



Building consent authority update

October 2010



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CANTERBURY EARTHQUAKE RECOVERY

Our thoughts are with all Cantabrians in the months ahead. If the spirit of the people of Christchurch that we have witnessed recently is anything to go by, then the rebuild will be one of solidarity too.

Much of the Department of Building and Housing's effort is shifting from on the ground efforts to working with others to plan and contribute to the building recovery programme.

Emergency legislation has been passed, which allows Ministers to speed up the recovery process including:

- expanding the scope of building work able to be done without a consent, enabling simple repairs and rebuilds to be undertaken immediately
- increasing powers of entry into affected buildings enabling Department officials to learn more about building structure and stability under earthquake conditions
- streamlining the dangerous building provisions in the Building Act 2004.

These new powers only relate to Canterbury and expire on 16 September 2011.

Department officials are working closely with affected councils and other agencies on all of the above and other operational day to day activities to support recovery and rebuild efforts. Other work underway includes further streamlining application processes for Canterbury Licensed Building Practitioners to support the recovery effort without

compromising quality and the competency standards required.

FIRST MULTIPROOF APPROVALS ISSUED

The first three MultiProof (National Multiple-Use) Approvals have been issued to volume builders in Christchurch, Palmerston North and Nelson.

MultiProof is a new streamlined national multiple-use pre-approval service for volume builders. It enables builders to obtain fast-tracked building consents for standard multiple-use building designs.



Building and Construction Minister Maurice Williamson recently congratulated Christchurch-based Spanbild for being the first to get a MultiProof approval and Palmerston North-based Little Buildings Limited for being the first to have consent issued for a MultiProof-approved design.

"MultiProof has already proved its worth," Mr Williamson says. "Little Buildings saved \$2800 on consent fees for its first two houses and the consents were issued within three working days."

Mr Williamson presented the certificate for the first MultiProof approval to Spanbild's Chief Executive Peter Jensen at a function held in Christchurch on 9 July.

"MultiProof is one of the first of the Government's Better Building Blueprint initiatives to take effect, demonstrating our commitment to ensuring the building regulatory environment meets the needs of the sector," he says.

"This initiative streamlines the consenting process and will save time and money for consumers and builders without compromising quality."

For building designs that have MultiProof approval, only site-specific issues will need to be checked by local BCAs, reducing the timeframe for building consent decisions from 20 days to 10 days or less.

"The range and application of these designs demonstrates the flexibility of a MultiProof approval to address variations around standard designs," Mr Williamson says.

The MultiProof service, launched in February 2010, enables volume builders to obtain a MultiProof for standardised building designs that are intended to be replicated several times. MultiProof approvals are issued by the Department of Building and Housing. A MultiProof is a statement by the Department that a specific set of building plans and specifications complies with the New Zealand Building Code. Under the Building Act 2004 (as amended in 2009), BCAs must accept a MultiProof as evidence of Building Code compliance.

MultiProof approvals create time and cost savings for volume builders by removing the need for the same or substantially similar building designs to be assessed repeatedly by individual building consent authorities for Building Code compliance. A building consent is still needed for a building with MultiProof approval. The role of Building Consent Authorities is to:

- approve site-specific details, such as drainage
- ensure that any MultiProof conditions have been met
- undertake normal inspections during construction
- issue a code compliance certificate on completion.

For more information about MultiProof, visit www.dbh.govt.nz/multiproof

THE LICENSED BUILDING PRACTITIONER SCHEME

The licensed building practitioner (LBP) scheme recognises the qualifications, skills and knowledge of building professionals. There are seven license classes: design, site, carpentry, roofing, external plastering, bricklaying and blocklaying and foundations.

From March 2012, it is expected that only LBPs will be able to design, carry out or supervise restricted building work (work critical to a home or small-medium sized apartment). An exemption for owner-builders is expected.



Mike Fox of Registered Master Builders Federation and Mark Scully, LBP Registrar

REBUILDING CONFIDENCE

"The scheme is helping rebuild confidence in the sector," says Mark Scully, the LBP Registrar. "From building officials to consumers, people appreciate that an LBP has been assessed as competent in their field. It's also about accountability. LBPs are accountable to an independent Board, and anyone, including a BCA, can lay a complaint about an LBP's conduct."

MAKING IT CONVENIENT

The Government streamlined the LBP application system earlier this year. "If practitioners hold a recognised qualification, it's easier to apply," says Mark. Nearly 30 qualifications for the scheme have been evaluated and listed in the LBP rules.

"We received feedback that the application forms were unnecessarily long and complex. We've now streamlined the process to make all the forms simpler and shorter," says Mark.

We're also working with building merchants to host clinics and workshops across the country to answer queries and help practitioners complete their forms. "A clinic offers a one-stop shop," says Jodie Youmans, Senior Promotions Advisor at the Department. "We give one-on-one advice and even provide a photographer for the ID photos and a JP to certify documents." Jodie is trying out other innovative ways to connect with potential LBPs, making good use of technology.

SUPPORT FROM BCAS

Colin Gibbs is the Senior Building Controls Officer at Horowhenua District Council. A 40-year veteran of the building and construction industry, who's led consent teams from Rangitikei to Horowhenua, Colin is passionate and knowledgeable about building quality.

Colin has taken the lead in presenting the nuts and bolts of the LBP scheme to local building practitioners through newsletters, meetings and lunchtime seminars. The Department supported him at a recent seminar 'LBP applications for Carpentry and Site.'

A strong relationship between the Council and the local building community was evident. "It's about open and ongoing communication, and maintaining a sense of humour," says Colin. "I've got a fantastic team here, too."

"Horowhenua was the first council that we know of to take this initiative," says Mark. "Good on Colin for taking the lead here, and congratulations to Horowhenua District Council for their proactive support."

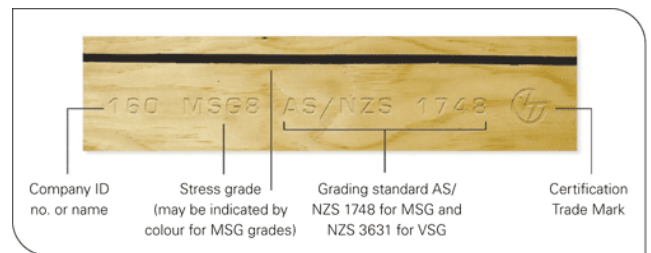
"We all want buildings built right first time," Mark says. "We've had ongoing feedback and dialogue with local authorities. Building officials have played an important role in helping get the scheme off the ground, and we want to continue working with them to ensure the scheme's success."

The Department can provide supporting material about the LBP scheme for your newsletters or seminars. For more information, visit www.dbh.govt.nz/lbp or phone 0800 60 60 50 for a copy of *Is licensing for me?* Stay up-to-date with licensing news with the Department's *Licensing Update* at www.dbh.govt.nz/lbp-licensing-update



Building and Construction Minister Maurice Williamson at the launch of the streamlined LBP Scheme

COURT DECISION REINFORCES NEED FOR MANUFACTURERS TO REPRESENT PRODUCTS FAIRLY



A recent case brought to court by the Commerce Commission is a timely warning to manufacturers to ensure claims made about products are accurate and not misleading.

Larry Roger Binns, former managing director of Total Frame and Truss Limited, a West Auckland-based company now in liquidation, pleaded guilty to 36 charges of breaching the Fair Trading Act. He was fined a total of \$15,000 and ordered to pay costs of \$130 in the Auckland District Court on 28 April 2010.

The charges relate to a period between April 2007 and October 2008 when Total Frame and Truss represented to its customers that the frames and trusses it was using had been manufactured using MSG8 timber. MSG8 is a premium grade of timber

that has been machine stress graded and is suitable for building frames. However, the majority of the timber used by Total Frame and Truss was a lower grade, known as non-load-bearing or 'reman' timber, which does not have the required characteristics of MSG8 timber.

The Commerce Commission prosecution was triggered by a complaint the Department of Building and Housing made following its investigations into feedback from the sector, and by a building inspector who noticed that timber used in a frame was different from that stated on the specifications. A significant number of houses built, particularly in the greater Auckland area, were affected by the actions of Total Frame and Truss.

In response to the allegations, the Department issued guidance to building consent authorities in December 2008, *Non load-bearing timber issues – guidance information for building consent authorities*, to help identify building projects that may have been affected. It provided advice on remedial options, and means to confirm Code compliance of buildings where suspected non-load-bearing timber may have been used. For more information you can view guidance online at www.dbh.govt.nz/bofficials-code-non-load-bearing

The Department has also issued a final determination on one of the affected houses. The commentary in the determination provides further guidance to help those making assessments on buildings containing non-load-bearing timber.

To reduce further misrepresentation of products and to generally improve current requirements and practices for timber framing, the Department has been working closely with timber and building sector leaders and technical experts.

There is strong agreement for clearer, simpler and more effective requirements for treating, grading, identifying and auditing structural timber.

The Department is working on changes to simplify and clarify timber framing standards and practices.

MAKING SURE IT'S SAFETY GLASS



The Department of Building and Housing wishes to remind building officials of the importance of verifying that safety glass is used in areas where it is required.

Safety glass reduces the likelihood of cutting or piercing injuries resulting from human impact with the glass. For this reason

safety glass is commonly used to meet the requirements of Building Code Clause F2 Hazardous Building Materials. Building consent applicants who use Acceptable Solution F2/AS1 to show compliance with Building Code Clause F2 are required to use safety glass in certain building locations, such as doors, balustrades and bathrooms. Therefore, when inspecting building work, building officials should satisfy themselves that safety glass has been used.

HOW TO CHECK THAT GLASS IS SAFETY GLASS

NZS 4223: Part 3: 1999 Glazing in Buildings - Human Impact Safety Requirements, which is incorporated by reference into Acceptable Solution F2/AS1, requires all safety glass to be permanently marked. This is to ensure installers, owners and building officials can check that the glass being installed is safety glass.



Each panel must be marked with:

- the name, registered trademark or code of the manufacturer or supplier
- the type of safety glazing material (e.g., T for toughened glass)
- the Standard to which the material has been tested, such as AS/NZS 2208
- the classification for impact test behaviour (e.g. A for Grade A).

Additional markings may be required by the particular testing Standard or certifier, such as a license number.

EXAMPLE OF COMPLIANT SAFETY GLASS MARKING

The marking (see example on left) is normally found in the bottom left corner viewed from the outside corner of the panel. Marking on thick glass can be on the edge of the glass, but should be legible after installation. Removable labels of any kind are not suitable for permanent marking.

If there is any reason to be concerned about the reliability of a safety glass marking, further enquiries may be appropriate. For example, it may be appropriate to contact the manufacturer, talk to the person who installed the glass or even check the glass register provided by the Window Association of New Zealand (WANZ). However, the WANZ register is voluntary and therefore is not a complete list of all manufacturers of safety glass.

WHAT IF GLASS DOES NOT HAVE PERMANENT MARKINGS?

The Department encourages those involved in the supply, installation and inspection of glazing products to verify that safety glazing material is used when required to meet the requirements of a building consent.

If glass is used in situations where safety glass is required, and it is not permanently marked with appropriate compliance information, then some other form of proof that it is safety glass is required. This could include statistical sampling and testing information, product certification, and evidence of appropriate quality assurance systems being in place to ensure that the glass being produced and supplied consistently meets the requirements of NZS 4223.3: 1999 for safety glazing materials.

BCA SURVEY RESULTS

The Department is currently undertaking a research project aimed at identifying how best to communicate with and provide technical information to residential building designers. The aim of the research, which is being conducted for the Department by Research New Zealand Ltd, is to help architects, designers and other industry members meet the requirements of the Building Act 2004 and Building Regulations (including the Building Code) and to improve the quality of the housing stock.

As Building Consent Authorities (BCAs) have considerable contact with building consent applicants such as designers and architects, the Department has carried out a survey recently. The survey asked about 150 BCA officials to provide feedback on the design sector's technical knowledge and understanding of the regulatory requirements. The survey also invited comments about the extent to which the Department is supportive of BCAs in general.

Almost half of the BCAs responded to this survey, and the results are quite enlightening. Below is a short summary of the main findings which you may also find interesting.

Overall the Department is seen as providing good service: 79% "agree or strongly agree that the Department provides useful guidance material, advice and support." Of those respondents who are directly involved in consent applications the approval rating was even higher - 92%. This is very pleasing to hear and shows that we are on the right track.

Nevertheless there are always areas to improve. Most frequently mentioned were:

- guidance documents, notifications and templates were published too late
- some publications are not user-friendly for the public

Other key survey results are:

- BCA staff directly involved with receiving and processing consent applications say that only 19% of architects and 14% of architectural designer are familiar with all or almost the entire regulatory framework. 75% reported that more than 50% of the consent applications were deficient. This is quite concerning and indicates that a lot more training needs to be provided to the design community on Building regulations including the Building Code.
- Most frequent deficiencies were related to external moisture management (39%) and plumbing and drainage (34%). This is somewhat disappointing considering that external moisture is a very topical issue and that a number of training seminars and guidance documents have been made available in recent years. It seems there is still room for improvement, and our Sector Education Strategy will focus on this going forward.
- 92% said that BCAs are one of the most responsible parties for compliance. Only 41% considered that designers believed that they were one of the most responsible parties and only 3% say that home owners would think so. The Building Act review will soon provide further clarification on how responsibilities are allocated between home owner, designer, builder and the BCA. The Department will do its best to support you as BCAs in your role of helping provide quality buildings for New Zealand.
- Almost a quarter of those receiving deficient applications reported that 51% or more of the deficient applications they received had deficiencies relating to alternative solutions rather than prescriptive Compliance Document solutions. The Department continues to provide guidance material such as the guide on "Means of Establishing Compliance: Alternative Solutions". This will hopefully assist designers to better develop and document alternative solutions in the future.

The Department's experience of design work, through technical reviews, BCA complaints and investigations and determinations would support this view about the quality of design work and consent documentation in the sector.

All these results clearly suggest that there is still a lot of industry skill development required.

The surveys with architects and designers are now underway and initial results show that those results line up pretty well with the BCA survey results. Once these surveys are complete, Research New Zealand will conduct a number of face-to-face interviews to explore specific ways on how best to communicate with the diverse groupings of the design sector.

This type of research is extremely helpful for the Department to further develop a more client centred approach to dealing with the building and design industry. It will hopefully also lead to improvements in the quality of consent applications which the BCAs receive, leading to higher productivity and better housing quality for all New Zealanders.

COLLABORATION IN THE WAIKATO

THE WAIKATO BUILDING CONSENT GROUP

Local decision-making is one of the strengths of the building consent process. However, applicants often experience inconsistency in practices, application forms, decision-making and service levels between different - even neighbouring - building consent authorities (BCAs). BCAs, particularly those serving rural districts, often face high costs per application and at times a lack of technical capacity. In light of these issues and a desire to operate more efficiently and effectively, five BCAs in the Waikato region (Hamilton, Matamata-Piako, Otorohanga, Waikato and Waipa) came together to form a BCA cluster called the Waikato Building Consent Group (the Group). The Group is made up of a cluster group manager, cluster administration officer, senior building control officials, and building control managers. It meets monthly to discuss issues and to make decisions for the future. This article looks at the Group's experiences and outlines lessons that other BCAs could use in forming their own clusters.

HOW DID IT ALL START?

Graeme Fleming initiated the Group in 2003, when he was the General Manager Environmental Services at Hamilton City Council. He approached local councils in the Waikato region with the idea of forming a cluster group, which could achieve consistency in building control services, and so improve customer service. Five councils, now BCAs, agreed to join the Group. In 2004 the Governance Committee, of Regulatory and Environmental Services Managers appointed a cluster group manager to engage with the cluster councils and key industry stakeholders. The initial start was a bit bumpy with the manager staying

only one year. In March 2007, Dr Elizabeth Goodwin, based at Hamilton City Council, was appointed the Waikato Building Consents Manager. "In the first year of my role, I focused on getting to know the cluster councils," Dr Goodwin says. "I spent time talking to cluster council building control managers and attending their team meetings basically but also just listening. This allowed me to identify issues the Group was dealing with. This allowed me to put in place tools and strategies to assist them in achieving stage one BCA accreditation."

WHAT HAVE THEY ACHIEVED SO FAR?

The Group has achieved several key outcomes so far. The most significant achievement is probably the development of a single quality assurance system. The system is based on an interactive manual/tool for BCA accreditation that Dr Goodwin introduced at stage one accreditation using the BCA Development Guide. It has since been developed further, merging and building upon the five BCA systems and will go 'live' in November this year. The system is also used as a training manual for cluster staff and as the source of all standard cluster documentation, such as forms, checklists, letters and supporting documents. It is the result of years of hard work and commitment by the Group to a more consistent building consent process. The system will contribute significantly to efficiencies in delivering building control services by reducing duplication. It will also help achieve greater consistency across the region, ultimately benefiting the customer, who will experience consistent service levels, irrespective of which cluster BCA they deal with.

Another significant achievement is the Waikato Building Consent website launched in August this year. The website provides consent applicants with information on the building consent process, legislative requirements and other building work/building control related issues. According to Dr Goodwin, the main objective for developing this website was "to take the scary out of the scary process of building a house and to improve customer competency." Providing information to consent applicants that is useful and easy to access makes this possible. The website also provides links to each cluster BCA so consent applicants can contact any particular council. For further information, visit www.buildwaikato.co.nz

A standard building consent application form introduced in August this year is another of the Group's key achievements. Other application forms, checklists, and processing check sheets for cluster staff are in the pipeline. Long-term plans include developing a single form for issuing building consents. Incorporating feedback from cluster staff on user-friendliness is an important

aspect of developing cluster documents. New documents are only made public on the cluster BCA website after agreement by the Group.

Regular training workshops for cluster staff, and for the industry, including designers, builders, developers, engineers, and architects, are another significant success for the Group. Training is triggered when the Group identifies common training needs across the cluster or individual cluster staff discuss their training needs with their managers. This is a useful approach in meeting BCA accreditation requirements for training employees, as training plans are developed at the same time. For groups of cluster staff between 10 -15, the Group identifies the appropriate technical expert to deliver the training and decides which cluster BCA to hold it at. Occasionally the Group runs workshops for the industry, for example on legislative changes. "The main objective here is convincing the sector that we all work together," Norm Barton, Building Manager, Matamata-Piako says, "but also helping the customer to get it right."

HOW DID THEY GET THERE?

It took the Group much hard work and dedication to get where they are now. An important aspect of their successful collaboration is their willingness to talk to each other and put historical issues aside. "Before the Group was established, the councils in the region did not discuss consent issues and even doubted each others' capabilities," Waipa District Council's Gary Boys says. "Now we all seek advice from each other - be that on legal issues around the interpretation of certain Building Act provisions or uncertainty about making technical decisions."

Respect for each other's input into the Group, irrespective of the size of the BCA and the ability to have open and frank discussions are key Group values. For Gary Boys, "there has to be give and take, just like in any other partnership."

The realisation that the Group could help each other through the process of getting accredited and maintaining BCA accreditation was instrumental to the Group staying together. Members saw this as an opportunity to take the best from each other and build on that. They also made sure any corrective action requests (CARs) issued by the BCA accreditation body, International Accreditation New Zealand (IANZ), were passed on to all councils in the Group. This allowed all members to learn from each other's mistakes but also to avoid making similar mistakes and subsequently reduce the number of CARs issued to the Group as a whole.

WHAT KEEPS THEM TOGETHER?

The Group shares a goal of getting it right and ensuring a uniform experience for their customers throughout the region. This is critical for their key stakeholders, such as group housing companies, which work across the region. This goal and the focus on lifting sector skills are key to the Group's cohesion.

"The Group's ability to compromise and treat each other equally, irrespective of the size of the BCA, means that everyone is starting off from a level playing field," Mr Barton says. "This is why we normally choose a medium-sized BCA, such as Waipa District Council, for our meetings."

Having a dedicated and independent cluster group manager with a background in business and relationship management, such as Dr Goodwin, contributes significantly to the Group's successful collaboration. As does her ability to focus the Group on the real issues and keep things on track. This means deliverables are met and the momentum is maintained. Her skills in developing appropriate business processes ensure the Group's main objective of bringing consistency and standardisation into the region is met, ultimately benefiting customers and stakeholders.

Another reason for the Group's cohesion is the ability to audit each other's systems and processes. As part of the Group's quality assurance system, cluster BCA staff have all been trained in internal auditing. This enables them to carry out audits required for accreditation.

Finally, and of critical interest to customers, Group members benefit from sharing costs. Members each contribute to the costs of running the Group and providing training, with contributions determined by the size of the cluster BCA and the number of building consents it handles. Costs are kept down by sourcing affordable and appropriate technical trainers, using cluster BCA technical expertise where possible and by cluster BCAs providing the venue.

WHAT CHALLENGES DID THEY FACE?

"One of the bigger challenges we faced when we first formed the Group was the realisation that we had to look at the big picture," Gavin Phillips, District Building Control Officer at Otorohanga District Council says. "We had to identify what was likely to work. Previously, we focused our attention on our own BCA only and its individual needs and desires. That's quite different from focusing on the whole region and what's best for it."

A behavioural and cultural change from Group members was needed for the Group to work together effectively. This meant the Group had to be willing to work together and share power, knowledge and expertise. This culture change was completely new to the Group, who were used to making their own decisions, without having to consult with anyone first. They met this challenge by having robust debates and respecting each other's opinions and also through a willingness to compromise on occasion for the greater good.

Getting buy-in from cluster BCA staff and key customers was another challenge the Group faced. They met this challenge by including cluster BCA staff in the decision-making process right from the beginning and making them feel that their input counted. Buy-in from key customers was achieved by keeping them up-to-date on the Group's activities via public training workshops, council newsletters, and council websites. The Group also sought feedback on proposed changes. This ensured customers and staff were prepared for change well in advance and not faced with any major surprises. The Group found that people can usually handle significant change when they are well informed, given plenty of notice and understand why the change is happening.

LESSONS FOR OTHER BCAs

There are several lessons for BCAs around the benefits from collaborating with other BCAs and forming a BCA cluster group.

Cost savings Savings can be achieved for smaller BCAs by sharing the costs of managing quality assurance systems or by developing a collective quality assurance system. Additional costs and duplication from administering individual consenting and inspecting systems and processes and internal auditing and management review processes for each BCA are then reduced.

Consistency of service delivery A single quality assurance system and standard consent documents, application forms and processing and inspection check sheets helps achieve a consistent building consent process across BCAs and ensures customers experience a more consistent standard of service.

Collective technical capability Collaborating with other BCAs allows resources and expertise to be shared, which is particularly important when covering for staff on leave or when faced with an increase in workload or an out of the ordinary complex building project.

Network development BCAs get to develop networks. This is particularly important for smaller

rural BCAs who often are isolated from other BCAs. In addition, the pool of technical expertise that BCA staff can draw from is increased considerably.

Using a broad pool of in-house BCA staff (rather than external consultants or training providers) to provide training across the BCAs provides efficiencies and cuts training and professional development costs.

Other factors that contribute to the success of a cluster group include:

Willingness to compromise and share power For a cluster group to work, group members must be willing to leave their 'egos' at the door and learn how to work together collaboratively. Additionally, it is important that group member contributions are recognised, and that their voice carries the same weight, whether they come from a large metropolitan BCA or a small rural one.

Dedicated cluster group management and administrative support A dedicated independent cluster group manager, responsible for the development and implementation and ongoing quality control of business systems and processes proposed by the cluster, can focus on strategic issues and continuous improvement. This allows the cluster BCAs to concentrate on day-to-day operational work. Keeping the cluster focused on what they're trying to achieve and showing them how to achieve it ensures the delivery of the group's objectives.

BCA staff involvement Actively including all BCA staff, customers, and building practitioners in decision-making increases their buy-in and support and reduces frustration and noise.

Public information Keeping customers and building practitioners well informed of proposed changes via training workshops, BCA newsletters or BCA websites keeps customers prepared and reduces surprises. This helps keep customers and BCA staff content, focused on the work required and getting on with business.

FUTURE BCA COLLABORATION

There are 75 BCAs in New Zealand, most with their own unique regulatory systems and building control policies procedures. This lack of uniformity does lead to significant inefficiencies and inconsistencies in the application of national standards and the sector's performance, and the Government is looking at ways to improve consistency, efficiency and productivity nationally. The Building Act already allows for the transfer of building control

functions between authorities. These provisions were intended to allow consolidation of building consent functions across local authorities. However, in practice little consolidation has occurred, with the exception of regional authority's smarter approach to consenting dams.

The Government has recently announced further work on making the building consent system more consistent and efficient through the Building Act review. The Department considers the Waikato Building Consent Group's approach to be right on track. We recommend other BCAs study the Group and consider the benefits from forming cluster groups and sharing services and benefiting from the economies of scale possible.

BUILDING AMENDMENT ACT 2010

The Building Amendment Act 2010 received Royal Assent on 6 July 2010 and became law on 7 July 2010.

The Act was divided from a regular Statutes Amendment Bill passing through Parliament. The Act contains the following amendments to the Building Act 2004.

- Section 4 – repealed and substituted a new section 177 ('Application for Determination'). This increased the range of matters that a Determination can now be sought on (i.e. the Chief Executive's jurisdiction has been extended)
- Sections 5-8 – new right of appeal against costs orders that the Chief Executive makes in relation to Determinations under section 211
- Section 9 – corrected a minor error relating to product certification in section 271
- Section 10 – amended section 412 to clarify that a compliance document that incorporates material by reference is not a regulation
- Section 11 – corrected a minor error in Schedule 1 (exemptions (a)(iv) and (ad)) in relation to repair/replacement work on hot water storage heaters.

A copy of this Amendment Act is available online at: www.legislation.govt.nz

ASSESSOR TRAINING FOR THE NATIONAL BCA COMPETENCY ASSESSMENT SYSTEM

WHAT IS THE NATIONAL BCA COMPETENCY ASSESSMENT SYSTEM?

The national BCA competency assessment system is a framework to assist BCAs to assess the

competency of its technical building control staff using a national set of performance indicators, which define a building official's competency. It has been developed by the Department to improve consistency, create efficiency and reduce duplication of effort amongst BCAs.

The framework includes 6 competency levels (3 residential and 3 commercial) that are modular in design and have been developed based on the risk and complexity of typical types of building work encountered by BCAs across the country.

ASSESSOR TRAINING

Whilst developing the system, it was identified that its success would depend on how well BCA staff or contractors carried out competency assessments. Consequently, it was decided that the Department would develop a training course that would train BCA assessors in the methodology of competency assessment.

WHAT IS INCLUDED IN THE TRAINING?

The 2-day training includes:

- a detailed presentation on the system
- transition exercises (transitioning from a BCAs existing competency system to the new system)
- the different types of evidence that would support a persons competence assessment
- verifying evidence (is the evidence valid, authentic, sufficient and current)
- assessment processes (planning, evidence gathering and recording decisions and outcomes)

The training is interactive and includes many hands on exercises and some role-playing activities. The delivery of the training is undertaken in a way to promote discussion and develop problem solving skills targeted at dealing with the issues often encountered by people assessing the competency of others.

WHO DOES THE TRAINING?

Rosemary Killip has been engaged to facilitate the training. Rosemary is well known within the building control profession and brings a wealth of training and teaching experience and assessment knowledge to the mix. Peter Sparrow and Paul Hobbs, from the Department were members of the project team that developed the system and provide technical guidance, practical examples and field any technical questions during the training.

WHAT WILL I GET IF I ATTEND THE ASSESSOR TRAINING?

In addition to learning about the national system and how competency assessment is undertaken you will gain valuable insight, develop new skills, and learn how to use the newly developed tools that form part of the system. You will also receive a copy of the National BCA Competency Assessment System in a bound folder, an assessor training workbook (including worked examples of the tools and templates used) and a certificate of attendance.

Group discussions held during the training often bring up issues that have been encountered by assessors, some which have not been voiced previously, these discussions have proven to be very informative and offer great learning's in their own way. Contacts made during the training also aid in developing an assessor network where communication is able to take place and national consistency can be further developed.

WHAT DO ATTENDEES HAVE TO SAY ABOUT THE ASSESSOR TRAINING?

The Department asked attendees to provide comments on what they thought of the assessor training course they attended. To date the Department has received favourable feedback following the assessor training, some of the comments provided by attendees included.

"We all found it very informative and the format of the presentation was entertaining and gave us all a good opportunity to discuss and practice some of the skills being conveyed. It will be good to put this into practice in the near future."

Mark Fursdon- Conform Building Consultants Ltd

"I can see the true value to the BCA and staff will be realised by its adoption nationally. Our current skill and competency system will morph easily into the proposed competency framework and it's something our staff have welcomed with open arms. We are aiming to have the National Competency Assessment System all sorted by the end of this year."

Warren Taylor- Building Unit Manager, Waimakariri District Council

"With regard to the system itself, the documentation provided was excellent and should be suitable to ensure consistency is achieved for all users. The technical ability of the presenters added credibility to the system... My colleague and I left the two day training seminar with a good understanding of the system, which has allowed us to "sell" the system to the rest of the team easily."

Andrew Tyer- Senior Building Management Officer, Taupo District Council

WHERE TO FROM HERE?

The Department is continuing to rollout its training on the national competency assessment systems for assessors, which is due for completion in November this year. The on-going maintenance and administration of the system will continue to be undertaken by the Department.

Further information on the national competency assessment system can be found at this link: <http://www.dbh.govt.nz/bca-competency-assessment-system-update>



Attendees of the recent assessors training held in Dunedin, from left to right, Murray Kennedy - Lakes Environmental Queenstown, Colin Pickering - Qualico Limited, Stefan Box - Dunedin City Council, Robert Ramsay - Dunedin City Council, Cam Allum - Dunedin City Council, Simon Tonkin - Invercargill City Council, Dick Marryatt - Mackenzie District Council, Stewart Geddes - Central Otago District Council, John Watson - Central Otago District Council, Angie Leckey - Waimate District Council, Neil McLeod - Dunedin City Council, Ray Applegarth - Clutha District Council, Rosemary Killip - Trainer and facilitator. Absent: Kevin O'Connor - Southland District Council. Photographer: Paul Hobbs - Department of Building and Housing.



Attendees of the recent assessors training held in Wellington, from left to right, Paul Hobbs - Department of Building and Housing, Rosemary Killip - Trainer and facilitator, Tim Taylor- Horowhenua District Council, Mike Reedy- Department of Building and Housing, David Sidwell- IANZ, Russell Brook- Kapiti Coast District Council, Vinh Tran- Wellington City Council, Owen Williams- Wellington City Council, Jeff Atkinson- Marlborough District Council, Tracy Quinton-Boundy- Nelson City Council, Derek Kerite- Hutt City Council, Sanjay Dutt- Manukau Building Consultants, Lusi Huang- Wellington City Council, Winton Griggs- Nelson City Council, Jon Astwood- Wellington City Council, Chris Nicholson- Wellington City Council, Chris Wood- Nelson City Council. Absent: Leigh Sage- - Kapiti Coast District Council

BUILDING WARRANT OF FITNESS AND COMPLIANCE SCHEDULE GUIDANCE

In 2009 the Department undertook technical reviews of 10 different territorial authority's performance in administering and enforcing the compliance schedules and building warrants of fitness (BWoFs) functions under the Building Act 2004. These reviews¹ identified the need for significant improvement in how territorial authorities are performing these statutory functions.



Specific findings identified four main performance improvement areas for territorial authorities, these are:

1. knowledge, understanding and application of statutory responsibilities
2. effective systems, policies and procedures
3. documentation of building control decisions
4. capacity and technical capability within councils.

KNOWLEDGE, UNDERSTANDING AND APPLICATION OF STATUTORY RESPONSIBILITIES

It has been identified that there is limited awareness and understanding among many building officials of all of the statutory obligations and responsibilities of authorities under the BWoF and compliance schedule scheme under the Building Act.

The Department recommends that all authorities ensure:

- building consent applicants provide a proposed inspection and maintenance procedure for each specified system with the building consent application
- they understand their role of enforcing the provisions relating to BWoFs (refer to section 12(2)(h) and 111 of the Building Act 2004)
- they understand the requirement that all buildings that contain a specified system must have a compliance schedule

¹ To view the summary report of the 2008/2009 technical review programme, which specifically reviewed the compliance schedules and BWoF procedures, go to www.dbh.govt.nz/technical-reviews

- the content of the building consent complies with section 51(1)(c) of the Building Act (i.e. building consents should list the specified systems that must be covered by the compliance schedule and the performance standards of those specified systems). It is recommended that the consent states what documentation is required to certify specified systems before the code compliance certificate is issued.

EFFECTIVE SYSTEMS, POLICIES AND PROCEDURES

A number of authorities still do not have systems and processes in place for dealing with specified systems, compliance schedules and BWoFs. Without effective systems and processes, specified systems are being missed, compliance schedules are being issued incorrectly and BWoFs poorly enforced.

The Department recommends that all authorities ensure:

- procedures for issuing certificates for public use include expiry dates and conditions to maintain specified systems to ensure they function correctly, rather than issuing a compliance schedule at this point
- they review processing checklists to ensure specified systems are assessed for compliance with the Building Code
- that policy and procedures are updated to accurately reflect their practice for BWoFs
- building owners with compliance schedules, issue and provide BWoFs to the council (not the council issuing on behalf of the owner)
- their processes or procedures include the requirement for compliance schedules to contain site-specific information (e.g. recording the actual fire alarm type rather than a generic description)
- where appropriate, a plan is attached to the compliance schedule showing the location of all specified systems.

DOCUMENTATION OF BUILDING CONTROL DECISIONS

A number of authorities are not yet keeping adequate records of their building control decisions. Some were found to not be showing how their documented procedures have been followed, the nature of their decisions, reasons for their decisions, supporting evidence for their decisions, and whether any follow-up action was required or has occurred.

The Department recommends that all authorities ensure they review their processing, inspection and audit checklists to ensure reasons for their

decisions relating to specified systems, compliance schedules and BWoFs are recorded properly.

CAPACITY AND TECHNICAL CAPABILITY OF THE COUNCILS

The Department identified that a number of councils generally do not consider the compliance schedule and BWoF functions under the Building Act to be an organisational priority. Consequently, these functions can often be under-resourced and under-funded.

The Department recommends that all authorities ensure:

- specified systems are included in staff competency assessments and that appropriate training is provided to bridge any gaps in technical knowledge
- adequate technical and administrative support resources are available to fulfill the council's responsibilities
- they continue to train staff in compliance schedule and BWoF functions.

SPECIFIED SYSTEM INFORMATION TO BE PROVIDED AT THE OUTSET

For authorities to compile site-specific and accurate compliance schedules, it is important that they receive detailed and well-specified information relating to the performance standards, inspection, maintenance and reporting of all proposed specified systems at the time of lodging the building consent application.

This means that authorities need to have reasonable but robust vetting and lodgment 'filter' systems at the front end of the building consent process. This will often require technically skilled vetting officers who can identify what relevant information is missing and communicate this clearly and early to the applicant. Authorities should be advising the applicant to approach their designer (e.g. fire engineer, mechanical services engineer or architect) to provide the missing information before the BCA accepts the application into the consenting system.

Again, having a robust front-end lodgment and vetting often proves the most efficient overall process. The Department encourages BCAs to reject inadequate and incomplete consent applications and send applicants back to their designers to complete their job.

FURTHER DEPARTMENT GUIDANCE FOR BUILDING OWNERS

The 2009 technical reviews on BWoF and compliance schedule functions also identified that

many building owners who had buildings with specified systems were unaware of their responsibilities to ensure their building occupants are able to use their buildings safely. As a result of this finding, the Department is currently preparing guidance material for building owners and managers who own or manage buildings with specified systems and compliance schedules. This publication will be freely available on the Department's website within the next month or two and we hope it will be a useful resource for council staff to provide consent applicants and building owners.

TOOLS OF THE TRADE

During a recent BCA accreditation assessment a building inspector was observed picking up a stray bit of wood on a building site, which was then used as a tool to check the consistency of the ground supporting a foundation. This was viewed as a particularly unscientific method of establishing the consistency and nature of ground conditions on-site. Regrettably, this kind of situation and the use of inappropriate tools for the task in hand are not that uncommon.

Having the right equipment is the first and most basic necessity for an inspector to do a professional and well informed job. BCA inspectors who do not possess the following equipment as part of their standard tool kit are unlikely to be in a position to undertake their inspection role accurately. BCAs are urged to equip each and every field inspector with the necessary equipment and resources to undertake their inspection duties in an accurate and competent manner. The items listed in the table on the following page are viewed to be essential tools in today's regulatory building control environment.

Each BCA inspector should be equipped with the necessary equipment and resources to undertake each of the above-mentioned inspection types accurately. This is by enabling the BCA inspector to be reasonably satisfied that building work is being carried out in accordance with the building consent. Under Regulation 14 of the Building (Accreditation of Building Consent Authorities) Regulations 2006 a BCA is required to provide employees with satisfactory technical and administrative equipment to perform their building control role. An ill-equipped inspector is less likely to perform a competent inspection if he or she is armed with less than satisfactory 'tools of the trade.'

The inspection format on the following page is based on the building inspection groupings from the BCA National Competency Assessment System developed by the Department. Information available at: www.dbh.govt.nz/bca-competency-assessment-system-update

Common equipment (recommended to be available during all of the below inspections)

Tape measure (retractable 8 metre tape-type or measuring wheel depending on application)

Digital camera

Cell phone (hands free car-kit if used while driving)

Sprit level (conventional bubble-type or digital smart level depending on application)

Torch

Relevant technical literature (e.g. commonly referenced material while on-site- Wintones technical manual, cited standards- NZS3604:1999, AS/NZS 3500:2003 etc)

Inspection forms and relevant stationary

local area maps

First-aid kit

Foundation Inspections (typical equipment required to perform inspections)

Building

Plumbing and drainage

Probe/prodder

Probe/prodder

String-line

String-line

Manhole lifting device

Pre-line Inspections (typical equipment required to perform inspections)

Building

Plumbing and drainage

Moisture meter (typically, invasive-resistance type meters used here e.g. slide hammer with prongs)

Drain dye

Screwdriver

Screwdriver

Retractable mirror

Retractable mirror

Ladder

Manhole lifting device

Ladder

Final Inspections (typical equipment required to perform inspections)

Building

Plumbing and drainage

Ladder

Ladder

Moisture meter (typically, non-invasive capacitance type meters used here)

Drain dye

Screwdriver

Screwdriver

Retractable mirror

Retractable mirror

Manhole lifting device

UPDATED GUIDE TO APPLYING FOR A BUILDING CONSENT

The Department has updated the 'Guide to applying for a building consent (simple residential buildings)', which helps consent applicants prepare plans, specifications and documentation for a building consent application. This is following a number of legislative changes such as the Building Amendment Act 2009, which introduced:



- Multiproof approvals
- Changes to PIM requirements
- Minor Variations.

There are a number of changes. A bigger focus is placed on the planning and design stage of a building project. The Guide also highlights the benefits of applying for a project information memorandum early on in the design stage. The design summary has been revised and made more userfriendly. This publication is freely available on the Department's website and we hope it will be a useful resource for building consent authority (BCA) staff to provide consent applicants. It is also expected that the information provided will prove beneficial to BCAs by providing them a guide for an acceptable standard of consent application documentation to accept.

A copy of this Guide is available online at: www.dbh.govt.nz/publications-about-the-building-act-2004

INVESTIGATION OF COMPLAINT – THE ADEQUACY OF INSPECTIONS UNDERTAKEN BY A BCA

THE MATTER INVESTIGATED

A complaint was made to the Department of Building and Housing about a BCA's performance, specifically concerning the adequacy of inspections undertaken by the BCA on the roof structure of the complainant's property.

A subsequent application for determination by the complainant was also accepted. It determined that the defects to the roof cladding would enable the ingress of water and therefore the roof cladding did not comply with Building Code Clause E2 External Moisture.

Preliminary enquiries by the Department found reasonable grounds to believe that the BCA may have failed without good reason to properly perform a building control function under the Building Act 2004 (the Act), or had been negligent in performing such functions, specifically in regard to the apparent inadequate inspection of consented building work for the roof structure of the complainant's property.

A formal investigation proceeded. Its scope included the apparent inadequate inspection of consented building work, specifically for the roof structure of the complainant's property.

The key issues for resolution were as follows:

- Could the BCA reasonably have been expected to observe or otherwise become aware of the deficiencies in the course of their inspections during construction?
- Was the BCA entitled to rely on the experience and expertise of the roofer to complete the roof to consent and Code requirements?
- In light of the answers to the above questions, was it reasonable for the BCA to have issued the CCC?

THE EVIDENCE CONSIDERED

In investigating the complaint, the Department considered, in particular the following evidence.

- input and opinion from technical advisors within the Department's Consent Authority Capability and Performance Group (CACPG), including an internal technical report
- input and opinion from an independent external building control expert commissioned by the Department

SUBMISSIONS FROM THE PARTIES

Both the complainant and the BCA made a number of detailed submissions in relation to this matter.

DISCUSSION

A review of the complaint file and, in particular, the submissions made by both parties, revealed that the issues for resolution for this matter are confined – the roof of the dwelling suffered from significant deficiencies that, from a technical point of view, were inadequate to meet the performance requirements of the Building Code. The BCA did not seek to argue that these deficiencies do not exist.

- Could the Council reasonably have been expected to observe or otherwise become aware of the deficiencies in the course of their inspections during construction?**

On this point, the BCA's key submission was that they are not able to view every detail of a house's construction and that, due to the timing of their inspections, the relevant detail was either not completed or on subsequent visits was concealed in a way that would have required destructive investigation to reveal. The BCA maintained that its inspection process was standard and involved the number of inspections that would normally be expected for a development such as this.

The Department accepted that a BCA is not in the same position as a clerk of works, and that there may be details of construction that a BCA, quite reasonably, does not view during the course of construction. In the present case, if the BCA could have established that the relevant details were not observable, that would have been highly relevant to a discussion of whether it properly fulfilled its functions.

However, the evidence from the technical experts – both the independent expert and also the Department's own in-house technical advisors – is that the defects should have been readily observable by BCA inspectors when they inspected the property. The advisors were in agreement that:

- the defects in the roof structure were observable from a ground level visual inspection and that these would have been obvious to a competent inspector
- the inspection approach and enabling processes applied by the BCA were clearly inadequate in this case
- there was sufficient opportunity available to the BCA during the course of inspection activity to have identified the obvious non-compliance in the roof cladding
- there was inadequate documentation of and follow-up of issues identified during inspections
- closer scrutiny of the roof junctions during construction by the BCA inspector would have reduced the potential for non-compliance.

There were a number of submissions from both parties about whether the BCA inspector should have got on to the roof as part of their inspection. In light of the evidence from the experts that the roof junction defects were observable from the ground, this matter was seen as irrelevant. Climbing onto a roof to inspect roof cladding during inspections, however, is considered appropriate and usually necessary to perform an adequate envelope inspection. Roof inspections are usually carried out during construction and as part of the final inspection.

Based on the technical advice, it was concluded that the defects in the construction of the roof were observable from the ground and that the BCA should have observed these defects and taken

steps to remedy them during the inspection process as they were clearly non-compliant.

b. Was the BCA entitled to rely on the experience and expertise of the roofer to complete the roof to consent and Code requirements?

The Council made detailed submissions that it was entitled to rely on the skills and experience of the roofer to complete the roofing work in accordance with the consent and the Building Code.

Shortly after receiving the BCA's submissions, the Court of Appeal released its decision on the *Sunset Terraces* case [2010] NZCA 64. In this case, the Court was unambiguous in its ruling that, irrespective of the involvement of building design professionals, a BCA continues to owe an independent duty of care to the owners of residential dwellings.

The BCA acknowledged that it owed such a duty of care but submitted that this was satisfied by relying on the roofer. The Department concluded that the BCA cannot seek to limit its own responsibility by relying on the skills and experience of the building professionals and tradespeople involved in the dwelling's construction to satisfy its own independent duty towards the adequacy of the inspections.²

This argument also did not carry any weight with the Department as the BCA concerned was also well aware of the skill and capability limitations of roofing practitioners in the sector, including the Government's initiative to license this trade to help address this trade's competency issues.

CONCLUSIONS

The Department substantiated the complaint. The key findings are that:

- not observing, identifying and assessing the defects in the roof structure was a failure on the BCA's part to properly perform a building control function (i.e. the inspection of building work for which it had granted a building consent)
- undertaking building inspections during the course of normal building inspection practice would have required the BCA to take reasonable steps to ensure that any defects (non-compliance) in the roof structure were identified, assessed and resolved during inspections and before issuing a CCC.

² This situation may be different where a BCA has specifically relied on a recognised skill or expertise of a particular building professional, for example where it has obtained a producer statement from a chartered professional engineer.

After careful consideration, the Department decided not to take any disciplinary action against the BCA. The improvements already made by the BCA through accreditation seem to have addressed matters that would otherwise have been referred to in any warning or remedial requirements and these improvements will help to prevent a similar failure of this nature occurring again.

International Accreditation New Zealand was also notified of the BCA's performance in this matter to help ensure that accreditation standards, particularly around inspection procedures and the competence of inspection staff, are improved by the BCA going forward.

The Department expects the BCA to engage positively with the complainant with a view to helping resolve the matter through negotiation or mediation, as they clearly have some accountability here.

LEARNINGS AND RECOMMENDATIONS TO OTHER BCAs

- irrespective of the involvement of building design professionals, a BCA continues to owe an independent duty of care to the owners of residential dwellings to help ensure Code and building consent compliance
- during the course of normal building inspection practice, a BCA must take reasonable steps to ensure that any defects (non-compliance) are identified, assessed and resolved during inspections and before issuing a CCC
- strong evidence is required for a Council to defend non-compliance identified after issuing a CCC. This is where good inspection records of decisions and reasons for decisions prove beneficial.

INVESTIGATION OF COMPLAINT – PROCESSING AN APPLICATION FOR A BUILDING CONSENT AMENDMENT OUTSIDE THE STATUTORY TIMEFRAME

THE MATTER INVESTIGATED

The Department of Building and Housing investigated a complaint alleging that the processing of an application for an amendment to a building consent was outside the statutory timeframe defined under section 48 of the Building Act 2004 (the Act).

THE EVIDENCE CONSIDERED

The BCA acknowledged that:

- the application for an amendment to the building consent was not processed in

accordance with the statutory timeframe defined under the Act

- there was no acceptable explanation for this failure to perform a statutory building control function.

Subsequent to the receipt of the complaint, the BCA has engaged some new contract resource to increase its in-house building control capability and capacity.

CONCLUSION

The Department upheld the complaint. The key findings were that:

- the BCA failed without good reason to perform a statutory building control function by not processing the application for an amendment to the building consent within the statutory timeframe defined under section 48 of the Act (i.e. the processing of an application for building consent which it had received)
- there is no apparent good reason for this failure; insufficient staff resources to keep on top of fluctuating work loads was not considered a reasonable excuse. BCAs need to have contingency plans for such usual experiences.

After careful consideration, including the BCA's cooperation in bringing this matter to prompt conclusion and action taken by the BCA to address their performance failure, the Department decided not to take formal disciplinary action against the BCA.

The Department offered support to the BCA to help it meet its statutory obligations under the Act, specifically:

- technical building control experts from the Department to provide intensive training sessions and mentoring for the Council's building control manager and staff where there have been technical limitations identified
- support to Building Control Management to focus on priority areas for performance improvement.

LEARNINGS AND RECOMMENDATIONS TO OTHER BCAs

BCAs need to ensure that they have the following:

- systems and processes in place to flag when an application is nearing the statutory timeframe for processing, and acting on this by reprioritising the work
- appropriate building control capability and capacity as required to process applications within statutory timeframes. The 20-working-day timeframe for processing building consents

and code compliance certificates (CCC) needs to be viewed by BCAs as an absolute maximum time limit. All BCAs should have the resources and/or have extra capacity on top when required to process consents and CCCs in a much quicker timeframe wherever possible. Failure to meet these statutory timeframes is a breach of the Act and failing by a BCA to perform its function properly.

INVESTIGATION OF COMPLAINT – THE WRONG PLANS ATTACHED TO A BUILDING CONSENT BY A BCA

THE MATTER INVESTIGATED

The Department of Building and Housing investigated a complaint alleging that a BCA had attached the wrong building plans to the building consent issued for work on the complainant's property.

THE EVIDENCE CONSIDERED

The background to the complaint is summarised as follows.

- The complainant submitted a building consent application to the BCA.
- The BCA advised the complainant that, if they wanted to build in accordance with the submitted plans, a resource consent would be required because the proposed building exceeded the site coverage rule, or they would need to reduce the size of the proposed building.
- The complainant submitted revised plans to the BCA for a building of reduced size that complied with the site coverage rule and so avoided the need for a resource consent.
- The BCA acknowledged receipt of the revised plans, and confirmed that the proposed building detailed in those plans would not require resource consent.
- The BCA issued the building consent with a copy of the original set of plans mistakenly attached (i.e. it should have been the revised plans that were attached to the consent rather than the original plans).
- The builder prepared the site and concrete foundations were poured based on the original plans.
- Timber framing was ordered for the building based on the second set of plans. When these were delivered to site, they did not fit the foundation.
- The complainant suffered a financial loss as a result of having to get the framing re-sized to fit the foundations of approximately \$11,000

and in obtaining a resource consent to enable the building to be completed as per the original plans.

- The BCA acknowledged and apologised for its mistake and offered a refund of \$500, being part of the processing fees paid by the complainant. This offer was rejected.

DISCUSSION

In issuing the building consent, the BCA should have taken sufficient care to ensure that revised plans submitted by the complainant were attached to the consent before it was issued. While the BCA acknowledged that a mistake was made, it did not explain how the wrong plans were attached to the building consent; human error one assumes.

Subsequent to the complaint, the BCA has appointed a new Building Control Manager and has made appropriate consent system improvements, including quality assurance checks and balances, to meet accreditation standards prescribed in regulations made under the Act. It is expected that these improvements will help to prevent a similar failure from occurring again.

CONCLUSIONS

The Department upheld the complaint. The key findings were that:

- attaching the wrong plans to the complainant's building consent was a failure on the BCA's part to properly perform the building control function of issuing a building consent
- there was no good reason for the failure and the BCA was negligent in issuing the building consent because the BCA failed to take adequate care to ensure that the correct consent plans were attached.

After careful consideration, the Department decided not to take any disciplinary action against the BCA as the system improvements made by the BCA and the acquisition of a new building control manager seem to have addressed matters that would otherwise have been referred to in any such warning or requirement. This decision does not diminish the Department's concern about the process failure that led to the complaint.

The BCA was encouraged to engage positively with the complainant with a view to negotiating a mutually acceptable resolution, given that the Council's offer of a partial refund of processing fees was not acceptable to the complainant.

LEARNINGS AND RECOMMENDATIONS TO OTHER BCAS

All BCAs need to ensure that they have a rigorous peer review and quality assurance process in place during the building consent process to ensure that the consent process and accompanying documentation are correct before issuing the consent. Humans are not infallible and will make mistakes from time to time. Most building consent applications should always pass through more than one set of eyes before being approved.

PROGRESS WITH PHASE 2 ACCREDITATION

The Department is pleased by the progress most BCAs are making towards being accredited against phase 2 accreditation requirements (regulations 5 – 17).

As at 21 October, 73 BCAs had completed their biennial assessments. Of these, 64 BCAs have achieved compliance against both phase 1 and 2 requirements. These BCAs are as follows:

Ashburton District Council
Bay Inspections
Buller District Council
Carterton District Council
Central Hawke's Bay District Council
Christchurch City Council
Clutha District Council
Dunedin City Council
Environment Canterbury
Environment Waikato
Far North District Council
Gisborne District Council
Gore District Council
Hamilton City Council
Hastings District Council
Hauraki District Council
Horowhenua District Council
Hurunui District Council
Hutt City Council
Invercargill City Council
Kaikoura District Council
Kapiti Coast District Council
Kawerau District Council
Mackenzie District Council
Manawatu District Council
Manukau Building Consultants
Marlborough District Council
Masterton District Council
Matamata Piako District Council
Napier City Council
Nelson City Council
New Plymouth District Council
Opotiki District Council
Palmerston North City Council
Papakura District Council
Professional Building Consultants Limited
Rangitikei District Council

Rodney District Council
Rotorua District Council
Ruapehu District Council
Selwyn District Council
Southland District Council
South Taranaki District Council
South Waikato District Council
South Wairarapa District Council
Stratford District Council
Taranua District Council
Tasman District Council
Tauranga City Council
Thames Coromandel District Council
Timaru District Council
Upper Hutt City Council
Waikato District Council
Waimakariri District Council
Waimate District Council
Waipa District Council
Wairoa District Council
Waitaki District Council
Waitomo District Council
Wanganui District Council
Wellington City Council
Westland District Council
Whakatane District Council
Whangarei District Council

Others that are still working through their corrective actions, some for several months now, are encouraged to complete their work and clear these as soon as possible. These BCAs are now considered stragglers as IANZ is gearing up for and about to start the next and third round of biennial assessments. BCAs are encouraged to engage with IANZ early to secure the next assessment date that best suits them and IANZ before these slots are filled up.

BIENNIAL ACCREDITATION REASSESSMENTS 2010 – 2012 AND THEIR RELATIONSHIP TO THE AMENDMENTS TO THE BUILDING ACT

The BCA accreditation reassessment programme is on track.

Accreditation of BCAs under the Act is intended to ensure improvements in the professionalism and competencies of building officials; and upgrading of BCA quality assurance measures.

IANZ, the Building Consent Accreditation Body appointed by the Department, carries out its role in accordance with requirements specified in a

Gazette notice, including a requirement that each BCA is audited no less than once every two years³.

The initial 'phase 1' round of accreditation assessments, relating to policies, procedures, skills and resources as required by accreditation regulations 5-16, was a challenging exercise for many BCAs and required extensions of statutory deadlines set by the Act to allow BCAs to complete their work to get up to standard.

The 'phase 2' assessment audits, relating to quality assurance systems as required by accreditation regulation 17 and a reassessment of compliance with phase 1 requirements, have progressed according to plan and are nearing completion.

Preparations for the next round of BCA biennial accreditation reassessments, to be completed during 2010 – 2012 are well under way. A total of approximately 80 accreditation assessments will be undertaken over the two-year period (including several site assessments for the new Auckland Council). The 2010 – 2012 round of reassessments will involve checking to ensure continued compliance with both the phase 1 and phase 2 (regulations 5 – 17) requirements. Phase 3, regulation 18 accreditation requirements relating to building official qualifications, will not be considered during the 2010 – 2012 accreditation reassessments.

RECENTLY ANNOUNCED BUILDING ACT CHANGES WILL NOT AFFECT BCA ACCREDITATION IN THE SHORT-TERM

The Building Act Review has been completed. On 12 August 2010 Building and Construction Minister Maurice Williamson announced that the Government will introduce amendments to the Building Act 2004 to help reduce unnecessary regulation and make practitioners more accountable. As the integrated package of changes announced by the Minister will be phased in over time (see below), there are no immediate, significant implications for national BCA administrative arrangements, policies and systems or accreditation reassessments. The changes announced are as much about changing attitudes and behaviours as they are about changing the law and will help to reduce costs and improve productivity in the building sector over time.

³ Except for the initial full technical assessment audit of local authority BCAs in the Auckland Region which must be completed within three years of the date of initial accreditation. This is the maximum period allowed between audits by the Act and the exception was agreed to by the Department Chief Executive to accommodate local authority reorganisation in that region.

The Department has also been directed to develop further advice to the Government in a number of areas, including in relation to:

- a comprehensive consumer and sector information and education programme to support the changes
- reviewing and providing advice on possible alternatives to the current 'joint and several liability' approach that applies in the building and construction sector
- developing proposals for a new national building consenting system that delivers greater consistency, improved information about building activity and performance of the sector, and further reduces overall costs to local government, building practitioners and consumers.

The planned amendments to the Act will also see some further minor, low-risk work, such as building a carport or veranda, exempted from the need for a building consent.

The most significant Building Act changes will be phased in after the next round of accreditation reassessments has been completed.

Minister Williamson has stated that the Government considers that it can only make changes to the building consenting and inspecting process to reduce costs once it has confidence in the quality of what is being built. The Government is therefore proposing to introduce a 'stepped' risk based approach to building consents and inspections after mid-2012 at the earliest, once the other improvements are in place to drive quality, including the licensing of building practitioners. Under this stepped approach, the amount of checking and inspection will be directly aligned to the complexity and risk of the work, and the skills and capability of the people doing the work. For example, when building a stand-alone garage, the only check that may be required is that the work is being done by a licensed building practitioner. For building a simple, one-storey house using proven methods and products and licensed building practitioners, it would be quicker to get consent and would require fewer inspections with the local BCA only focusing on the critical elements and the LBPs taking responsibility for the rest.

Longer term, the Government is also looking at how it could make the building consent system more nationally consistent and efficient – for example, through centralising some of the functions of BCAs, supported by technology solutions such as an online consenting system.

While there is potential to reduce costs significantly the Government also recognises the need to balance that against the cost of change, and the risk to building quality, and will be discussing future change options with local authorities over the

coming year as further work around this area is undertaken.

A SUMMARY OVERVIEW OF AMENDMENTS AGREED TO BY THE GOVERNMENT AND FURTHER CONSULTATION PLANS

The Government has agreed to a package of amendments that, without compromising building quality and safety, will help ensure clearer accountabilities, more efficient regulation and improved skills and knowledge.

In terms of accountabilities, the amendments will make it clear that:

- builders and designers must make sure their work will meet Building Code and consent requirements
- building owners must make sure they get the necessary approvals and are accountable for any decisions they make - such as substituting specified products
- BCAs are accountable for checking plans and inspecting to make sure approvals are followed and Code compliance is achieved
- mandatory written contracts will be required for all residential building work above \$20,000 in value
- the building contractor will have to give the home owners some specified information before the contract is signed, including what, if any, surety or financial backing is available to cover the costs of fixing any faults.

There will be new legal remedies that mean the building contractor will be expected to routinely fix any defects in their work that the home owner reports within 12 months of completion - as long as there has not been misuse or negligent damage.

The Government has set a checkpoint for the end of 2011 to look at whether there has been sufficient progress to decide on when it might be appropriate to 'activate' a stepped system of risk-based consenting.

Pre-conditions for activating stepped, risk-based consenting would include:

- a sound base of competent, licensed building practitioners who know how to comply with the Code and are doing so
- consumer protection measures in place to ensure home owners are not left exposed.

There's a lot of detail behind all of this, and quite a bit still to be worked out. This will be set out in amendments to the Act, and in regulations that now need to be developed, and you will have the

chance to comment again through the select committee process and as a new Building Amendment Bill is developed.

Local government will be consulted as work on a detailed, fully costed plan progresses and the Minister has stated that he wants to look at that plan in the first half of 2011.

Overall the Government wants to ensure the system provides:

- nationally consistent and robust decision-making
- user-friendly and consistent requirements and processes
- timely and responsive service delivery
- rapid response to new information, such as changes in the Building Code or information on building performance
- seamless integration with other activities such as resource management.

For more information on the detail of the proposed changes to the Building Act visit: www.dbh.govt.nz/buildingactreview

CHANGES ARISE FROM BUILDING ACT REVIEW

The Government is planning to make a number of changes to the laws governing building, as a result of the year-long review of the Building Act 2004. The changes include new contracting and information disclosure requirements for residential building work, more exemptions from the need for a building consent and future changes to the consenting system. The Minister for Building and Construction Maurice Williamson says the planned changes set the scene for an efficient and productive sector that stands behind the quality of its work. The changes form part of the Government's better building blueprint and sit alongside other initiatives to drive improvements in building quality, including the licensing of building practitioners and improved education about Building Code requirements and how to meet them. The Department would like to acknowledge the Sector Reference Group for its input and advice. Further information about the key changes can be found in the following articles, and on our website at www.dbh.govt.nz/buildingactreview

NEW CONTRACT REQUIREMENTS FOR RESIDENTIAL BUILDING WORK

Building contractors who are building new houses or doing major renovations or other projects in the residential sector will have to be ready to meet new

contracting requirements from late next year. 'There are many good people doing good work in the sector, but the behaviour of some, and the weathertightness crisis, has dented confidence,' says Mr Williamson. He says the planned changes to contracting requirements and supporting information are aimed at rebuilding confidence, by making it clearer to all parties what is expected and how any problems will be fixed. Under the new rules, it will become a legal requirement for building contractors to have a written contract in place with their clients for all residential projects over \$20,000. The building contractor could be an individual or a company, and the contract requirement will apply to work to construct, alter, repair, demolish or remove a building. Every contract will have to include the already-existing warranties in the Building Act that require building work to be fit for purpose, meet the Building Code and be undertaken with reasonable care and skill (among other requirements). The building contractor will be expected to fix any defects in their work that are reported within 12 months of completion, on top of the existing obligation to 'put things right' for up to 10 years (provided there has not been misuse or negligent damage by the consumer). At the same time, consumers will get more information about what maintenance they need to carry out and the importance of reporting any defects as quickly as possible.

New information disclosure provisions will also make it easier for consumers to make informed decisions about who they contract to carry out their building work. The building contractor will have to give the consumer information before the contract is signed about the skills, qualifications and license status of those who will do the work and any publicly available information about any disputes (for example the results of any court judgments). They will also have to disclose what, if any, surety or insurance backing they have, to cover the cost of fixing any faults. Mr Williamson says these requirements are not that different from what many responsible contractors already do. 'Both the Certified Builders Association and the Registered Master Builders Federation have standard contracts and offer forms of surety for their members.' 'I would expect to see these changes resulting in any faults being fixed faster, and fewer disputes ending up in court.'

CHANGES TO BUILDING CONSENT PROCESS ON HORIZON

The Government is signalling that it wants to make changes to the building consent system once other measures to provide more quality assurance are in place. It plans to introduce a 'stepped' riskbased approach, where the amount of checking and inspection is directly aligned to the risk and complexity of the work and the skills and capability of the people doing the work.

'We can only do this once we can have confidence quality is being built in,' says Mr Williamson. This planned approach is more conservative than the suggestions consulted on during the Building Act review. The first step would be a streamlined process for some low-risk work (such as a free-standing garage or large rural shed) that simply checks that certain conditions are met (for example the work is undertaken by a licensed building practitioner). The next step would see a simplified and more prescribed consenting process for certain simple residential building work at the lower-risk end of the spectrum (such as a simple single-storey house built using proven methods and design with low structural and weathertightness risks). Existing consent and inspection requirements would continue for other residential work. As part of this new risk-based approach, change is also on the cards for consenting for commercial buildings. This would provide for reliance on third-party (non-building consent authority) review and quality assurance processes as an alternative to the current consenting and inspection requirements, provided certain conditions are met. Mr Williamson says this new approach would reduce compliance costs by doing away with unnecessary checking and inspection, and would also provide incentives for builders and designers to get licensed and demonstrate their professionalism.

However, he says, the Government is not prepared to compromise building quality and wants to see some pre-conditions in place before changing the consent system in this way. In practice this means these changes will only come into effect once there is a strong base of licensed building practitioners, who show they understand the performance requirements of the Building Code and how to comply with them (mid-2012 at the earliest). It will also depend on new contracting arrangements for residential work being in place, and the results of monitoring of building quality. Longer term, the Government is also looking at how it could make the building consent system more nationally consistent and efficient. This could be achieved through nationally consistent back office support and IT systems, in support of efficient local delivery. An initial assessment found there was scope for significant efficiency gains. The Government now wants to develop a detailed, fully costed plan for how this might be achieved. Local government will be involved and the Government will receive a report by the end of March next year.

MORE EXEMPT BUILDING WORK

The Government is moving to exempt a broader range of building work from needing a building consent by adding to Schedule 1 of the Building Act.

The exact date that these changes will take effect depends on regulations being passed, but this is expected to happen later this year or early next year.

All exempt building work must still meet the Building Code and other relevant regulations, such as the provisions of the Plumbers, Gasfitters and Drainlayers Act 2006 and the Electricity Act 2002, and district plan requirements.

The agreed exemptions include:

- replacement or alteration of internal wall and floor linings and finishes in a dwelling. This clarifies that linings are exempt but not the entire wall
- adding lightweight stalls (e.g. used at fairs and exhibitions) to the current exemption for tents and marquees
- fabric shade sails and associated structural supports that do not exceed 50 square metres in area (with limitations on matters such as the level on which the sails are installed and distance from a legal boundary)
- installation, replacement or alteration of thermal insulation in existing buildings (excluding exterior walls and fire walls). This clarifies that retrofitting ceiling and underfloor insulation will not need a consent
- penetrations with a maximum diameter of 300 mm (including associated weatherproofing, fireproofing and any other finishings) to enable the passage of pipes, cables, ducts, wires, hoses and the like through any existing building. This clarifies that, for example, a heat pump can be installed without needing a consent, although the wiring must be done by a registered electrician
- signs and associated structural supports where the sign is no more than 3 metres high and the face area of the sign does not exceed 6 square metres
- height restriction gantries (e.g. a vehicle height warning in a car park)
- private playground equipment used in association with a single household where no part of the equipment extends more than 3 metres above the ground.

Exempt if carried out in accordance with the Plumbers, Gasfitters and Drainlayers Act 2006:

- replacement (including repositioning) of water heaters, except for systems that are not open-vented, have an uncontrolled heat source or a controlled heat source other than gas or electricity.

Exempt building work if designed by a Chartered Professional Engineer (CPEng):

- signs and plinths
- retaining walls in a rural zone that retain not more than 3 metres depth of ground with limitations on matters such as the distance from any legal boundary or any existing building
- playground equipment installed in a public place for a government department, Crown entity (including a school), licensed early childhood centre or a local authority.

In addition, Schedule 1 will be amended to clarify the following existing exemptions.

- additions to clarify that the current exemption relating to internal walls does not include load-bearing or bracing element walls (i.e. as originally approved by Cabinet in May 2008) or any part of a wall that is fire-rated or part of a specified system
- increasing the height of exempted fences and hoardings from 2 m to 2.5 m and removing the term 'wall' from the same exemption as this is adequately covered by the term 'fence' and avoids potential for confusion with reference to walls that are part of another building
- adding to the exemption for tanks and pools to allow a wider range of volume-height configurations than are currently provided for
- increasing the size of marquees and tents for public events to 100 square metres (i.e. the same as is currently allowed for private events)
- increasing the height of exempted decks, other platforms and bridges from 1 m to 1.5 m and adding the term 'boardwalks'
- increasing the floor area of exempted porches and verandahs from 15 square metres to 20 square metres, adding carports to the same exemption and removing the requirement that the structure be over a deck or a patio
- increasing the area of exempted awnings from 15 square metres to 20 square metres and adding the term 'canopies' to the same exemption.

Exempt if carried out in accordance with the Plumbers, Gasfitters and Drainlayers Act 2006:

- adding to the existing exemption allowing alterations to sanitary plumbing the clarification that the exemption excludes water heaters (which are now covered by a separate exemption) and does not permit the total number of sanitary fixtures in a dwelling to be increased.

UPDATE ON DEVELOPMENT OF NATIONAL QUALIFICATIONS FOR BUILDING OFFICIALS – CONCLUSION OF THE ASSESSMENT OF PRIOR LEARNING PILOT

This article summarises the results of the recently completed pilot of the 'assessment of prior learning (APL)' process against the two new National Diplomas in Building Control Surveying.

In 2008 and 2009 key sector stakeholders worked together to develop two new qualifications, the National Diploma in Building Control Surveying (Small Buildings) and the National Diploma in Building Control Surveying (Medium and Large Buildings) which were registered on the New Zealand Qualifications framework in 2009. As their names suggest one diploma is focused on small buildings, predominately residential, and the other on medium and large buildings, and are aimed at supporting building officials to increase their technical skills and expertise. These qualifications represent a good professional development opportunity for building officials working in the sector now, as well as strengthening the technical capability, capacity and professionalism of the workforce in the longer term.

Otago Polytechnic's Centre for Assessment of Prior Learning (CAPABLE NZ) was contracted by LGITO to conduct a pilot of the APL process for these diplomas. The APL process was intended for building officials who had extensive experience and knowledge of the industry and therefore could be expected to address all of the requirements of the diplomas through the APL process.

Sixteen candidates were ultimately involved in the pilot. These were split into two groups, with seven candidates in the South Island and nine in the North. The facilitated process involved candidates attending workshops and being helped to prepare a portfolio of work as evidence that they meet the required standards. This evidence was assessed by a panel of technical experts and CAPABLE NZ staff.

The Department congratulates the 12 candidates who have, to date, successfully been awarded one or both diplomas.

- Christopher Randell, Dunedin City Council
- Stewart Geddes, Central Otago District Council
- Peter Sparrow, Department of Building and Housing
- Stephen Hull, Papakura City Council

- Christian van den Bosch, Christchurch City Council
- Aaron Haymes, Christchurch City Council
- Craig White, New Plymouth District Council
- Alistair Couper, Compass Building Consultants
- Marie Joubert, Rodney District Council
- Colin Pickering, Qualico Limited
- Taylor Wong, Whakatane District Council
- Cory Lang, Hamilton City Council

The pilot was a success and demonstrated the effectiveness and value of the APL process. It provided information on what was done well as well as identifying ways of strengthening the APL process so that it can be improved in the future.

The pilot looked at the following areas:

- length of time taken to complete the qualification
- appropriateness and fairness of acceptance criteria
- quality of resources – facilitator, system, workbook
- challenges within the process that need to be managed
- inherent challenges identified with the qualification
- employer support for completion of qualification
- costs – and who should meet such costs
- necessary candidate guidance, advice and support
- other matters raised by candidates, employers and others.

A summary of feedback obtained from candidates, their employers, assessors and the facilitator follows.

All employers interviewed felt that a tertiary level qualification for the Building Control Industry was essential. They felt that BCAs stood to benefit from having a general uplifting of qualification, competency and professionalism levels and many found that graduates of the diploma appeared more confident. Graduates saw tangible personal benefits in obtaining the diploma, as well as benefits for their employer.

Graduates also spoke positively about the facilitator, the facilitation process, the nature of feedback given, the resources and the benefit of the workshops. A number of suggestions to strengthen the programme included using 'work' language rather than 'academic' language, providing clearer expectations and guidance around written material, in-house rather than

external assessors, location of workshops, and better stakeholder communication.

Most candidates completed the APL process within a reasonable timeframe, and time spent ranged between 80 to 250 hours in total for the two qualifications. However, some felt they had put in more hours and effort than necessary. Most found it challenging to fit around existing work commitment.

An important aspect of successful completion was employer support. Support might include time off, financial support, the ability to gain experience in a particular area (e.g. inspection), and the ability to use work time to gather evidence of prior learning. Some employers considered that promotion or additional remuneration upon completion could be used as incentives for officials to complete the diplomas.

Further consideration of the financial impact of the qualifications to those undertaking as well as delivering the diplomas was seen as important. Most graduates felt it was reasonable to share the costs and time between the employer and employee. All employers interviewed saw difficulties for employers financially when qualifications became compulsory.

It was noted that specialised roles can make it challenging for some candidates to complete the qualification (i.e. in terms of acquiring the skills and knowledge required). Some candidates suggested a process that provided some APL in addition to new learning, as this could address issues related to 'siloed' roles, lack of current experience in some aspects of building control work and the need for updating specific areas of knowledge. This also highlighted the need for a careful selection process for entry into the APL programme.

It was also proposed that consideration be given to the 'level' of the diploma to make sure it was pitched at the right target group, and whether there was a need for a higher level qualification or for a specialisation in the qualification (e.g. Advanced Diplomas in specialised areas such as fire or weathertightness compliance). Feedback also suggested that the Department will need to communicate more about how the attainment of the diplomas supports the accreditation process and requirements.

CAPABLE NZ is using the findings from this pilot to streamline its delivery to future APL candidates as well as informing the development of further delivery options catering for other practitioners with varying skill levels. CAPABLE NZ is currently scoping the requirements and feasibility of delivering another APL process which will be provided on a user pays basis. The exact cost of this is currently being worked out.

Anyone interested in participating in the APL process to be assessed against one or both of the National Diplomas in Building Control Surveying should express their interest to Capable NZ at Otago Polytechnic by clicking on the website www.capablenz.co.nz and following references to Building Officials.

FIRST PRODUCT CERTIFICATE ISSUED



The first certificate issued under section 269 of the Building Act 2004 (the Product Certification scheme) has been issued by Global Mark (www.global-mark.com.au). Global Mark is a product certification body accredited by JAS-ANZ (Joint Accreditation System of Australia and New Zealand). www.jas-anz.org

The product is known as the James Hardie Linea™ Weatherboard. The certification applies to both Direct Fixed and Cavity Cladding options. The Certificate covers Building Code clauses B1 (Structure), B2 (Durability), C3 (Spread of Fire), E2 External Moisture and F2 (Hazardous Building Materials).

The certificate is subject to the company maintaining the validity of BRANZ Appraisal 446 (Linea™ Weatherboard Direct Fixed Cladding) and BRANZ Appraisal N 447 (Linea™ Weatherboard cavity Cladding).

The certificate is subject to some design decisions relating to designer competence and access to information. Similarly there are conditions relating to the installation including installer competence as well as sign off requirements. These conditions are important criteria for the BCA to use when making the Code compliance test when issuing the consent and later when issuing the code compliance certificate. Consent applications should contain evidence of compliance with these conditions.

The Departments web site contains the register of products certified under the scheme as well as product accreditations under the 1991 Act which are deemed to be product certificates. The register can be found at

<http://www.dbh.govt.nz/product-certification-current-register>

INTRODUCTION TO BUILDING LAW IN FRANCE

This article was written by Steve Garner who is currently on sabbatical in Europe studying systems thinking and its application to improving local government services.

French construction law is complex and bureaucratic. The basis of construction work in France revolves around the idea that skilled individuals undertake work that they stand behind for a period of 10 years. In addition the law considers all parties involved in the construction of the building - contractors, architects, engineers, *Bureaux de contrôle*, manufacturers and importers of products and components to carry some responsibility. Insurance is available to parties to a building contract to ensure that the 10 year responsibility can be met.

Whilst formal qualifications are available for different aspects of the building trade they are not compulsory.

Building permits are linked with planning permission and are required for most building work including demolitions. Design and construction rules are governed by codes of practice (*Document Techniques Unifiés*) for established construction methods and products. For novel methods or products, technical advisory notes (*Avis techniques*) are issued. In addition products are assessed by *Centre Scientifique et Technique du Bâtiment*. Technical recommendations for their use and applications are recorded as *Normes Françaises*. *Normes Françaises* are roughly equivalent to our New Zealand Standards. Products which have been assessed carry a NF mark.

Building work may be inspected any time up to two years after completion. Inspections do not relieve builders of any liability for defective work.

CONTRACTUAL REQUIREMENTS

Contractual responsibility starts from the conception of the works and may run for a period of beyond practical completion for a maximum period of 30 years. Special responsibility covers:

- Responsibility of perfect achievement: introduced by the 1978 Spinetta law and running for a period of one year starting from handover of the works to the client.
- *Biennial* responsibility for satisfactory functioning: introduced by the law of 1967 to cover minor works and lasting for a period of two years starting from handover of the works to the client.

- *Decennial* responsibility: as set out in articles 1792 and 2270 of the Napoleonic Code⁴ and lasting for a period of 10 years starting from the handover of works to the client. This covers two aspects, the solidity of construction and the fitness for purpose.
- Third party responsibility under common law: starting from the moment the third party is damaged and (since 1985) lasting for a period of 10 years.

These responsibilities apply to all forms of construction work, whether new work or alterations to existing buildings.

INSURANCE REQUIREMENTS

The *Spinetta* law of 1978 requires all parties to the construction process to take up the appropriate insurance policy before construction begins; if an architect is employed it is their responsibility to ensure that the client, the contractors, the subcontractors and the suppliers are all properly insured.

Owners may insure against decennial responsibility. This is provided on a project basis. By law, no limit can be attached to this type of policy. Its purpose is to finance any essential work prior to apportionment of responsibility. Any defective work is reinstated immediately, and then the claim is settled between the insurance companies of the parties concerned. The policy may also cover situations where a contractor or contractors go bankrupt.

While this seems straight forward in principle, in practice it can be quite complex. For example a roofing contractor will be insured for roofing work as defined in their insurance policy. Alterations to roof trusses or rebuilding a chimneystack however may not be covered by their insurance unless there is an express clause in their policy. In addition consumer ignorance means that work is often undertaken without the appropriate insurance policies in place.

So each construction project may entail each subcontractor providing insurance cover for different parts of the job. In addition a claim for defects may need to be settled by a number of insurance companies. The advantage of the decennial insurance policy is that it ensures that defective work is rectified immediately and responsibility settled afterwards. This protects the client from having to wait months or years for responsibility to be settled before the job is satisfactorily completed.

⁴ The Napoleonic Code was established by Napoleon Bonaparte in 1795 in Paris

DIY WORK

Whilst some DIY work is permissible (see the section on building and planning permits), work that an individual undertakes on their own property will not be insured by others. While this may not be an issue if in the case of minor works, there may be implications if they install a new heating system, create openings in load bearing walls or replace a roof; even if they have the skills required for such work. This is because the work may not be insurable.

In addition, they retain liability to third parties if the work becomes defective (decennial responsibilities still apply). Future buyers might request the insurance details of the contractors involved prior to purchase and where these are unavailable this could dramatically affect the resale value of the property.

BUILDING REGULATIONS

There are national legal requirements with which buildings must comply concerning safety of persons, hygiene, and energy consumption. There are also departmental⁵ regulations, based on these national requirements, covering sanitary requirements for existing buildings.

DOCUMENTS TECHNIQUES UNIFIÉS (DTU)

Public contracts are governed by the *Documents Techniques Unifiés* (DTUs), which set out rules for design, building, and structural calculations. In addition there are technical advisory notes (*Avis Techniques*) issued in relation to innovative procedures, materials, components and equipment, where no standardisation yet exists. These are issued by the *Centre Scientifique et Technique du Bâtiment* (CSTB)⁶

NORME FRANÇAISE (NF)

The *Association Française de Normalisation* (AFNOR)⁷ sets out technical or technological recommendations for products, in the form of *Normes Française* (NF), some of which are mandatory and form part of the *Documents*

⁵ France is divided into a number of administrative departments which are similar to our regional government level in New Zealand. Requirements may vary geographically depending on aspects such as snow loading, wind and cyclone impact and ground stability.

⁶ CSTB collaborates with contracting authorities, architects, research offices, manufacturers and entrepreneurs, and helps the French public authorities to define technical regulations and ensure the quality of buildings. CSTB is a State-owned industrial and commercial corporation.

⁷ AFNOR is the French national Standards body

Techniques Unifiés. When a product has the mark NF, it indicates that it is subject to systematic control, conforms to the norm and is suitable for use.

BUILDING AND PLANNING PERMISSION

In 2007 a new national planning procedure including the issue of interlocking planning/building application permission were implemented across France.

Key relevant permits for comparison with New Zealand building consents include:

- *Permis de démolir* - Demolitions permit
- *Certificat d'urbanisme* – Outline planning/planning in principle application
- *Déclaration Préalable* - Minor works
- *Permis de construire* - Planning application for a building permit
- *Permis de construire maison et/ou ses annexes* - Planning application house only
- *Permis d'aménager* Individual house on housing estate
- *Modification d'un permis délivré en cours de validité* - Modification to application
- *Transfert d'un permis délivré en cours de validité* - Transfer of permit
- *Déclaration d'ouverture de chantier* Commence work on site
- *Déclaration attestant l'achèvement et la conformité des travaux* - Completion of work in accordance with permit.

EXEMPT BUILDING WORK

No permission is required for building work that is:

- a room with a surface area of less than 2m² and a ceiling height of less than 1.5 m
- a wall that is not a fence and is less than 2m in height
- a work of art (for example a sculpture) less than 12m high and 40m³

MINOR WORKS PERMITS

Minor works include:

- work where there is no change of use, no additional storey's added and the work is less than 20m² of additional floor area
- garden shed or garage of less than 20m²
- an open air pool not subject to controls set out below
- renovation of a façade
- greenhouses 1.5m-4m in height and less than 2000m² in surface area.

A demolition permit can also be combined with the minor works application. There is no legal

obligation to employ an architect to submit a minor works application (*Déclaration préalable*).

A minor works application requires a response from the Mairie⁸ within 1 month. Building work may commence after a month if a negative response has not been received.

PLANNING APPLICATION FOR BUILDING PERMIT (PERMIS DE CONSTRUIRE)

The *Permis de construire* is the main instrument of planning control. There are two permits:

1. for an individual house and annexes (*Permis de construire maison et/ou ses annexes*). This must be processed within 2 months
2. for general purpose (*Permis de construire generale*). This must be processed within 3 months.

An architect is required to submit any *Permis de construire*. The law states that a request for a building permit (*Permis de construire*) cannot be investigated unless a qualified registered architect has "established the architectural project," that is, prepared the plans and written documents, shown site plans, volume and layout, sections, and elevation treatment, as well as the choice of materials.

The exception to this is an individual submitting an application on their own property if on completion it has a net floor area of 170 m² or less.

The Ordre des Architects is the national body of registered architects in France. The profession of an architect is protected in France and only those architects registered with the *Ordre* and that are the principal of a practice may submit planning/building applications (salaried architects may not). It is a criminal offence for an unregistered person to pose as an architect in France. Unqualified architects that stamp and sign permits of others are suspended for a minimum of six months.

All registered architects require professional indemnity insurance and under the code of contract they require a contract of engagement.

PLANNING APPLICATION HOUSE ONLY AND/OR ANNEXES (THE PERMIS DE CONSTRUIRE MAISON ET/OU SES ANNEXES) COVERS

- constructions that creates over 20m² gross floor area
- the work that modifies a load bearing structure/wall **or** the building façade when accompanied with a change of use of an auxiliary section of a building so that the whole building has the same usage
- work that modifies the volume of a building and that creates a new opening or increases the size of an existing opening in an exterior wall
- swimming pools less than 1.8m deep and over 100m²

GENERAL CONSTRUCTION PERMIT (PERMIS DE CONSTRUIRE GENERALE)

This permit covers all other construction work excluding that work covered by the *Permis d'Aménager* as detailed below.

OWNERS LIABILITY

It is the responsibility of the land owner to ensure that all applicable building permits are in place for the construction work undertaken. An application must be made by the owner of the land, by someone mandated by them (their representative), or by a person with a title permitting building or by a person able to benefit from the expropriation of the land for a public utility. There is no fee to submit any of the development permits described above, although there is a fee for the application if it is successful.

The fee is generally paid in two parts:

1. 18 months after the permission is granted
2. the remainder 12 months later

SUBMITTING THE APPLICATIONS

All the applications are submitted either by hand or by registered letter to the local Mairie. The Mairie forwards the applications to the local DDE planning office (*Direction Départementale de l'Équipement*), and the police, highways, fire service and *Architectes des Bâtiments de France*⁹ (ABF). A receipt is issued with the application number and

⁸ The Mairie is effectively the Mayor's office or town hall. Each commune has its own Mairie including small villages of a few hundred people.

⁹ The ABF provides advice regarding permits for historic buildings, restorations and monuments

the date of registration. The response to the application (*délai d'instruction*) starts from this date.

If any information from the planning office/Mairie is not received by the applicant within this processing period then the application has been approved (*Tacit permit*).

DOSSIER INCOMPLETE

The local planning office examines the planning application and dossier; if more information is required then either an e-mail or letter will be sent with a request for the additional information, this information can be provided by e-mail and PDF drawings are acceptable.

PLANNING APPROVAL

Once complete, planning will be approved by the planning department, if the application is in accordance with the local plan. The application then goes back to the Mairie where responses will also be returned from the police, highways, fire service and the Architecte des Bâtiments de France (ABF). If all responses are favourable (including Service Public d'Assainissement Non-Collective (SPANC)) and the Mairie is in agreement then permission is granted.

SPANC (SERVICE PUBLIC D'ASSAINISSEMENT NON-COLLECTIVE)

Building projects in the countryside may have a septic tank or similar on site effluent disposal system. As part of a planning application the Mairie will ask SPANC to ascertain what sewerage system the property has. Until SPANC has approved the existing/proposed system permission will not be granted by the Mairie. SPANC does not operate to a time scale because it is covered by environmental law not building/planning law and it can take weeks to sort out an application.

TWO MONTH THIRD PARTY NOTICE

Once planning approval is received, a notice has to be displayed on the property for a period of two months informing third parties of the application. Third parties can view the dossier at the Mairie and object to the application. The objection can only be sustained if the application is contrary to planning law (which it should not be because it has already had approval from the planning authority). However, every objection has to be investigated and this can slow a project down, sometimes by years, even if it is obvious that the objection will be overruled. If after the two-month notice period nobody has objected then work can start.

DURATION OF PERMISSION

Construction must commence within two years of approval for a *Permis de construire*, *Permis de construire maison* or *Permis d'aménager*. There is no time limit on completion.

COMMENCE WORK ON SITE (DÉCLARATION D'OUVERTURE DE CHANTIER)

Before starting work the Déclaration d'ouverture de chantier (commence work on site) notice is submitted to the Mairies office. The *Permis de construire*, *Permis de construire maison* or *Permis d'aménager* has to be displayed on a panel, at the entrance to the site for the duration of the works.

COMPLETION OF WORK IN ACCORDANCE WITH PERMIT (DÉCLARATION ATTESTANT L'ACHÈVEMENT ET LA CONFORMITÉ DES TRAVAUX)

30 days after completion of the work a *Déclaration attestant l'achèvement et la conformité des travaux* must be submitted to the Mairies office. This is a signed attestation by the proprietor (countersigned by the architect if applicable) that the project has been constructed in accordance with the approved planning application. Any changes that have been made during planning or construction are discharged (via a *Permis modificatif*) prior to declaring that the project is complete and in accordance with the application.

The authorities have the right to inspect the works to ascertain conformity with the terms of the respective application and within three months the authorities will send a *Certificat de conformité*. It is on the receipt of the *Certificat de conformité* that the application is discharged.

PENALTIES

It is an offence to undertake construction work without a *Permis de construire*, *Permis de construire maison* or *Permis d'aménager* if one is required. This can result in a fine or in certain circumstances an order for the building to be returned to its original state prior to the unauthorised building work.

Having been granted a *Permis de construire*, *Permis de construire maison* or *Permis d'aménager*, it should be noted that is also an offence to carry out work that is outside of that which is defined.

BUILDING REGULATION ENFORCEMENT

Enforcement of these building regulations is the responsibility of the local *Préfecture* and *Mairie* which are roughly equivalent to our level of local

government although often much smaller organizations with few staff and no internal technical expertise in building or planning issues. Their representatives may inspect works in progress; carry out tests, and request to see all official documents. This right can be exercised at any time within two years of the completion of the construction. The builders by law are not relieved of any of their liability by such inspections.

Smaller Mairie's or prefecture may undertake no inspections and purely rely on the system of notification of work through the planning system and the insurance and liability systems operating effectively. However the system does not always ensure that buildings are compliant.

CONCLUSIONS

The system is complex, expensive, time consuming and provides no certainty for applicants of obtaining a consent/permit or the quality of the built product. Even minor variations to a consent require formal approval which is time consuming, 2-3 months. For that reason, local people I have spoken to seldom bother to get permission to alter buildings despite the penalties for illegal building work and the ongoing liability to third parties and future building owners.



Poor quality brick work on apartment building



Typical brick dwelling. Bricks are usually rendered with plaster to improve water proofing



New fire exit added to local village music venue. Exit onto steps.



New roof and solar heating added to several hundred year old stone cottage



Apartments built next to 15th century church

CAREER IN BUILDING CONTROL RECRUITMENT RESOURCE

The Department in a joint initiative with the Building Officials Institute of New Zealand (BOINZ), New Zealand Society of Local Government Managers (SOLGM), and Local Government New Zealand (LGNZ) has recently developed career information material that could be used by building consent authorities to recruit Building Officials in future. Following on the next few pages, please find a copy of this material. A copy will also be available on the Department's and BOINZ websites.

A CAREER IN BUILDING CONTROL

- It's a busy industry with jobs throughout New Zealand
- You make sure people's homes and buildings are safe and healthy
- There's challenge and variety
- You work independently, or as part of a team

SO WHAT IS 'BUILDING CONTROL'?

Building projects in New Zealand have to follow certain rules and meet certain standards set by Government. Building officials make sure these rules and standards are followed. They make sure people's homes and other buildings are safe and healthy to live and work in.

The rules are administered by building consent authorities who employ building officials to ensure they are followed.

Most building officials work for accredited city or district council building consent authorities. There are also some working in the private sector.

WHAT DO BUILDING OFFICIALS DO?

Building officials need to be experts in a range of different areas, including building legislation, technical codes, construction standards, and building products and materials.

Building control work covers a lot of different activities, including the following.

Building consents

Building officials receive consent applications from people who want to build, then check the proposed building design complies with the legal requirements (including the New Zealand Building Code), and finally approve and issue the consents so building can start.

Inspections

While building is under way, building officials inspect the construction to make sure it's built in accordance with the approved building consent and complies with the Building Code.

Approving completed building work

Once the building is completed, building officials carry out final inspections and issue code compliance certificates – or can require remedial work to ensure it complies.

Specialist fields

Senior and experienced building officials can end up specialising in specific areas, for example:

- forensic surveying and building defect/failure investigation and reporting work
- commercial plumbing and drainage compliance
- weathertightness compliance
- fire safety design compliance.



Where can I find the rules around building projects?

- The Building Act 2004
- The Building Regulations
- The Building Code
- Councils may have their own local requirements and bylaws
www.legislation.govt.nz

What makes a good building official?

- An analytical and investigative thinker who can take a systematic approach and focus on the risks
- A practical person who picks things up quickly
- Wanting to learn about building design, construction processes, products and materials
- Able to apply the law and building requirements, and communicate these to others
- Able to work with people from different backgrounds
- Well-organised, paying attention to detail and able to work well under pressure
- A good communicator, in speaking and writing
- A responsible person who makes good judgements
- A genuine passion for protecting people's health and safety in buildings.

Helping other people understand the rules

Building officials keep up-to-date with new legislative requirements, codes of practice, Standards, building products and methods being used in the industry, and engage regularly with builders, architects, designers, engineers, developers and others about building work. They also help the public and building practitioners with advice about building regulations and building compliance requirements.

The fundamental role of building officials is to help ensure buildings are safe and healthy to use.

WHAT KIND OF CAREER CAN I HAVE IN BUILDING CONTROL?

Over the last decade the building industry has grown and buildings have become more architecturally and scientifically complex so demand for skilled people working in building control has grown.

Building officials work throughout the country. In smaller towns, officials can do a wide range of different jobs, covering residential, commercial and industrial buildings. In larger cities there's also room to specialise in specific areas of compliance like fire safety, plumbing and drainage, accessibility, or weathertightness compliance.

There's demand for already-experienced and skilled people to work in building control. There are also organisations taking on cadets at the start of their careers and training them on the job.

WHAT QUALIFICATIONS DO I NEED TO START?

To start a career in building control as a cadet you need at least four years' secondary school education.

Trade experience or qualifications (eg. in building surveying, building science, building/carpentry, architectural technology, quantity surveying, plumbing) can provide a good foundation for a building control career. Qualifications in the building industry are an advantage to securing employment.

The building control sector has its own industry specific qualifications. These are the National Diploma in Building Control Surveying (Small Buildings) and the National Diploma in Building Control Surveying (Medium and Large Buildings).

You can also join the Building Officials Institute of New Zealand (BOINZ). While membership is not compulsory, it helps demonstrate your commitment to the profession, provides you with information and peer support services and makes it easier to access much of the latest training and continued professional development opportunities to grow in a role.

WHAT COMPETENCIES WILL I DEVELOP?

Building control work can be complex and technical requiring a range of different skills and expertise. Some of the core competencies required to perform well in the job include:

- an understanding of the philosophy and principles of building design and construction
- an understanding and knowledge of building products and methods
- an understanding of relevant building legislation, Codes and Standards
- good communication and people skills
- an understanding of quality assurance principles and practices.

What kind of qualifications are helpful?

- Building control surveying
- Construction management
- Architectural technology
- Carpentry/building
- Quantity surveying
- Building science
- Architecture
- Project management
- Plumbing
- Drainlaying
- Engineering



WHERE WILL BUILDING CONTROL TAKE ME?

Building officials gain different skills and experience on the job. They also attend regular training courses, conferences and seminars to increase their knowledge and expertise.

A career in building control can either steer you towards more senior roles in specialised building control areas or management, or to other areas in local government, construction or consultancy.

WHERE CAN I GET MORE INFORMATION?

You can find out more about the building control industry and the role of a building official from the following organisations.

Your local council will have a building control department, called a building consent authority, and can give you information about building control roles and career opportunities within their organisation.

The Building Officials Institute of New Zealand (BOINZ) has been established to promote and advance the building control profession. The BOINZ website provides information on membership and training opportunities as well as highlighting situations vacant. Visit www.boinz.org.nz

The People Shaping Progress/Local Government Careers website provides information on what it is like to work in local government in New Zealand. The website contains information about different career options, employee profiles from different councils and a job board for the latest vacancies in local government. People Shaping Progress is the national employment brand for local government and is managed by the New Zealand Society of Local Government Managers (SOLGM), a professional organisation for local government management. Visit www.localgovernmentcareers.govt.nz

The Department of Building and Housing is the central government agency that regulates the building industry and administers the building laws in New Zealand. It also provides information and advice to the public, building professionals and the local government sector. Their website has information about building law, building compliance requirements and guidance and advice for building officials. Visit www.building.dbh.govt.nz

For further information on building control and local government go to:

- Building officials – www.careers.govt.nz and www.boinz.org.nz
- Local Government – www.localcouncils.govt.nz
- Local government associations – www.lgnz.co.nz, www.solgm.org.nz





Advisor Performance Monitoring and Review

- Wellington based
- Permanent

The Department of Building and Housing has a unique opportunity for a motivated and competent advisor who is looking to use their excellent relationship skills, as well as their knowledge of the building industry, to meet the demands of a key New Zealand industry. Working as a member of the Consent Authority Capability and Performance group, the Advisor Performance Monitoring and Review will:

- Undertake technical performance reviews of local authorities' building control functions.
- Provide technical support to International Accreditation New Zealand (IANZ) on accreditation assessments of local authorities' building control functions.
- Provide technical building control support to other business groups within the Department (eg, Policy, Communications, Building Standards, Determinations, Multiproof etc).
- Develop technical guidance and advice for building consent authorities.
- Contribute to responses to demand driven work (eg, Building Act and Building Regulation enquiries, internal memos, Ministerials, Official Information Act requests, general correspondence, etc).
- Foster relationships with the Department's key stakeholders (including: building consent authorities and building practitioners etc).

Key Requirements

The successful candidate will have a relevant tertiary qualification, preferably in a building and construction related field, and will be able to demonstrate:

- A comprehensive knowledge and working experience of the Building Act 2004, associated building regulations and other relevant pieces of legislation.
- The ability to develop high quality technical guidance and advice.
- Excellent relationship management and communication skills.
- A proven track record applying building legislation at all stages of the building and construction process.
- Knowledge and understanding of the local government environment in New Zealand.
- Proven systems thinking and quality assurance management.

This position will require some travel around New Zealand.

For further information about this role please contact Peter Sparrow on 04 817 4881.

If you are interested in this position, please email a copy of your CV and an application form quoting position number 658 to jobs@dbh.govt.nz by 5pm 29 October 2010.



BUILDING ACT AND BUILDING REGULATIONS HELPLINE

The Department's Consent Authority Capability and Performance Group continue to offer a free helpline for building officials' enquiries about the Building Act and Building Regulations. You can email us at info@dbh.govt.nz or phone 0800 242 243 and ask for the Consent Authority Capability and Performance Group.

Please address your email enquiry to this group, provide all of your contact details, and explain your question fully. Like you, staff in the group are very busy and it can take a day or two to respond to individual enquiries as we fit these enquiries in around other activities.

Our message to building officials is use this free service or we risk losing it.

Consent Authority Capability and Performance Group
Department of Building and Housing
PO Box 10-729, Wellington 6143
Telephone: 0800 242 243

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This publication has been developed to highlight and communicate topical building control issues. The original circulation list was developed from multiple mailing lists within the Department. To ensure you continue to receive this publication, subscribe through the address below.

www.dbh.govt.nz/Utilities/notifications/subscribe-notifications.aspx

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