

3. COUNCIL SUBMISSION ON THE BUILDING AMENDMENT BILL (NO 3)

General Manager responsible:	General Manager Regulation and Democracy Services, DDI 941-8462
Officer responsible:	Environmental Policy and Approvals Manager
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PURPOSE OF REPORT

1. This report is to advise the Council about the Building Amendment Bill (No 3) ("the Bill") and for a submission (**Appendix 1**) to be approved by the Council on the Bill.

EXECUTIVE SUMMARY

2. The Bill is the first of two proposed by the Government that are aimed at implementing a number of policy decisions arising from the review of the Building Act 2004 in 2009/10. The Council made a submission on the review discussion document and a copy of the submission is attached to this report (**Appendix 2**).
3. The Bill provides for better regulation of building work, and adjusts the licensing regime for builders already in place under the Act. It seeks to promote accountability from those responsible for ensuring building work complies with the Building Code. The idea is that this should lead to a reduction in liability for Councils.
4. The Bills Digest (prepared for Parliament to assist it in its consideration of the Bill) is attached (**Appendix 3**) to this report, but in brief, the explanatory note to the Bill states that it:
 - (a) More clearly signals the accountabilities of participants involved in building design and construction.

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- (b) Enhances accountability under the licensed building practitioners' regime.
- (c) Introduces a stepped risk-based approach to how building consent and inspection requirements are administered so that the role of the building consent authorities at each step is aligned with the risk involved.
- (d) Repeals the offence of allowing the public use of a building without a Code Compliance Certificate for building work commenced between 1992 and 2005.
- (e) Provides for an owner-builder exemption from the restricted building work provisions of the Building Act 2004.
- (f) Makes a number of changes to enhance and clarify the building warrant of fitness regime.
- (g) Makes a number of other minor and technical amendments.

The whole Bill, including its explanatory note, can be found at:

www.legislation.co.nz/bill/government/2010/0253/latest/viewpdf.aspx?search=ts_bill_building_re_sel&p=1

5. The review of the Building Act found that there is still a heavy reliance by the general public on building consent authorities for building quality. It also noted the concerns that were raised during the review raised about the costs, complexity, and delays in building consent processes. The Government determined that change is needed to give incentives to building professionals and tradespeople to take responsibility for the quality of their work and to stand behind it. The current system is unbalanced because of the unduly heavy reliance on building consent authorities (who are mostly Councils) to identify and fix inadequacies in building design and construction. As a result building consent authorities have tended to be more cautious, and this has led to a level of checking and inspection that may be higher than necessary, particularly when low-risk building work is involved.
6. The Bill proposes to make it clearer to building consent authorities, builders, designers and building owners the various participants' accountabilities. One way it does this is through new sections proposed for the Act, set out in clause 10 of the Bill:
 - (a) Section 14B: **Owners** of building work are responsible for getting any necessary approvals. An owner is responsible for ensuring the building work complies with the building consent or, if there is no building consent, with the Building Code.
 - (b) Section 14C: **Owner-builders** are responsible for ensuring the work complies with the building consent, and the plans and specifications, to which the building relates.
 - (c) Section 14D: **Designers** are accountable for ensuring that their plans, specifications and advice will meet the requirements of the Building Code.
 - (d) Section 14E: **Builders** are responsible for building to any approved plans or specifications. If there are no approved plans or specifications, then builders are responsible for meeting the requirements of the Building Code. However, there is no requirement for a builder to be a licensed building practitioner or have carried out any particular training. There is also no requirement for a builder to have a guarantee or warranty system in place to cover any significant building work they might do, as was proposed in the Review discussion document.
 - (e) Section 14F: **Building consent authorities** are responsible for checking the Building Code compliance of plans and specifications that accompany a building consent application, and for checking that work is done according to the plans and specifications, as well as issuing the statutory consents and certificates. Building consent authorities must also approve any critical variations.

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7. This structure implies that a building consent authority's responsibility should be better balanced with each party involved in a building project now with express responsibilities set out. However, there is no shift in the actual liability system provided for in the Bill. Although Councils have long submitted there should be a proportionate liability system introduced to replace joint and several liability, the Bill does not go that far.
8. Under a joint and several liability regime the injured party need not prove what contribution each wrongdoer made in causing the damage and he/she is not prejudiced if not all of the persons responsible for the loss can be found, or are solvent, or are insured. Where two or more wrongdoers cause the same damage to the one person, the person suffering the loss can recover their entire loss in full from all or any of those liable.
9. What this means for the Council in relation to building related claims is that it will often be the only party still available to be sued or able to pay any compensation that may be awarded by the Court, as others involved in a building project might be "phoenix" companies, formed just for that project and no longer in existence, an individual cannot be located, or the companies or individuals involved can be found but are insolvent.
10. Under a proportionate liability regime, the injured party can only recover from each liable person compensation of an amount that reflects that person's respective responsibility for the damage. The difference being, that the risk that one or more of the persons responsible for the loss will be unavailable to sue, or will be insolvent, or will be uninsured, rests on the person who has suffered the harm and not any other party.
11. However, it does introduce a new stepped risk-based approach to how building consent and inspection requirements are administered. The idea behind this is so the role of the building consent authority at each step is aligned with the risk involved, as well as the skills and capability of the people doing the work.
12. Instead of the one standard consent provided for in the current Act the Bill proposes four types of building consent:
 - (a) A **low-risk building consent** - this introduces a streamlined consent process for some low-risk work, such as a free-standing garage or a large rural shed. This process simply checks that certain conditions are met (for example, that the work is undertaken by a licensed building practitioner), but involves no further inspection by building consent authorities. Staff have identified some issues with the system proposed, as further discussed in the draft submission attached to this report (**Appendix 1**).
 - (b) A **simple residential building consent** - this provides for a simplified and more prescribed consenting process for certain simple residential building work that is at the lower-risk end of the spectrum. As an example, the Department of Building and Housing identify a single-storey house built using proven methods and design, with low structural and weathertightness risks.
 - (c) A **commercial building consent** - there will be new building consent processes and requirements for commercial buildings, that largely rely on third-party (non-building consent authority) review and assurance processes. These processes are an alternative to the current consenting and inspection requirements, provided certain conditions are met. Staff have also identified issues with these proposals, as further discussed in the draft submission attached to this report (**Appendix 1**).
 - (d) A **standard building consent** - essentially the consent that is currently provided for in the Act.
13. This four consent system proposed in the Bill is more or less the same risk-based system the Council has put in place following the earthquake, to process building consents under the current Act. A diagram of the Council's process is attached to this report (**Appendix 4**).

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14. While the Bill makes a number of improvements compared to the current Act, and staff are satisfied with many of the new provisions, the proposals do not address all the matters raised by Council in its previous submission. It also leaves a lot of the detail around the types of consent, etc, to be made by regulations. For example, we do not yet know what type of building work will be low-risk building work, as the interpretation clause of the Bill provides it has the meaning given to it in regulations made under the Act. It is imperative that the Council also has input into the regulation-making process. Councils did not have a chance to provide input on the "change of use" regulations, and they do not work as effectively as they should.
15. The above concerns are set out in the attached draft submission, as well as other suggestions for further changes to the proposed Bill clauses and amendments to the Act.

FINANCIAL IMPLICATIONS

16. If an oral submission is to be made by the Council then there may be financial implications if the Council representatives need to travel to Wellington for the Select Committee hearing.

LEGAL CONSIDERATIONS

17. No legal considerations involved in making a submission on a Bill.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

18. Not applicable.

ALIGNMENT WITH STRATEGIES

19. Not applicable.

CONSULTATION FULFILMENT

20. The Council would not need to consult with any member of the public in relation to its submission on the Bill, because any member of the public can also make their own submission. Staff from the Environmental Policy and Approvals Unit and the Legal Services Unit have worked on this report and submission.

STAFF RECOMMENDATION:

That the Council resolves to:

- (a) Approve the draft submission on the Building Amendment Bill (No 3) (Appendix 1).
- (b) Determine whether the Council should make an oral submission on the Bill and, if so, appoint a Councillor or Councillors to represent the Council at the Select Committee hearing.
- (c) If necessary, make provision for further amendments to be made to the submission by the Council if further information from other territorial authorities or Local Government New Zealand becomes available before the submissions closing date of 4 March 2011.
- (d) That the Council write to the Government seeking to have input into the drafting of the regulations to be made as a consequence of the Bill.

COMMITTEE RECOMMENDATION:

That the Council:

- (a) Adopt the staff recommendation.
- (b) That Councillor Wells present the Council submission to the Select Committee.
- (c) That the submission be forwarded to local Members of Parliament to highlight the Council's concerns.

BACKGROUND

21. A brief background is provided on the context of the Building Act review and the position the Council has taken regarding its discussions with the Department of Building and Housing and input to various discussion papers.
22. The Building Act 2004 introduced the requirement for Building Consent Authorities to become accredited and licensed by the Department of Building and Housing, operate within a quality management system and be audited by an audit body (IANZ - International Accreditation NZ). Council was accredited and licensed in 2008. The Building Act 2004 also introduced the requirement for licensed building practitioners to undertake all building works, effective in 2012.
23. 2007 - The Labour Government and Minister of Housing, Shane Jones indicated that it intended to reduce the scope of building works requiring a building consent, make PIMs (Project Information Memoranda) voluntary and look at reducing risk adverse consenting practices in BCAs. They passed regulations and amended the Building Act, Schedule 1 in 2007 to exempt more building work and make PIMs voluntary in 2007.
24. 2008 - Council Officers participated in a Metro Sector Group which commenced working closely with the DBH on developing a further package of initiatives to provide better regulation of building work, develop a more targeted risk-based approach, reduce the building industry reliance on BCAs to ensure work complied with the building code and for Licensed Building Practitioners (LBP) to take a greater responsibility for the work they carried out.
25. The Government decided to allow owners to undertake limited building works (including restricted building works) on their own homes and resolved to amend the legislation to allow this to happen.
26. 2010 - The Department of Building and Housing released a discussion document "Cost effective quality: Next generation building control in New Zealand". Council submitted an extensive response to the matters raised and supported the concepts of a streamlined, risk based approach to consent and inspection processes, building practitioners increasingly responsible for their work and lower risk consents and greater protection for customers through warranties, guarantees and contracts. Specifically, the Submissions Panel resolved on 16 April as follows:

"The panel directed staff to make the following amendments to the draft submission:

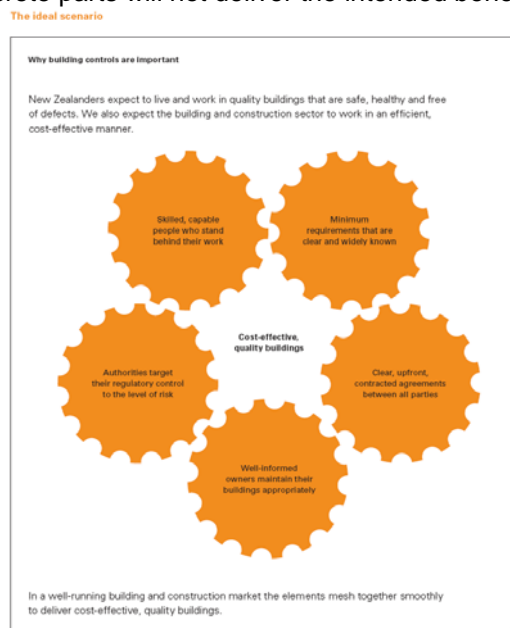
- *Submission to be signed by the Mayor and Chief Executive, not the Chairperson of the Submissions Panel.*
- *There are alternatives to the proposal which would achieve the same goals. For example territorial authorities could take a more risk-based approach if the DBH issued standards, such as the recent Simple House Compliance document.*
- *Submission 1: accepted but staff asked to moderate it a little.*
- *Submission 11 paragraph 4 needed to be more strongly expressed. The complexity of the forms are a barrier; cost of subscription to the standards is a barrier to small building firms. In this section also mention quality of housing and quality of licensing of the LBP.*
- *Submission 14: comment on Property records needs to be emphasised as it is really important. The history of a building is vital to homebuyers and the territorial authorities need knowledge of changes to the infrastructure, for example sewer connections.*

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- *Submission 15: the Panel does not support the further potential exemptions listed in Table B. The Council needs an understanding of the load on its sewerage network and charges a connection fee. Solar water heaters are integral to the plumbing system and also penetrate the roof with weathertightness implications.*
- *Submission 18: this point is really important and needs more emphasis. An example is that the proposed new requirement of 1 metre from the boundary is in conflict with this Council's City Plan which requires 1.8 metres.*
- *Submission 78: include suggestion that consultation with the Insurance Council be carried out. Explain more clearly why costs to homeowners will go up.*
- *In general: the proposal will not make it easier to build, simply make it necessary for building practitioners to gain a qualification that may be beyond their reach. Refer to the Canadian system which uses a rigorous home building warranty system. Include a statement that the Christchurch City Council issues the greatest number of building permits in New Zealand and provide economic data.*

The panel agreed that staff make the amendments as directed and that these be e-mailed to members for approval before sending to the Department of Building and Housing."

27. The review of the Building Act found that there is still a heavy reliance by the general public on building consent authorities for building quality. It also noted the concerns that were raised during the review raised about the costs, complexity, and delays in building consent processes. The Government determined that change was needed to give incentives to building professionals and trades-people to take responsibility for the quality of their work and to stand behind it. The current system is unbalanced because of the unduly heavy reliance on building consent authorities (who are mostly Councils) to identify and fix inadequacies in building design and construction. As a result building consent authorities have tended to be more cautious, and this has led to a level of checking and inspection that may be higher than necessary, particularly when low-risk building work is involved.
28. The release of the Building Amendment Bill 2010 is the first of two Bills in response to the review. It addresses building consent and inspection requirements, building design and construction requirements, the Licensed Building Practitioners regime and the law related to DIY projects. However there were a number of other matters raised in the review which should be developed as part of the package. Each of the interdependent processes (outlined in an excerpt from the discussion paper below) relies on the other processes to deliver their part and the adoption of discrete parts will not deliver the intended benefits.



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29. Next Steps - The Department of Building and Housing is presently looking to develop the regulations to support the Building Amendment Act (No 3) and the next Bill to implement the outcome of the Building Act review, concluded next year. The indications are that they intend to seek to achieve greater national consistency and standardisation of building regulatory requirements. This would be achieved by a more regionalised approach for building consent authorities and more use of private entities as BCAs - leading to improved sector productivity.