



Department of
Building and Housing
Te Tari Kaupapa Whare

A guide to making a complaint about a building consent authority



Contents

INTRODUCTION

- Purpose 1
- Explanatory note 1

GENERAL INFORMATION

- Complaints investigated by the Department 2
- Complaints not investigated by the Department 2

THE COMPLAINTS PROCESS

- Making a complaint 4
- Receiving and processing a complaint 5
- Timeframe 5
- Possible outcomes 6
- Overview of the Department's complaints management process 7

GUIDANCE FOR COMPLETING THE COMPLAINT FORM

- Before making a complaint to the Department 8
- Check-list for completing the complaint form 8

APPLICATION FORM FOR COMPLAINTS 9

OTHER PROCESSES THAT ENSURE A BUILDING CONSENT AUTHORITY PERFORMS ITS DUTIES PROPERLY 13

FURTHER INFORMATION 14

ABOUT THE DEPARTMENT OF BUILDING AND HOUSING 15

This document's status

This document is issued as guidance under section 175 of the Building Act 2004. While the Department has taken care in preparing the document it should not be relied upon as establishing compliance with all relevant clauses of the Building Act in all cases that may arise. The document may be updated from time to time and the latest version is available from the Department's website at www.dbh.govt.nz

Introduction

PURPOSE

This guide explains the process for making a formal complaint with the Department of Building and Housing (the Department) about a building consent authority under section 200 of the Building Act 2004.

It is designed for those who are experiencing a problem, or are concerned about building control services provided by a council acting in their capacity as a building consent authority.

Guidance is provided on how to complete the complaint form and the evidential documentation that needs to be submitted in support of your complaint. By following this guide, complaints can be processed and resolved faster.

EXPLANATORY NOTE

In most cases the building control unit in your local council will be your building consent authority.

If you have a problem or concern about any building control service, you should first talk to the building consent authority that provided the service. All building consent authorities are required to have a formal complaints procedure for receiving and resolving complaints about building control functions. Ask them for a copy of their complaints procedure.

If you have complained to the building consent authority and the matter has not been resolved to your satisfaction, then you can discuss the issue with staff at the Department. You may be able to make a formal complaint under section 200 of the Building Act 2004.

General information

COMPLAINTS INVESTIGATED BY THE DEPARTMENT

Under the Building Act 2004, the Department can only investigate complaints if they are about:

- a building consent authority not properly performing its statutory building control functions under parts 2 and 3 of the Building Act without good reason, or
- a building consent authority acting negligently or failing to perform its statutory building control functions.

This means the Department can generally only investigate complaints about a building consent authority's performance relating to:

- assessing, processing and granting building consents, and issuing documents such as code compliance certificates, compliance schedules and notices to fix
- conducting inspections of building work
- providing building consent applications to and receiving advice from the New Zealand Fire Service Commission
- collecting the building levy on behalf of the Chief Executive of the Department.

COMPLAINTS NOT INVESTIGATED BY THE DEPARTMENT

The Department only investigates complaints that relate to the functions of a building consent authority under the Building Act 2004.

If your complaint is about something else, you should discuss it with the appropriate agency. Refer to the table on the next page.

| IF YOUR COMPLAINT OR DISPUTE IS ABOUT... | TALK TO... |
|---|--|
| <ul style="list-style-type: none"> customer service-related issues | <ul style="list-style-type: none"> the building consent authority or agency directly responsible. Consider escalating your concerns to a senior or executive manager at the council if you can't resolve the issue at an operational level |
| <ul style="list-style-type: none"> a licensed building practitioner | <ul style="list-style-type: none"> the Building Practitioners Board, which can be contacted on (04) 473 1586 or at bbp@dbh.govt.nz Further information is also available online at www.dbh.govt.nz/lbp |
| <ul style="list-style-type: none"> a technical Building Code compliance issue associated with your building consent or code compliance certificate | <ul style="list-style-type: none"> the Department's Determinations team, which can be contacted on 0800 242 243 or emailed at info@dbh.govt.nz Further information on the Department's determinations service is also available online at www.dbh.govt.nz/determinations |
| <ul style="list-style-type: none"> a territorial authority function under the Building Act | <ul style="list-style-type: none"> the relevant part of the territorial authority/council. Consider escalating your concerns to a senior or executive manager at the council if you can't resolve the issue at an operational level. Failing this, you could consider escalating your concerns to the office of the Ombudsmen, which can be contacted on 0800 802 602 or email at office@ombudsmen.parliament.nz Ombudsmen are independent officers of parliament who can review and investigate decisions of local and central government agencies. Further information is also available at, www.ombudsmen.parliament.govt.nz |
| <ul style="list-style-type: none"> a town planning matter related to a district plan rule or application for resource consent, or the need for one | <ul style="list-style-type: none"> the relevant part of the territorial authority/council that is directly responsible for the decision. If you are unable to resolve the matter with the territorial authority, then you may wish to contact either the Ministry for the Environment, which administers the Resource Management Act 1991 or the Parliamentary Commissioner for the Environment, who can be contacted on (04) 471 1669 or emailed at pce@pce.parliament.nz Further information is also available online at www.pce.parliament.nz or www.mfe.govt.nz |
| <ul style="list-style-type: none"> an infringement under the Building Act | <ul style="list-style-type: none"> the relevant part of the territorial authority/council that is directly responsible |
| <ul style="list-style-type: none"> an infringement offence for which you have been prosecuted | <ul style="list-style-type: none"> a lawyer to seek independent legal advice concerning the matter. Or you may wish to seek free, impartial and confidential advice from your local Community Law Centre. To find the Community Law Centre nearest to you, see www.communitylaw.org.nz |
| <ul style="list-style-type: none"> access to official information | <ul style="list-style-type: none"> the building consent authority, territorial authority or agency concerned in the first instance. Consider escalating your concerns to a senior or executive manager at the council if you can't resolve the issue at an operational level. Failing this, you could consider escalating your concerns to the Office of the Ombudsmen, which can be contacted on 0800 802 602 or emailed at office@ombudsmen.parliament.nz Further information is also available at: www.ombudsmen.parliament.govt.nz |

The complaints process

MAKING A COMPLAINT

If you have already complained to the building consent authority and the matter has not been resolved to your satisfaction, you should discuss the issue with staff at the Department before submitting a formal complaint. Contact the Consent Authority Capability and Performance Group at the Department on phone 0800 242 243 or email at info@dbh.govt.nz

Section 200 of the Building Act states that the Chief Executive of the Department can receive and investigate complaints alleging that a building consent authority has failed, or is failing (without good reason) to properly perform its statutory building control functions under parts 2 and 3 of the Act or has been, or is, negligently performing its functions.

Making a complaint is free of charge. You should complete the Department's complaint form about the performance of a building consent authority. A copy of this form is available on page 9 of this document or electronically online (in Word format) at www.dbh.govt.nz/consumer-complaints

When completing the application form, it is very important to be clear about:

- the performance of the building consent authority function(s) you are unhappy with and why
- details of the complaint (eg, who, what, when, where, how and why etc)
- parties involved in the complaint, roles they played and their names and contact details (including who you have been dealing with at the building consent authority)
- your contact details (including email, postal and phone)
- steps you have taken to try and resolve the issue (including all relevant conversations, letters or other records)

- what outcome(s) you would like to see as part of the resolution. Please note that the Department has no legal powers to require building consent authorities to pay money to you as a complainant in the event your complaint is upheld (refer to part 8 of the complaint application form on page 9)
- any other information that will help to explain your circumstances. It is particularly important to supply as much supporting information and evidence up front to help substantiate your complaint (eg, copies of previous correspondence about your concern). Supplying this type of information will help reduce the complaint processing timeframe and lead to better outcomes for all.

Written complaints should be sent to:

Consent Authority Capability and Performance Group
Department of Building and Housing
PO Box 10 729
Wellington, 6143
Phone 0800 242 243
Email info@dbh.govt.nz, Attention: Consent Authority Capability and Performance Group

RECEIVING AND PROCESSING A COMPLAINT

Once the Department has received your written complaint, it will acknowledge receipt and begin its assessment to decide whether to accept or decline the complaint.

At this stage, the Department may:

- commence preliminary enquiries into your complaint to determine whether to accept or decline the complaint
- direct you to another agency with responsibility for the area you have complained about (including the local authority in question) if your complaint relates to matters outside the Department's jurisdiction
- decline the complaint because it does not cover the kinds of issues that the Department can investigate (eg, town planning/resource consent matters, quality of customer service received)
- decline the complaint as it is considered to be frivolous or vexatious.

Upon receipt of the complaint, and in the interests of natural justice, the Department notifies the building consent authority concerned of the complaint, and provides them with a copy of the complaint and all relevant documents. The Department also requests from the building consent authority a copy of their files and information relating to your complaint or building consent documents as part of its preliminary enquiries before making a decision to accept or decline the complaint.

Preliminary enquiries undertaken by the Department are usually document-based and do not normally involve interviewing the complainant or building consent authority staff. This approach allows for the efficient use of Department resources and ensures that decisions are based on documented evidence.

If the complaint is accepted, the Department will then investigate the matter under powers provided by the Building Act.

The Department's investigation may involve:

- obtaining additional independent technical advice
- inviting you to provide further information or documents that you may not have supplied in support of your original complaint
- meeting separately with you and building consent authority officials to discuss aspects of your complaint and to obtain additional context
- inviting the building consent authority to make submissions and provide further formal response to the matters of complaint
- inviting you to make submissions and to provide a formal response to that provided by the building consent authority
- undertaking a site inspection or assessment of certified building work if relevant to the complaint.

If a complaint is upheld, the Department may take disciplinary action against the building consent authority, by exercising powers available to the Chief Executive of the Department under the Building Act. These are detailed in section 203 of the Building Act available online at www.dbh.govt.nz/legislation.govt.nz

TIMEFRAME

The length of time to process and resolve your complaint depends on:

- the nature and complexity of your complaint
- actions already taken to try to resolve it
- the time each party takes to respond to the Department's enquiries.

Some complaints can take only a matter of weeks to resolve, others can take several months. If the Department needs to work with others to investigate and resolve your complaint, processing it may take longer.

As the complainant, you can assist the timeliness of the complaint resolution process by completing the complaint application form as comprehensively as possible, clearly articulating your concerns, rather than just referring to documents.

You should aim to provide as much evidence as possible up front to support your complaint (eg, copies of previous correspondence with the building consent authority).

You will be kept informed of the progress made to resolve your complaint by regular updates wherever possible or when significant milestones in the investigation process are achieved. These may be via phone call, email or letter.

POSSIBLE OUTCOMES

Possible outcomes could include the following.

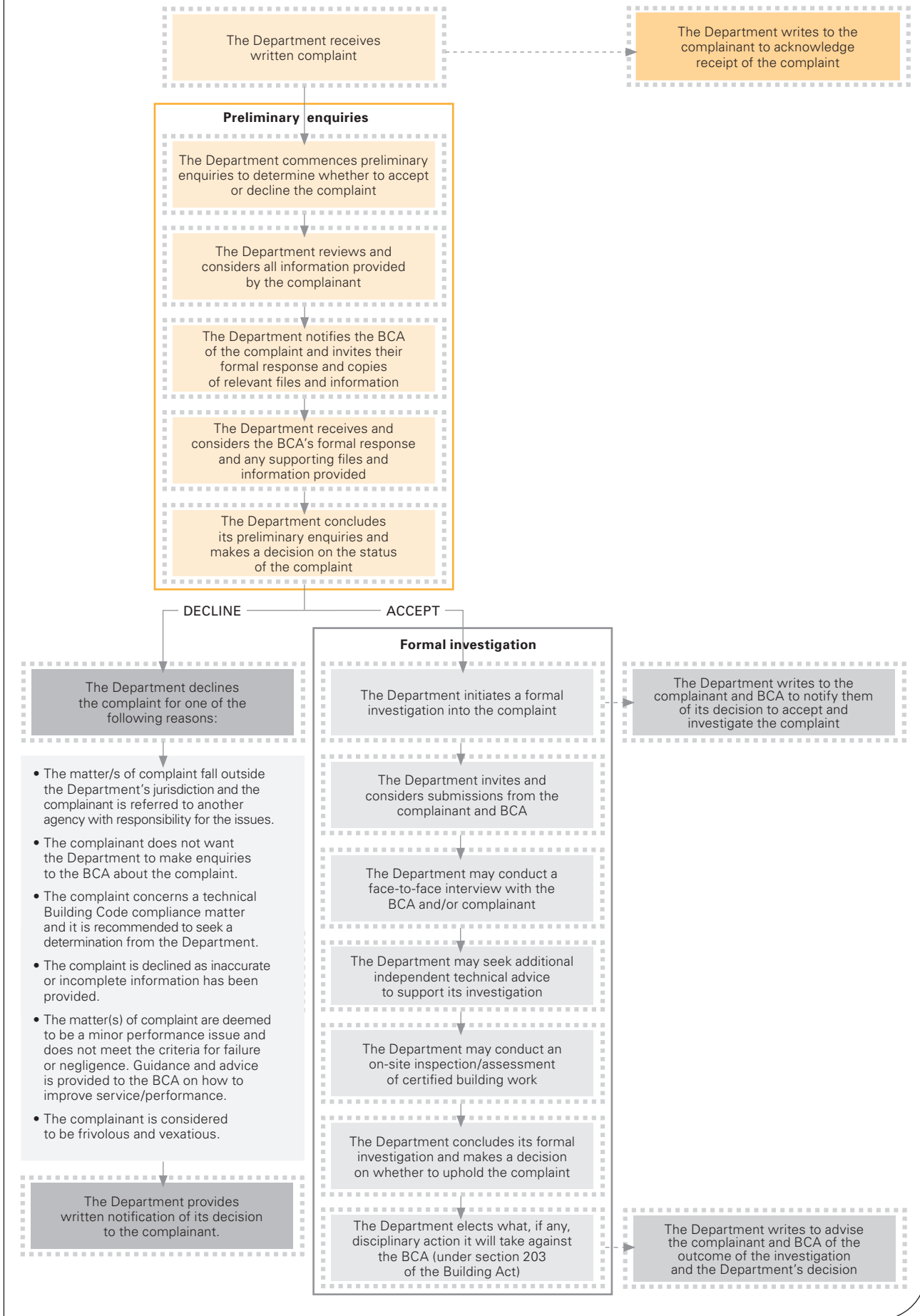
- If your complaint falls outside the Department's jurisdiction it will be declined and you will be referred to the agency best placed to respond to the concerns that you are raising.
- Your complaint is declined and it is recommended that you may wish to submit an application for a determination to the Department to seek a binding legal decision on a technical Building Code compliance matter (eg, the level of Building Code compliance achieved on a specific building project or the appropriateness of a council's technical Building Code compliance decision).
- Your complaint is upheld and the building consent authority is provided with guidance and advice from the Department to make the necessary performance improvements to avoid the situation happening again.
- Your complaint is upheld and additional monitoring and review is placed on the building consent authority, such as a technical review by the Department or special accreditation audit by International Accreditation New Zealand.
- Your complaint is upheld and disciplinary actions are taken against the building consent authority.

- Your complaint is declined because you do not want the Department to contact the council to enquire into and seek information concerning your complaint.
- Your complaint is declined as you have provided inaccurate or incomplete information in your complaint.
- Your complaint is declined as the matter of complaint is deemed to be a minor performance issue that does not meet the criteria for failure or negligence
- Your complaint is declined because it is considered to be frivolous or vexatious.

If you are not satisfied with the Department's handling of your complaint, you may wish to contact the Office of the Ombudsmen. Ombudsmen are independent officers of Parliament who can review and investigate decisions made by central and local government agencies. For more information on their functions and the procedure for making a complaint, visit www.ombudsmen.parliament.nz/

Further information and contacts for other government agencies and organisations can also be found on the New Zealand Government website portal, www.newzealand.govt.nz

OVERVIEW OF THE DEPARTMENT'S COMPLAINTS MANAGEMENT PROCESS



Guidance for completing the complaint form

BEFORE MAKING A COMPLAINT TO THE DEPARTMENT

Prior to making a formal complaint to the Department, you should consider the following questions (and supporting actions).

- Have you discussed and attempted to resolve your concerns with the building consent authority?
- Have you enquired with the building consent authority about how to make a formal complaint to them (eg, requested a copy of their complaints procedure and complaints form)?
- Have you made a formal complaint in writing to the building control manager at the building consent authority?
- If the complaint was not resolved to your satisfaction, did you escalate your concerns to a senior or executive manager at the building consent authority?

If the answer to any of the above questions is 'no', the Department suggests that you make a formal complaint to the building consent authority, allowing their complaints procedure to run its course before making a formal complaint to the Department.

CHECK-LIST FOR COMPLETING THE COMPLAINT FORM

To assist in your completion of the Department's complaint form, please consider the following questions.

- Have you provided your name and contact details (eg, postal address, phone and e-mail)?
- Have you provided details (eg, who, what, when and dates) of what your complaint is about and the building consent authority involved, including all parties involved in the complaint from the building consent authority?
- Have you provided the relevant building consent number and building project address, where applicable?
- Have you clearly stated the building consent authority function you have concerns about and why? A list of these is detailed in part 4 of the complaints form on page 9.
- Have you provided all relevant supporting information and documents to substantiate your matters of complaint and itemised these on the complaint form (eg, copies of all relevant previous correspondence with the building consent authority, building consent documents, code compliance certificates, notices to fix etc)?
- Have you detailed the steps or actions you have already taken in an attempt to resolve your complaint (eg, copies of all relevant correspondence, including letters, emails, fax etc)?
- Have you indicated the outcomes you would like to see as part of the resolution of your complaint?
- Have you signed the complaint form?
- Have you undertaken to ensure that all the information you have supplied in support of your complaint is true, correct and complete?

If the answer to any of these questions is 'no', your complaint form may be incomplete.

Application form for complaints

FORM FOR A COMPLAINT ABOUT A BUILDING CONSENT AUTHORITY

| | |
|---|--|
| <p>1. Your details</p> | <p>Title:</p> <p>Given names:</p> <p>Family name:</p> |
| <p>2. Your contact details</p> | <p>Postal address:</p> <p>Suburb/Town:</p> <p>Country:</p> <p>Daytime phone number:</p> <p>Email address:</p> |
| <p>3. Who is your complaint against?</p> | <p>What is the name of the council or private building consent authority that you would like to make a complaint against?</p> <p>What are its contact details?</p> <p>When did you notify the council or private building consent authority of your complaint?</p> <p>What is the name of the person or persons you spoke to or wrote to about your complaint?</p> |
| <p>4. Grounds for the complaint? Please tick the grounds for your complaint (if known)</p> | <p><input type="radio"/> Applying for project information memoranda</p> <p><input type="radio"/> Assessing, processing, and granting building consents</p> <p><input type="radio"/> Issuing documents such as code compliance certificates, compliance schedules and notices to fix</p> <p><input type="radio"/> Conducting inspections of building work</p> <p><input type="radio"/> Providing building consent applications to and receiving advice from the New Zealand Fire Service Commission</p> <p><input type="radio"/> Collecting the building levy</p> <p><input type="radio"/> Something else (please specify):</p> |
| <p>Note: To allow sufficient room to document your complaint, a Word version of this form is available online at www.dbh.govt.nz/consumer-complaints. Once completed the form can be printed out or emailed and supplied to the Department with all relevant supporting information (eg, documents) and evidence.</p> | |

FORM FOR A COMPLAINT ABOUT A BUILDING CONSENT AUTHORITY

| | |
|---|---|
| 8. What outcomes do you want to see? | What outcome(s) would you like to see as part of the resolution? |
| <p>IMPORTANT NOTE:</p> <p>Please be advised that as an outcome of our enquiries into your complaint the Department has no power to require a council as a building consent authority to do:</p> <ul style="list-style-type: none"> • compensate you financially/reach a financial settlement with you • award costs against a council. | |
| 9. Permission to notify | <p><i>By signing this form you give the Department permission to use the information contained on this form to initiate our preliminary enquiries.</i></p> <p><i>The Department may need to share information provided on this form with the building consent authority concerned in order to fully investigate your complaint. This way the Department can ensure the full specifics of your complaint are put to the council concerned. If you do not provide permission, the Department will need to discuss with you the options for addressing your complaint. This may include not progressing the complaint.</i></p> |
| 10. Declaration | <p>In signing this form I/we: _____</p> <p>certify that all information supplied in this application is true, correct and complete in every respect and understand that if it is not true, correct and complete this complaint may be declined by the Department.</p> |
| <p><i>Please review carefully sections 9 and 10 prior to signing this form.</i></p> | |
| Signature | |
| Date | |

IMPORTANT NOTES TO THIS FORM

Official information Act 1982

The information you provide with your complaint will be subject to the provisions of the Official Information Act 1982, which applies to information held by agencies such as government departments.

Privacy Statement and Disclosure of Information

The privacy of information relating to you is governed by the Privacy Act 1993. The information the Department of Building and Housing collects and holds about you will be used to:

- communicate with you about your complaint
- communicate with the building consent authority that you are making a complaint about, and
- support the achievement of a satisfactory outcome(s) to your complaint.

The information about you will be collected directly from this application form and from any documents that you submit with this form. We will need to discuss your complaint with the building consent authority that you are making the complaint against.

The Department of Building and Housing will endeavour to ensure the personal information that we collect, store and use is accurate, complete and up to date. Prompt notification of any changes to your personal contact details will help us do this. We will also endeavour to protect your personal information from misuse or loss and from unauthorised access, modification or disclosure in accordance with the Privacy Act.

Under the Privacy Act you are entitled to have access to, and request correction of, any personal information held by us. If you have any queries about privacy of information or wish to access any personal information held by us, please contact:

Manager, Consent Authority Capability
and Performance
Consent Authority Capability and
Performance Group
Department of Building and Housing
P.O. Box 10 729
Wellington 6143
Email: info@dbh.govt.nz

If any of the information requested on the form (or as part of the complaints process) is not provided, it may delay the processing and resolution of your complaint.

Other processes that ensure a building consent authority performs its duties properly

ACCREDITATION AND REGISTRATION

The Building Consent Authority (BCA) accreditation and registration scheme, implemented in 2007, is designed to strengthen the regulatory building control system at building consent, inspection and approval stages of the building process (the functions undertaken by building consent authorities). It aims to ensure authorities responsible for checking building work compliance have the capacity and capability to undertake their regulatory functions to the standards required by the Building Act and Building Regulations.

International Accreditation New Zealand (IANZ) audits BCAs to help ensure standards are maintained. A full technical audit of all building control operations is undertaken every two years, or a targeted special assessment audit may be undertaken at the direction of IANZ, the BCA or the Department of Building and Housing.

Further information about the BCA accreditation and registration scheme is at www.dbh.govt.nz/bofficials-bca

TECHNICAL REVIEWS

Technical reviews are carried out by the Department under powers provided by sections 276 and 204(1)(b) of the Building Act. A technical review is a performance review of whether an authority is properly performing its functions and exercising its powers under the Act.

Reviews help to:

- monitor authorities' performance
- enhance the performance of building control activities
- communicate appropriate systems and processes for building control operations
- ensure authorities fulfil their obligations under the Building Act and Building Regulations.

Technical reviews also examine whether authorities have appropriate operational systems and resources to perform building control work effectively and efficiently.

Further information about the technical reviews undertaken by the Department, including copies of published technical review reports, is available online at www.dbh.govt.nz/technical-reviews

DETERMINATIONS

When you cannot agree with your council about a technical Building Code compliance matter, a determination can often help you solve the problem. A determination is usually the most appropriate way to resolve a dispute about an interpretation of the Building Code or Building Act by an authority, often affecting an application for a building consent or code compliance certificate.

A determination is a binding decision in law made by the Department. It provides a way of resolving disputes or questions about the rules that apply to buildings, how buildings are used, and Building Code compliance issues such as accessibility, health and safety, fire and weathertightness etc.

Further information and guidance about the determinations process, including an application form, is available online:

- www.dbh.govt.nz/determinations-about-determinations
- www.dbh.govt.nz/pub-determinations-guide

Further information

For further information and guidance on complaints about building consent authorities, please contact the Department's Consent Authority Capability and Performance Group on:

Ph (0800) 242 243 or **email info@dbh.govt.nz**

Please address your enquiries 'Attention Consent Authority Capability and Performance Group'.

About the Department of Building and Housing

The Department of Building and Housing has an important role to play in working with the sector to lift standards and performance.

The Department also looks ahead and considers how our buildings and built environment can better meet New Zealanders' needs now and in the future, and how to best respond to changing building technologies and systems, and changing housing needs.

The Department of Building and Housing was established in November 2004. It brings together in one organisation building and housing sector policy and related regulatory functions and dispute resolution services from across a range of government agencies.

Consolidating the Government's building- and housing-related activities was designed to:

- ensure an effective regulatory system for the building and housing sector
- deliver good-quality advice to the government
- improve and streamline services to the public.

The Department incorporates the Ministry of Housing, the former Building Industry Authority, the Weathertight Homes Resolution Service from the Department of Internal Affairs, the building policy functions from the Ministry of Economic Development, and related functions from the Ministry of Social Development and Housing New Zealand Corporation and the functions of the Electrical Workers Registration Board.

The Department is responsible for:

- ensuring an effective regulatory environment for the sector
- regulating the sector
- delivering effective information, advice and dispute resolution services
- providing purchase and monitoring advice to the government on Housing New Zealand Corporation

- providing policy advice on the sector, including emerging trends and issues and regulation
- providing occupational licensing for the sector
- working with Housing New Zealand Corporation to improve housing outcomes for the sector
- undertaking analysis of the building and housing environment, emerging issues and monitoring trends
- influencing the wider Government sector to ensure it contributes to the Government's goals for housing
- working with other agencies to influence and promote delivering the Government's outcomes for the housing and building sector
- undertaking specific initiatives under the New Zealand Housing Strategy.

The Department also administers a range of legislation and regulations (including the Building Act and Building Regulations) in the building and housing sector.

The Department was formed after a major review of agencies with housing and building-related responsibilities found that regulatory, policy and dispute resolution functions were spread across too many departments. Consolidating the Government's building and housing related activities into one department has allowed for a more integrated and efficient approach to policy development, compliance and enforcement, advice to Government and the sector and, most importantly, improving the delivery of services to New Zealanders, taking a 'whole of government' approach to New Zealand's built environment.

Amended in January 2011 by
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