues around staged use or occupation of buildings during development (for example, hospitals).
- Insertion of a new transitional provision to provide that section 363 applies to all:
 - new buildings from 31 March 2005
 - existing buildings from 15 April 2010
 - and in respect of existing buildings, there is allowance for owners to apply for a certificate of acceptance for building work that did not have a building consent issued.

These amendments will assist administration of the Act.

These changes to the Code Compliance Certificate regime will have a significant impact on operational activities and resourcing levels. As obtaining a final CCC was not mandatory under the previous Act, we are still working through a large backlog of uncompleted consents, many of which are very complicated and have become extremely contentious because the rules have tightened since weather tightness issues have come to the fore. The demand for CCCs has risen significantly as a result of the problems.

(iv) **Compliance Schedules**

A Compliance Schedule lists specified systems and features within a building. These systems and features ensure a building is safe and healthy for members of the public to enter, occupy or work in.

The Compliance Schedule for a building must identify which systems are present, the performance standards for those systems, and how those systems will be monitored and maintained to ensure they will continue to function.

The requirements for a Compliance Schedule in the Building Act 2004 are broadly similar to those in the Building Act 1991. However, the new Act allows more options for the administration of Compliance Schedules by territorial authorities, and significantly, the ability to charge a fee for the service. The Building Act 2004 provides for the territorial authority to be proactive in inspecting these buildings and reviewing the Compliance Schedule.

(v) **Building Warrants of Fitness**

A Building Warrant of Fitness (BWoF) is a statement supplied by a building owner, confirming that the systems specified in the Compliance Schedule for their building have been maintained and checked in accordance with the Compliance Schedule for the previous 12 months and that they will continue to perform as required.

The requirements of the Building Act 2004 for BWoFs are similar to those of the Building Act 1991. The Act provides for the territorial authority to proactively check a building to ensure a BWoF is correct, and that IQP/LBP reports are correct. A territorial authority can now charge a fee for undertaking a BWoF inspection.

(vi) **Certificates of Acceptance**

A Certificate of Acceptance (CoA) is a new tool in the Building Act 2004. It can be used in situations where work has been done without a building consent, or where a building consent authority that is not a territorial authority cannot issue a CCC. It can also be used in a situation where emergency work is required.

A Certificate of Acceptance has some similarities to a Code Compliance Certificate in that it will provide some verification for a building owner/future building owner that part or all certain building work carried out complies with the Building Code. A certificate can exclude areas that are not able to be inspected.

A Certificate of Acceptance is based on the Code **at the time application is made** rather than what was in place at the time consent was granted, should have been applied for, or when work was actually carried out.

The territorial authority, again, has 20 working days from the date the Certificate of Acceptance application is received to decide whether to grant or refuse the application. Only a territorial authority can issue a Certificate of Acceptance. All fees that would have had to be paid if a consent had been properly obtained are payable.

(vii) **Notices to Fix**

A Notice to Fix is a statutory notice requiring a person to remedy a breach of the Building Act 2004 or regulations under the Act. It is similar to the Notice to Rectify under the Building Act 1991 but, unlike a Notice to Rectify, a Notice to Fix can be issued for **all breaches of the Act**, not just building work. A building consent authority must issue a Notice to Fix for any contravention of the Building Act 2004 and building regulations (eg failing to obtain a building consent). It is issued to a **specified person** who is the building owner or the person carrying out building work or any other person supervising that work.