



Department of
Building and Housing | Building
Controls
Te Tari Kaupapa Whare

Building Officials' Guide to the Building Act 2004

Second edition



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1.0 INTRODUCTION TO THIS GUIDE

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1.0

This booklet is an introduction to the Building Act 2004 and Building Amendment Act 2005 for use by building officials. It provides a summary of some of the important parts of the new Act, as well as an explanation of what some sections in the Act mean, and what implementation of those sections will require.

1.1 About this guide

Life of this document

The content of this document is based on the following legislation as at June 2005.

- Building Act 2004
- Building Amendment Act 2005
- Building (Forms) Regulations 2004
- Building (Forms) Amendment Regulations 2005
- Building (Forms) Amendment Regulations (No 2) 2005
- Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005
- Building (Fee for Determinations) Regulations 2005
- Building Levy Order 2005.

Guidance

This document is intended as a general guide to the Building Act 2004 and is not intended to replace it. While the Department of Building and Housing has taken every care in preparing this document, it should not be relied upon as establishing all the requirements of the Building Act 2004. Readers should always refer to the Building Act 2004 as the source document, and be aware that for specific situations or problems it may be necessary to seek independent legal advice. The full legal details can be found in the Building Act 2004. A copy of the Act is located at www.building.govt.nz/uploads/ba-pdf.pdf

Information in this guide

The Building Act 2004 introduces some significant changes to the way the building industry in New Zealand is regulated, with the intent of providing greater assurance to consumers. It is larger, both in size and scope, than the Building Act 1991. New measures have been introduced, such as registration of building consent authorities and the licensing of building practitioners.

The introduction to this booklet provides some context, or 'thinking' behind the Act, and describes how the Act is laid out. It briefly outlines what has changed as responsibility for the Building Act moved from the Building Industry Authority to the Chief Executive of the Department of Building and Housing.

The most detailed parts of the booklet deal with the day-to-day operational activities that territorial authorities and building consent authorities undertake. These are the sections in the Act that deal with all of the activities associated with the building consent process, including code compliance certificates, and Compliance Schedules/ Building Warrants of Fitness.

Other information is included, for example, functions, duties and powers of the Chief Executive; warnings and bans; and Determinations.

What this guide does not cover

It is not the intention of this guide to cover every topic associated with building controls. The focus of this document is the operational activities that came into force on 31 March 2005 and, as a result, the following subjects may be mentioned but are not discussed in depth.

- Building consent authority accreditation.
- Building consent authority that is not a territorial authority.
- Building practitioner licensing.
- Dam safety.
- Functions and duties of regional authorities in relation to building controls.
- Levies.
- Policies on dangerous, insanitary or earthquake-prone buildings.
- Infringement notices.

The Department of Building and Housing will provide more detailed information on these subjects through other publications.

1.2 About the Building Act 2004

Overview of the Act

On 31 March 2005 the Building Act 1991 was repealed and the Building Act 2004 came into force. However, parts of the Building Act 2004 came into force on 30 November 2004.

For the period from 30 November 2004 to 31 March 2005 the two Acts ran concurrently. The Building Act 2004 provides for this in two ways.

1. The Building Act 2004 is implemented in stages.
2. The Building Act 2004 contains a number of 'transitional' provisions that determine how regulatory matters that were begun under the 1991 Act are to be managed under the new Act.

It is important to note that the Building Regulations 1992 (First Schedule), including the Building Code, passed under the 1991 Act, continue in force under the 2004 Act.

The Building Industry Authority (the Authority) was responsible for administering the Building Act 1991. On 30 November 2004 this responsibility passed to the Chief Executive of the Department of Building and Housing and the Authority was dissolved.

Navigating the Act

The Building Act 2004 is set out in five parts.

Part 1 includes the purpose and principles of the Act, and interpretation. These sections provide an important reference when reading and interpreting the Act.

Part 2 (and Schedules 1 and 2) deals with matters relating to the Building Code and building control (for example, building consents).

Part 3 sets out the main functions, duties and powers of the Chief Executive, territorial authorities, building consent authorities and regional authorities. It also deals with the accreditation of building consent authorities and dam owners, and product certification.

Part 4 (and Schedule 3) deals with matters relating to the licensing and disciplining of building practitioners.

Part 5 (and Schedule 4) deals with miscellaneous matters including offences and criminal proceedings, implied terms of contracts, regulation-making powers, amendments to other enactments and the repeal of the Building Act 1991, and the transitional provisions from the Building Act 1991 to the Building Act 2004.

Purpose of the Act

The Building Act 2004 aims to improve the control of, and encourage better practices in, building design and construction to provide greater consumer assurance. That means:

- more clarity on the standards we expect buildings to meet
- more guidance on how those standards can be met
- more certainty that capable people are undertaking building design, construction and inspection
- more scrutiny in the building consent and inspection process
- better protection for homeowners through the introduction of mandatory warranties.

The Building Act 2004 articulates four broad goals (set out in section 3).

- People can use buildings safely and without endangering their health.
- Buildings have attributes that contribute appropriately to the health, physical independence, and wellbeing of the people who use them.
- People who use a building can escape from the building if it is on fire.
- Buildings are designed, constructed and able to be used in ways that promote sustainable development.

Principles of the Building Act

The new Act does not contain an equivalent to section 47 of the Building Act 1991, which contained guidance on how a territorial authority should exercise its powers. Under the Building Act 2004, section 4 'Principles' is now more important. It should be taken into account when performing functions or duties or exercising powers relating to the granting of waivers or modifications of the Building Code, and the adoption and review of policies on dangerous, earthquake-prone or insanitary buildings.

The Building Act 2004 re-states many of the principles outlined in the Building Act 1991, and makes explicit some of the implied principles of that legislation (for example, that innovation is important). However, some significant new concepts have been introduced, including a particular focus on the household unit, and that whole-of-life costs of building work are to be considered.

The principles are summarised below.

- Household units have an important role in the lives of the people who use them, and are accorded a special focus.
 - The Building Code as it relates to household units is important, and household units should comply with the Building Code.
 - Maintenance requirements of household units should be reasonable, and owners of household units should be aware of the maintenance requirements of their household units.
- To ensure that harmful effects on human health resulting from the use of building methods, products, design or building work are prevented or minimised.
- Buildings should be durable.
- Special traditional and cultural aspects of the intended use of a building should be recognised.
- The whole-of-life costs of a building should be considered.
- Standards are important in achieving compliance with the Building Code for building design and construction.
- Innovation in methods of building design and construction is important.
- People who undertake a rescue operation or firefighting in a building should be able to expect a reasonable level of protection from injury or illness while doing so.
- The extent and effects of the spread of fire should be limited to protect other household units and other property.
- Other property should be protected from physical damage resulting from the construction, use and demolition of a building.
- People with disabilities should be able to enter and carry out normal activities and processes in a building.
- Buildings of significant cultural, historical or heritage value should be preserved.
- Energy use in buildings should be efficient.
- Buildings should use renewable sources of energy.
- Material use in buildings should be efficient and sustainable.
- Water use in buildings should be efficient and promote water conservation.
- Waste generated during the construction process should be reduced.

Meaning of 'building'

The meaning of 'building' has not changed significantly from the Building Act 1991. However, there have been a few important changes. Notably, the following structures are buildings.

- A fence around a swimming pool.
- A vehicle that is immovable and that is occupied on a permanent or long-term basis.
- A mast, pole or telecommunications aerial more than 7 metres tall and attached to a building.
- The non-moving parts of a cable car attached to or servicing a building.
- After 30 March 2008, the moving parts of a cable car attached to or servicing a building.

The definition of 'building work' in the Building Act 2004 has been expanded to include work 'on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code'.

As well as including sitework, 'building work' now also includes building design that is declared through Order in Council to be restricted work. This means building consents will be required in situations where they may not previously have been required.

Example: Approval is granted for a subdivision which includes subdivisional drainage by a network utility operator. The invert levels are below the pile foundations of an existing dwelling on the site. As this work may affect the existing dwelling, a building consent is required for the work.

1.3 Transitional arrangements

The Building Act 2004 will be implemented over a period of 5 years.

There are three key dates on which various sections of the Act come into force. Appendix 2 to this document provides tables that can be used as a reference to the commencement dates for these sections.

Outlined below are the transitional provisions surrounding Act implementation, in order of commencement.

30 November 2004

- The Building Industry Authority ceased to exist and the transitional provisions surrounding the dissolution of the Authority and the regulation-making powers under the Building Act 2004 began. The provisions setting out the functions of the Chief Executive began, including the obligation to review the Building Code.
- The obligation of territorial authorities to adopt a policy within 18 months on dangerous, earthquake-prone or insanitary buildings began.
- Provisions under the licensing regime for building practitioners began.
- The Building (Forms) Regulations 2004 (except regulations 5 and 8 and Part 2 of the Schedule) came into force.

30 November 2004 – 31 March 2005

The Chief Executive performed the functions and duties, and exercised the powers of, the Authority under the Building Act 1991.

31 March 2005

- The Building Act 1991 was repealed. Apart from a few sections relating to Licensed Building Practitioners (LBPs), the rest of the Building Act 2004 came into force. This includes all the building control provisions relating to building consents, code compliance certificates and Compliance Schedules, including the transitional provisions.
- On 31 March the Building Regulations 1992 (except regulation 3 and the First Schedule) were revoked.

30 November 2004 – 31 May 2006

Territorial authorities and regional authorities must apply to register as building consent authorities (BCAs). Building certifiers approved under the Building Act 1991 may apply to be registered as BCAs.

31 May 2006

Territorial authorities must have adopted a policy on dangerous, earthquake-prone or insanitary buildings.

After 30 November 2007

Only BCAs registered under the Building Act 2004 may perform functions relating to building control.

30 November 2009

Restricted building work must be carried out or supervised by a Licensed Building Practitioner. On this date all the sections of the Building Act 2004 have come into force and the transitional period ends.

More detailed transitional provisions

These can be found in sections 429-450 of the Building Act 2004, which includes the transitional arrangements for:

- Determinations
- levies
- Project Information Memoranda and building consent applications made under the 1991 Act but not yet issued
- Notices to Rectify
- code compliance certificates
- Certificates of Acceptance
- Compliance Schedules
- Building Code Compliance Documents
- other matters.

2.0 RESPONSIBILITIES OF TERRITORIAL AUTHORITIES AND BUILDING CONSENT AUTHORITIES

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2.0

The Building Act 2004 creates three clearly defined operational roles. These are the territorial authority, the building consent authority, and the regional authority. (Note: the role of regional authorities is not discussed in this document.)

A territorial authority:

- must apply to be registered as a building consent authority by 31 May 2006
- may act as a building consent authority until that application for registration is approved or declined, or until 30 November 2007 (whichever comes first).

2.1 Role and responsibilities of a building consent authority

A building consent authority performs the following functions.

- Issues building consents (except consents subject to a waiver or modification).
- Inspects building work for which it has granted a building consent.
- Issues Notices to Fix.
- Issues code compliance certificates.
- Issues Compliance Schedules.

When issuing building consents, a building consent authority must provide to the New Zealand Fire Service Commission a copy of every application for a building consent of a kind specified by a *Gazette* notice (see the reference section in part 4).

Building consent authorities must ensure that:

- all prescribed forms meet the requirements as set out in the Building (Forms) Regulations 2004 and their amendments
- applications/certificates are completed in full.

2.2 Role and responsibilities of a territorial authority

A territorial authority must perform the functions of a building consent authority for its own district.

A territorial authority is now responsible for any coastal marine area adjacent to its district that is not within the district of another territorial authority, and a territorial authority must perform the functions of a building consent authority within this area.

In addition to these functions, a territorial authority performs the following functions (including any functions that are incidental and related to, or consequential upon these).

Issuing:

- Project Information Memoranda
- building consents where the consent is subject to a waiver or modification of the Building Code
- Certificates of Acceptance
- Compliance Schedules and amending Compliance Schedules.

A territorial authority also:

- follows up and resolves Notices to Fix
- administers annual Building Warrants of Fitness
- enforces the provisions relating to annual Building Warrants of Fitness
- decides the extent to which buildings must comply with the Building Code when they are altered, the use is changed, or their specified intended life changes
- performs functions relating to dangerous, earthquake-prone or insanitary buildings
- determines whether building work is exempt under Schedule 1 from requiring a building consent
- carries out any other functions and duties specified in the Building Act 2004.

Gaining accreditation

1. A territorial authority must act as a building consent authority within its district and for any coastal marine areas adjacent to its district that are not in any other TA's district.
2. It must apply to the Chief Executive of the Department of Building and Housing to be registered as a building consent authority.

3. In order to be registered, a territorial authority must first be accredited.
4. An application for accreditation is made to a building consent accreditation body.

The Chief Executive may appoint a building consent accreditation body that is responsible for:

- accrediting building consent authorities (sections 250-251)
- auditing accredited building consent authorities at least once every three years (section 249)
- determining the scope of accreditation for a building consent authority that is not a territorial authority or a regional authority (section 252)
- revoking the accreditation of a building consent authority in certain circumstances (section 254).

Keeping information

A territorial authority must keep for at least the life of the building any information that is relevant to the administration of this Act, including the following information.

- Plans and specifications in relation to building consent applications.
- Project Information Memoranda and building consents.
- The specified intended life of the building (if applicable).
- Code compliance certificates.
- Compliance Schedules.
- Building Warrants of Fitness.
- Copies of energy work certificates.
- District Court orders under section 126 (territorial authority having undertaken the work).
- Records of information on any land or building received by the territorial authority from a statutory authority.
- All information provided to the territorial authority by a building consent authority under section 238. (Information building consent authorities have provided in relation to the above.)

The following information must be available to the public and must be kept for 10 years.

- Summary of written complaints received by the territorial authority concerning alleged breaches of this Act or the former Act.
- Information on how the territorial authority dealt with the complaints.

Access to information

All of the information referred to above must be available on request to members of the public during ordinary office hours.

The only exception to this requirement is where the applicant, owner or subsequent owner for reasons of security of the building has marked plans or specifications as confidential.

A territorial authority must make photocopying facilities available to people who wish to access information as described above, and may charge a reasonable fee for the use of those facilities.

Providing information to the Chief Executive of the Department of Building and Housing

A territorial authority must provide information to the Chief Executive that is related to its functions, duties and powers under this Act, as prescribed by regulations.

Charges and levies

A territorial authority may impose a fee or charge for services provided under the Building Act 2004, and must collect the levy in relation to a building consent.

The amount of levy payable is \$2.01 (including GST) for every \$1,000 of the estimated value of building work, and is only payable if the total estimated value of building work is equal to or over \$20,000.

Power to carry out building work

Where building work is dangerous, insanitary or earthquake-prone, and the owner or responsible person has not taken corrective measures, a territorial authority can apply to the District Court for an order authorising the territorial authority to do the work.

Power to inspect and enter land

Sections 222 to 228 provide details of the powers of entry to undertake an inspection. These powers are largely similar to the powers territorial authorities had under the Building Act 1991. A clear reason for any inspection must be provided to the owner/occupier/builder.

Enforcement powers

The territorial authority may choose to warrant enforcement officers to issue infringement notices under section 372 of the Act. Infringement notices will be detailed by regulations during 2005 and are not discussed here.

2.3 Considerations for implementation

- Are all records relating to building work being kept for the life of the building?
- Are energy work certificates being collected and filed with the building consent documentation?
- Does the territorial authority keep a register or public record of written complaints relating to building control matters?
- Does the territorial authority's register or public record contain a summary of how the complaints were dealt with?

2.4 Future considerations

A building consent authority may also be an independent organisation and not part of a territorial authority.

An independent building consent authority performs the functions of a building consent authority, with some exceptions, including the following.

- It must obtain a Project Information Memorandum from the territorial authority.
- It must provide copies of all documentation referred to under the 'Keeping information' heading on page 6 to the territorial authority for the district within 5 working days after receiving or issuing such information.
- After issuing a Compliance Schedule they have 5 days to notify the territorial authority.



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- 3.6 Certificates of Acceptance 32**
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3.0

This section provides guidance on the operational functions in the Building Act 2004. This includes Project Information Memoranda, building consents, code compliance certificates, Compliance Schedules, Building Warrants of Fitness, Certificates of Acceptance, Notices to Fix and Certificates for Public Use.

It covers the new procedures and requirements under the Building Act 2004 while discussing all aspects of the functions ranging from how an application is made through to issuing the documentation. A question and answer section is provided at the end of each section. Future considerations will also be discussed.

3.1 Project Information Memoranda

Overview

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

A PIM is expected to have a more important role under the Building Act 2004 than it did previously, and there are some important new requirements to be aware of.

- The PIM must be issued within 20 working days of receiving an application.
- A PIM can be reissued where a territorial authority considers that an error or omission has occurred within the original processing time-frame.
- A PIM must notify the requirement to obtain an evacuation scheme under the Fire Service Act 1975, where necessary.
- A PIM must now include a statement that the New Zealand Historic Places Trust has been notified (where applicable).

- A territorial authority may attach a development contribution notice to a PIM.
- A certificate noting Resource Management Act requirements must be attached to the PIM. (This was required to be attached to the building consent under the Building Act 1991, not the PIM.)

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

- heritage status and special features (eg, natural hazards)
- relevant information from other Acts that has been notified to the territorial authority
- stormwater and wastewater utility systems
- details relevant to a network utility operator (eg, vehicle access).

Commencement

The PIM provisions of the Building Act 2004 came into force on 31 March 2005.

Location in Act

PROJECT INFORMATION MEMORANDA		
Location – Building Act 1991	Location – Building Act 2004	Description
PART V – Building work and use of buildings Project information memoranda	PART 2 – Building Subpart 3 – Building work Project information memoranda and building consents	Sections 30 and 31 of the Building Act 1991 – Project Information Memoranda are largely equivalent to sections 31–39 of the Building Act 2004.

APPLICATION FOR A PIM

When the application should be made

An owner can apply to a territorial authority for a PIM at any time if they are considering carrying out building work where a building consent is required.

Whenever a building consent authority (that is not a territorial authority) receives a building consent application it must apply for a PIM to the relevant territorial authority (unless a PIM for the relevant building work has already been obtained by the owner).

Who the application should be made to

An application for a PIM must be made to a territorial authority for the district in which the proposed building work is to be located.

What the application must include

This application must be on form 2 from the Building (Forms) Regulations 2004. It must include the details outlined in the 'forms' section of this document (see the reference section, part 4) and must also include the following information.

- Details of the location of building work.
- Description of building work.
- Change of use (if applicable).
- Estimated value of building work.
- Previous consents issued for the project, if applicable.
- Subdivision details.

The Building Act 2004 requires this form to be accompanied by:

- a charge fixed by the territorial authority
- any information the territorial authority reasonably requires in relation to authorisations or requirements in respect of:
 - the intended use of the proposed building
 - the location and external dimensions of the proposed building
 - provisions to be made for vehicle access in buildings over or adjacent to any road or public place, and for disposing of stormwater and wastewater
 - precautions to be taken if building work is carried out over any existing drains or sewers or in close proximity to wells or water mains

- any other information the territorial authority requires in respect of proposed connections to public utilities from the proposed building work.

Note: The application must include sufficient information to determine resource management issues. This would include contours, sunlight access planes etc.

PROCESSING A PIM APPLICATION

Processing time

Decision time: The territorial authority must issue the PIM **within 20 working days** of receiving the application.

Further information: There are two types of information that a territorial authority can request. The time period requirements are different for each type of information.

1. **Within 10 working days** of receiving the application, requests can be made for further information from the applicant, in relation to authorisations or requirements (intended use, location and dimensions, vehicle access and roading, stormwater and wastewater disposal, proximity to drains etc).
2. **Within the 20 working day period**, the territorial authority can also request information in respect of proposed connections to public utilities.

Where any of the information above is requested, the 20 working day period is then suspended until the territorial authority receives the information.

The PIM must be issued within 10 working days after the information is received.

Note: If a request for further information is made within the first 10 days after receiving the application, the total consideration time for the territorial authority will be reduced from the 20 days.

Matters for consideration

The territorial authority must advise the New Zealand Historic Places Trust **within 5 days** (not 5 working days) of receiving a PIM application that affects a registered historic place, historic area, waahi tapu or waahi tapu area. This only applies where a PIM has not previously been issued for the building work.

Recommendations

It will be to the territorial authority's advantage to process the PIM application within the first 10 working days, for two reasons.

1. Requirements for further information can be identified early, and requests made within the 10-day period.
2. Prompt PIM processing will assist the consent issuing process.

ISSUING A PIM

Who can issue

Only a territorial authority for the district in which the proposed building work is to be situated can issue a PIM. Once a building consent authority has received a PIM from a territorial authority, it must provide a copy to the owner.

When to issue

The PIM must be issued within 20 working days from the date of receiving the application, or within 10 days after any further information has been received.

Content

The PIM must include all the information likely to be relevant to the proposed building work that was formerly required under the Building Act 1991, including:

- information identifying each special feature of the land concerned (if any)
- information that, in terms of any other Act, has been notified to the territorial authority by a statutory authority
- details of existing stormwater or wastewater utility systems on, or adjacent to, the site of the proposed building work
- details of authorisations (including requirements to be met and conditions) in respect of the proposed building work that the territorial authority, on its own behalf and on behalf of any network utility operator, is authorised to refuse or require under any other Act
- either confirmation that the building work may be carried out subject to the requirements of a building consent and subject also to all other necessary

authorisations being obtained OR notification that building work may not be carried out because any necessary authorisation has been refused, despite the issue of any building consent

- if the PIM relates to the construction of a building on land composed of two or more allotments, the statement referred to in section 75(2)

plus, where applicable:

- information regarding the heritage status of the building
- a statement, if the building is of historic nature, that the New Zealand Historic Places Trust will be (or has been) notified
- if the owner of the building is likely to be required to make provision for an evacuation scheme under section 21A of the Fire Service Act 1975, a statement to that effect (see part 4, references)
- a notice under section 36 advising that a development contribution under the Local Government Act 2002 will need to be paid before a code compliance certificate can be issued
- a certificate under section 37 stating that building work may not proceed until a resource consent has been obtained, or may only proceed to the extent stated in the certificate (under the Building Act 1991 this certificate was attached to a building consent not a PIM).

Matters for consideration

In some cases a PIM for a building site might already exist (for example, where multiple units are to be constructed). If the territorial authority considers the existing PIM contains an error or omission, or the territorial authority receives any information that affects the existing PIM, the territorial authority may reissue a PIM within the periods outlined in the **processing section** (see page 12).

If the territorial authority has an agreement with a network utility operator (NUO) to act as their agent (s35(1)(d)), any relevant information must be disclosed.

CONSIDERATIONS FOR IMPLEMENTATION

- Is there a process in place to check the PIM application against the requirements of the District Plan?
- Is there a process in place to check whether the proposed building work comes into a category that might require an evacuation scheme under the Fire Safety and Evacuation of Buildings Regulations 1992?
- Is there a process in place to link development contributions to the PIM process?
- Is there a standard note added to the PIM template reminding the applicant of the section 363 offence to permit the use of public premises affected by building work that has no building consent, certificate for public use or code compliance certificate?

QUESTIONS AND ANSWERS

- Q.** What should a territorial authority do with applications for PIMs made under the 1991 Act that are still being processed?
- A.** The territorial authority must treat these applications as if they were made under the Building Act 2004. Therefore, the new deadlines in relation to that application apply instead of those in the Building Act 1991/Building Regulations 1992, and additional information may need to be provided.

3.2 Building consents

Overview

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

A person cannot carry out building work except in accordance with a building consent. There are some exceptions to when a building consent is required (see section 41 of the Building Act 2004), but section 17 still requires building work to be carried out in accordance with the Building Code even if no building consent is required.

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

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

Another significant change is the need to consult with the New Zealand Fire Service Commission on some building consent applications as specified by *Gazette* (see references section). This will require a system to identify and separately process New Zealand Fire Service Commission applications so that the time-frames within the Act are not exceeded.

Building consent authorities should become familiar with these changes from the Building Act 1991 to ensure they give correct advice as to when building work will or will not require a building consent.

Commencement

The building consent provisions came into force on 31 March 2005.

Location in Act

BUILDING CONSENTS		
Location – Building Act 1991	Location – Building Act 2004	Description
PART V – Building work and use of buildings	PART 2 – Building Subpart 3 – Building work Project information memoranda and building consents	Sections 32–35 and 41(1) of the Building Act 1991 concerning building consents are equivalent to sections 40–52 of the Building Act 2004.

APPLICATION FOR BUILDING CONSENT

When the application should be made

When an owner intends to carry out building work they must apply for a building consent before the work begins. (A building consent is not required in some cases; see sections 41 and 43 and Schedule 1 of the Act.)

Who the application should be made to

An application for a building consent must be made to a building consent authority that is authorised within the scope of its accreditation and registration to grant a building consent for the proposed building work.

What the application must include

This application must be on form 2 from the Building (Forms) Regulations 2004. This must include the details outlined in the 'forms' section of this document (see the reference section, part 4) and must also include the following information.

- Clauses of the Building Code complied with.
- Waivers/modifications to Building Code Clauses, and the reasons for this.
- Development notice on form 3 from the Building (Forms) Regulations 2004, if applicable.

The Building Act 2004 requires this form to be accompanied by:

- the charge fixed by the building consent authority
- the plans and specifications required by regulations, or if there are no requirements in regulations, then as required by the building consent authority
- the PIM, where the owner has previously applied for one, plus any development contribution notice, and any resource consent certificate attached under section 37 and issued with the PIM
- a list of the specified systems for the building (from the Compliance Schedule) whether the systems are existing, new, altered or removed
- any other information the building consent authority reasonably requires.

Matters for consideration

Staged consents

An owner may make a series of building consent applications for stages of the proposed building work. This may be useful where the scope of the work can be clearly defined in each case. Where an owner wishes to occupy parts of the building during construction they may apply to the territorial authority for a 'certificate for public use'. This would avoid the owner being in breach of section 363 of the Building Act. Staged consents may also be useful where household units may be subject to section 364 (sale by residential property developer).

Producer Statements

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

Amendments

It is important that any changes to the building work that affect compliance with the Building Code are properly dealt with by an application to amend the building consent. This is because a code compliance certificate is issued by a building consent authority if the building work complies with the building consent.

PROCESSING A BUILDING CONSENT

Processing time

A building consent authority has **20 working days** from the date the application for a building consent was received to decide whether to refuse or grant the application.

Further information: A building consent authority may request more information in respect of the application within 20 working days from the date the application was received.

If a request is made, the 20-working-day period is suspended until the building consent authority receives this information.

Note: This time is not suspended if the application has to go to the New Zealand Fire Service Commission.

Matters for consideration

New Zealand Fire Service Commission

The building consent authority must forward certain applications, which have been specified by the Chief Executive of the Department of Building and Housing in a *Gazette* notice (see reference section in part 4), **upon receipt** to the New Zealand Fire Service Commission.

The New Zealand Fire Service Commission may provide the building consent authority, **within 10 working days**, with a memorandum in the building consent application advising on the provisions for means of escape from fire and the need for people authorised by law to enter the building for firefighting.

The New Zealand Fire Service Commission must not give advice in the memorandum that requires the building to meet performance criteria that exceed the requirements of the Building Code. If the New Zealand Fire Service Commission does not provide the memorandum within the 10 working days, the building consent authority may proceed to determine the application without it.

ISSUING A BUILDING CONSENT

Who can issue

Only a building consent authority that is authorised within the scope of its accreditation and registration to grant a building consent can issue a building consent.

When to issue

The building consent authority must grant the consent if it is satisfied on reasonable grounds that the provisions of the Building Code will be met if the building work is completed in accordance with the plans and specifications.

The building consent authority is not required to grant the consent until the charge fixed for the consent and the building levy are both paid.

If the building consent is refused, the building consent authority must write to the applicant and state the reasons. This must be done within the 20-working-day time-frame.

Content

A building consent must be issued on form 5 from the Building (Forms) Regulations 2004. This must include the details outlined in the 'forms' section of this document (see the reference section, part 4) and must also include the following information.

- Details of the location of the building work (must align with PIM).
- If a Compliance Schedule or an amendment to an existing Compliance Schedule is required as a result of building work, the consent must state the specified systems that must be covered by the Compliance Schedule.
- If the building work has a specified intended life, the consent must specify certain conditions that must be complied with at the end of that specified life (eg, alteration, demolition or removal).
- Any other conditions.

The Building Act 2004 requires this form to be accompanied by:

- the PIM
- the development contribution notice (section 36) (if any)
- the section 37 certificate (if any).

Matters for consideration

The building consent authority must take into account:

- any memorandum from the New Zealand Fire Service Commission
- any warning or ban on a building product or method to be used. If a ban has been imposed, a consent cannot be granted (see section 28(2) of the Building Act 2004).

If a building consent authority that is not a territorial authority does not receive a PIM from the territorial authority within 20 working days, that building consent authority may issue a building consent (if all other information has been obtained, provided, processed and approved).

When the building consent authority that is not a territorial authority receives the PIM, it must provide a copy to the owner, together with any development contribution notice and any section 37 certificate.

ALTERATIONS

The provision for building alterations in the Building Act 2004 is very similar to the provision that appeared in the Building Act 1991. The consent can only be granted where the building consent authority/territorial authority is satisfied that:

- the building will comply as nearly as is reasonably practicable with the Building Code provisions for means of escape from fire and access and facilities for people with disabilities (if required)
- the building will continue to comply with the other provisions of the Building Code to at least the same extent as before the alteration.

Some changes have been made.

- Building consent authorities are allowed to grant a building consent for the alteration of an existing building.
- The Building Act 2004 clarifies that if part of a building is altered, the upgrade provisions are triggered for the whole building.

Perhaps the most significant change is that a territorial authority may, by written notice, grant an application to allow alterations to take place without the building complying with the relevant provisions of the Building Code. A territorial authority can only grant such an application if it is satisfied that:

- if the building were to comply with the relevant provisions of the Building Code the alteration would not take place
- the alterations will result in improvements to the means of escape from fire or access and facilities for people with disabilities
- the improvements outweigh any detriment likely to arise as a result of the other non-compliance with the Code.

Although not a requirement of the Act, a territorial authority should have a policy on how it will exercise this new discretionary power.

CHANGE OF USE, EXTENSION OF LIFE AND SUBDIVISION

An owner of a building must give written notice to the territorial authority if they propose to change the use of a building, or extend the life of a building with a specified intended life. Notice must also be given if the owner of a building proposes to subdivide land in a manner that affects a building. If the owner fails to give written notice in these circumstances they commit an offence and are liable to a maximum fine of \$5,000.

Change of use

An owner of a building must not change the use of a building unless the territorial authority gives the owner a written notice stating that the territorial authority is satisfied that the building in its new use will comply with the provisions of the Building Code that relate to:

- means of escape from fire, protection of other property, sanitary facilities, structural performance, fire-rating performance
- access and facilities for people with disabilities.

It must also comply with the other provisions of the Building Code to at least the same extent as before the change of use.

If the use of a building is being changed to include household units where these did not previously exist, the building must then comply as nearly as is reasonably practicable with the Building Code in all respects. This will require a significant assessment of the existing building across all relevant aspects of the Building Code, and decisions will need to be made about what constitutes 'as nearly as is reasonably practicable' about a range of Code Clauses.

Specified intended life

The specified intended life provisions are the same as in the Building Act 1991. These provide that only a territorial authority can grant a building consent for a building with a specified intended life. This is on the condition that the building must be altered, removed or demolished before the end of the specified life and any other conditions the territorial authority considers necessary.

Extension of life

Where a building consent has been issued subject to the condition that the building must be altered on or before its specified intended life (imposed under section 113(2) of the Building Act 2004 or section 39(1) of the Building Act 1991) the life of such a building may not be extended unless written consent is obtained from the territorial authority. The territorial authority can only give its consent if it is satisfied that the building has been altered in accordance with the condition and it will comply with section 112 of the Building Act 2004.

Subdivision

A territorial authority must not issue a certificate under section 224(f) of the Resource Management Act 1991 for the purposes of giving effect to a subdivision affecting a building or part of a building unless it is satisfied, on reasonable grounds, that the building will comply, as nearly as is reasonably practicable, with every provision of the Building Code that relates to one or more of the following.

- Means of escape from fire.
- Access and facilities for people with disabilities (if this is a requirement for the building).
- Protection of other property.

The building must also continue to comply with the other provisions of the Building Code to at least the same extent as before the subdivision application was made.

CONSIDERATIONS FOR IMPLEMENTATION

- Has a bring-up system been implemented so that consents issued after 31 March 2005 can be followed up?
- Is there a process in place to link building consent applications to the Compliance Schedule/Building Warrant of Fitness processes?
- Does the territorial authority have a policy in place on how discretion will be exercised where an alteration is allowed without upgrading means of escape from fire or access and facilities for people with disabilities?

QUESTIONS AND ANSWERS

- Q.** What happens to an application for a building consent that was made before 31 March 2005, but where the building consent was not issued by that date?
- A.** From 31 March 2005 an application for a building consent must be treated as an application under section 45 of the Building Act 2004 (see section 432(2)(b)).
- Q.** What happens to a building consent granted before 31 March 2005 under section 34 of the Building Act 1991?
- A.** From 31 March, such a building consent must be considered as if it were a building consent granted under section 49 of the Building Act 2004 (see section 433(1)). However, the time-frames in which to decide whether to issue a code compliance certificate in section 93 do not apply (see section 433(2)), and the code compliance certificate should be issued against the Building Code at the time the consent was granted (see section 436).

FUTURE CONSIDERATIONS

From 30 November 2009, if an application for a building consent relates to restricted building work the name of the Licensed Building Practitioner carrying out or supervising that work must be stated in the application (see section 45(1)(e) of the Act).

From 30 November 2009, any plans and specifications used in an application for a building consent in relation to restricted building work must be prepared by and certified, or under the supervision of, one or more Licensed Building Practitioners. These must be Licensed Building Practitioners whose licences authorise them to certify the plans and specifications (see section 45(2)-(4) of the Act).

See the reference section (part 4) of this document for the definition of restricted building work.

3.3 Code compliance certificates

Overview

A code compliance certificate is a formal statement, under section 95 of the Building Act 2004, that building work carried out under a building consent application complies with that building consent.

The Building Act 2004 introduces a number of changes surrounding the application for, and processing and issuing of code compliance certificates. Major changes include that:

- the code compliance certificate is issued if the building work complies with the building consent
- only the building consent authority that granted the building consent can issue the code compliance certificate (unless an agreement is made)
- at the expiry of 2 years from the date the consent was granted the building consent authority must decide on whether to issue a code compliance certificate. The decision must be made within 20 days of the expiry (or a further agreed period).
- interim code compliance certificates can no longer be issued
- it is an offence to use or permit the use of public premises affected by building work that has no code compliance certificate, or certificate for public use
- it is an offence for a residential property developer to transfer a household unit without a code compliance certificate. This does not apply to contracts entered into prior to 30 November 2004.

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

Building consent authorities will need to be proactive in the way they manage the issuing of code compliance certificates. This will include establishing clear expectations with applicants who apply for a building consent, and developing a clearly documented and transparent process for managing code compliance certificates.

Building owners, occupiers or controllers will need to ensure any building work affecting public premises has a code compliance certificate or a certificate for public use before the part of the premises affected by the building work is used by members of the public. Any outstanding building work that was started or consented before 31 March 2005 has until 31 March 2010 to obtain either a code compliance certificate or a certificate of acceptance.

These changes will have a significant impact on the operational activities of a building consent authority.

Commencement

The code compliance certificate provisions under the Building Act 2004 came in to force on 31 March 2005.

Location in Act

CODE COMPLIANCE CERTIFICATES		
Location – Building Act 1991	Location – Building Act 2004	Description
PART V – Building work and use of buildings Notices of rectification	PART 2 – Building Subpart 3 – Building work Code compliance certificate, certificates of acceptance, and compliance schedules	Section 43 of the Building Act 1991 concerning code compliance certificates is equivalent to Part 2, Subpart 5, sections 91–95 of the Building Act 2004.

APPLICATION FOR CODE COMPLIANCE CERTIFICATE

When the application should be made

The owner must apply for a code compliance certificate after all work set out in the building consent approval has been completed.

If no application is made before the expiry of 2 years from the date the building consent was granted, the building consent authority must decide whether to issue the code compliance certificate.

The building consent authority and the owner can agree to extend the time-frame above.

Recommendation: The building consent authority should make clear to the applicant at the time the building consent is granted that:

- the applicant has an obligation to apply for a code compliance certificate on completion of the building work
- the building consent authority must decide within 2 years whether to issue the code compliance certificate.

Who to make the application to

The owner must apply to the building consent authority that granted the building consent for a code compliance certificate. However, an agreement can be made between the owner and another building consent authority for that building consent authority to issue the code compliance certificate.

What the application must include

This application must be on form 6 from the Building (Forms) Regulations 2004. This must include the details outlined in the 'forms' section of this document (see the reference section, part 4) and must also include the following information.

- Evidence of ownership (Certificate of Title, lease, sale and purchase agreement).

- Details of authority from the owner if an agent of an owner applies for the code compliance certificate.
- Details of the people who undertook the work, including registration numbers if applicable.

The Building Act 2004 requires this form to be accompanied by certificates relating to any gas fitting or prescribed electrical work (energy work) that has been carried out.

PROCESSING AN APPLICATION FOR CODE COMPLIANCE CERTIFICATE

Processing time

The building consent authority has 20 working days in which to decide whether to issue the code compliance certificate, following either:

- the application for a code compliance certificate, or
- expiration of the two-year or agreed period since the date the building consent was granted (if no application has been made).

If either party considers 20 working days to be insufficient time, the building consent authority and the owner may agree on a further period of time. The building consent authority must then decide whether to issue a code compliance certificate within the agreed time-frame.

Further information

Within the 20 working days or agreed period, the building consent authority can reasonably request further information in respect of the application for a code compliance certificate. If this is the case, then the time period is suspended until the building consent authority receives that information.

Recommended procedure

There is now a prescribed time period in which a building consent authority has to decide whether to issue a code compliance certificate. The building consent authority should therefore develop a formal procedure to follow in the case where no application for a code compliance certificate has been made. This could include the following steps.

1. **Two months prior to the expiry of the application period.** The owner should be contacted (eg, by phone, letter or a visit). This contact should establish whether the work has been completed and if the owner intends to apply for a code compliance certificate before the application period expires. The contact should convey several key messages.
 - The two-year period is due to expire in 2 months.
 - The decision to issue a code compliance certificate can be made by the building consent authority within 20 working days of the expiry date.
 - There is an option to make an agreement with the building consent authority to arrange a further time period in which to apply for the code compliance certificate.
2. **One month prior to the expiry date.** Where no response from the owner is received or where the owner's intention has not been made clear, a follow-up should be made.
3. **Application period has expired.** If the owner's intention is not clear, contact with the owner should be made and the building work inspected before 20 working days have passed. As a result of this inspection, one of the following decisions concerning the code compliance certificate should be made.
 - Where the building work complies with the building consent, the code compliance certificate can be issued.
 - A building consent authority can refuse to issue a code compliance certificate if the work does not comply with the consent, or an energy work certificate has not been provided, or a development contribution has not been paid.
 - A building consent authority can request further information about the building work during the 20-day period (eg, where the building work could not be sufficiently inspected). The assessment period is suspended until the information has been received.
 - If contact is made with the owner, the building consent authority can reach an agreement with the owner that a further period of time can be allowed before a decision on a code compliance certificate is made.

Comment

It must be made clear to the owner that if they do not supply the requested information it may not be possible to issue a code compliance certificate.

ISSUING A CODE COMPLIANCE CERTIFICATE

Who can issue

Only a building consent authority can issue a code compliance certificate. This building consent authority must have granted the building consent. Another building consent authority may issue a code compliance certificate, but only if both the owner and that building consent authority agree.

When to issue

Once any fees (including any development contribution owing) have been paid and all matters outlined below have been considered, the building consent authority must issue a code compliance certificate on form 7 of the Building (Forms) Regulations 2004 including the details outlined in the 'forms' section of this document (see part 4, references).

Matters for consideration

Offences

It is now an offence to use, or permit to be used, public premises that are affected by building work that do not have a building consent, code compliance certificate or Certificate for Public Use. There is a transitional provision for building work consented or started before 31 March 2005 that affects public premises, so that section 363 does not apply until 31 March 2010.

It is also an offence for a property developer to transfer a household unit without a code compliance certificate. This does not apply where the sale and purchase agreement was entered into prior to 30 November 2004 (see part 4, offences).

Building consent authorities will need to be aware of the offences and, where possible, alert building owners and residential property developers to these offences.

Building consent

The building work to which the code compliance certificate relates must comply with the building consent.

Compliance Schedules and Compliance Schedule Statement

If a Compliance Schedule (whether new or amended) is required as a result of building work, the building consent authority must issue that Compliance Schedule with the code compliance certificate.

Where a Compliance Schedule has been issued for the first time, the territorial authority must issue a Compliance Schedule Statement before or with the code compliance certificate. This statement replaces the Statement of Fitness required by the Building Act 1991, and states that all the systems and features listed in the Compliance Schedule are functioning at the date of issue.

Where a Compliance Schedule is new or has been amended as a result of building work, or where a Compliance Schedule Statement is being issued, the building consent authority must be satisfied on reasonable grounds (eg, through statements from independent qualified persons) that the specified systems meet the performance standards set out in the building consent before they issue the code compliance certificate.

Warnings and bans (see part 4 of this booklet)

A building consent authority must not issue a code compliance certificate for building work if doing so results or could result in a person breaching a ban made by the Chief Executive on a building method or product.

Energy work

The application for a code compliance certificate must include certificates relating to any gas fitting work or prescribed electrical work. Failure to provide an energy work certificate is sufficient reason for the building consent authority to refuse to issue a code compliance certificate.

Development contribution

(see references section in part 4)

Payment of any required development contribution must be made prior to issuing the code compliance certificate. Alternatively, a copy of a written agreement between the owner and the territorial authority can be made stating that the code compliance certificate may be issued.

CONSIDERATIONS FOR IMPLEMENTATION

- Is there a process in place to ensure a copy of the building consent documents will be on site for building officials to check when doing inspections and undertaking a final inspection for a code compliance certificate?
- Has a process been set up to proactively follow up on building consents within the two-year period?
- Is there a process in place to check specified systems prior to issuing a code compliance certificate?
- Is there a process in place to issue a Compliance Schedule Statement (previously the Statement of Fitness) with the code compliance certificate and Compliance Schedule?
- Is there a process in place to check that the development contribution has been paid prior to issuing a code compliance certificate?

QUESTIONS AND ANSWERS

- Q.** How should an application be dealt with for a code compliance certificate made after 31 March 2005 in respect of building work carried out under a building consent granted under the Building Act 1991?
- A.** An application of this sort must be considered and determined as if the Building Act 2004 had not been passed and section 43 of the Building Act 1991 remains in force, but with two changes.
- A code compliance certificate may be issued only if the territorial authority is satisfied that the building work concerned complies with the Building Code that applied at the time the building consent was granted.
 - Interim code compliance certificates can no longer be issued.
- Q.** What happens to code compliance certificates already issued under the Building Act 1991?
- A.** A code compliance certificate issued under section 43 of the Building Act 1991 has effect as if it had been issued under section 95 of the Building Act 2004.

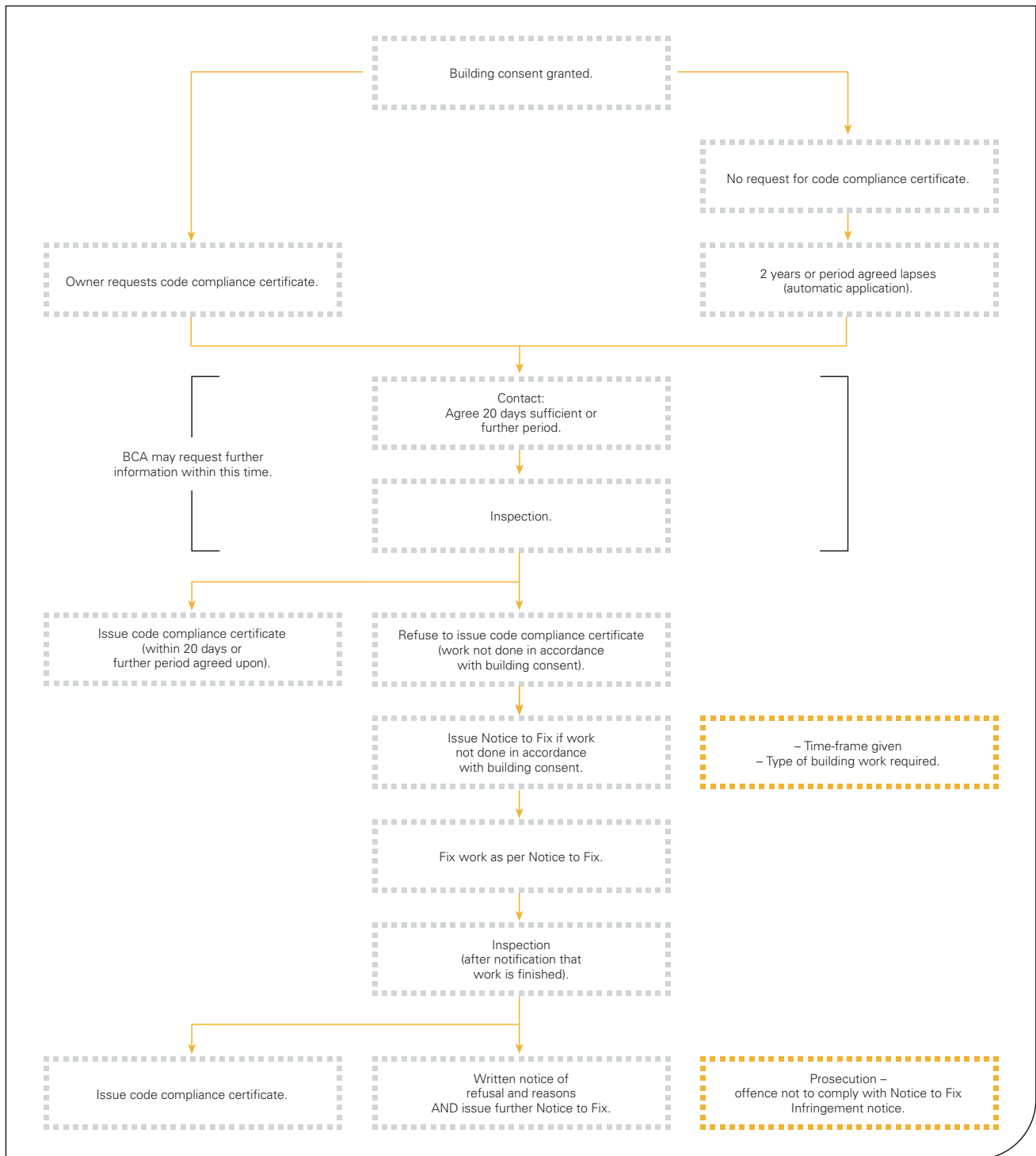
- Q.** What happens if a request for a code compliance certificate has been made, but the work has not been carried out in accordance with the approved building consent?
- A.** There may be several ways to deal with this situation, depending on the circumstances involved. The following could be required by a Notice to Fix depending on the circumstances.
- A building consent be applied for to carry out remedial work (see Notice to Fix section in this document).
 - An amendment to the existing consent be applied for.
 - Work be done in accordance with the consent.
 - The building work be removed.
 - Owner instructed to apply for a Certificate of Acceptance.
- Q.** What happens if at the time of a final inspection other work has been done that did not have a consent?
- A.** Issue a Notice to Fix to the specified person. The notice could provide options about how they may remedy a problem. For example, if building work is not in accordance with the current consent, a responsible authority could give the owner three options:
- remove the building work (to the extent necessary) and comply with the current consent
 - remove the building work (to the extent necessary) and apply for an amendment to the consent
 - apply for a Certificate of Acceptance for the non-compliant work and apply to amend the consent to remove such work from its scope.
- Q.** What happens if the Building Code or Compliance Documents (including Acceptable Solutions) change while the work authorised by a building consent is being undertaken?
- A.** For building consents issued after 31 March 2005, the building work must comply with the consent documents. Therefore, changes to the Building Code or Compliance Documents in the interim do not apply.
- Q.** Can territorial authorities still issue an interim code compliance certificate after 30 March 2005?
- A.** No. There are no provisions to issue interim code compliance certificates under the Building Act 2004.
- Q.** From what date can an offence under section 363 occur?
- A.** If the building work affecting the premises started or the consent was issued before 31 March 2005, the offence applies from 31 March 2010 (section 363B(1)). If the consent was issued or the work started after 31 March 2005, the offence applies from 31 March 2005.

FUTURE CONSIDERATIONS

When the Licensed Building Practitioner scheme comes into force, applications for code compliance certificates must include certificates issued by Licensed Building Practitioners that state:

- for new Compliance Schedules required as a result of restricted building work, that the specified systems in the building are capable of performing to the performance standards set out in the building consent
- for an amendment to an existing Compliance Schedule required as a result of restricted building work, that the specified systems that are being altered in, or added to, the building are capable of performing to the performance standards set out in the building consent.

Building compliance process



3.4 Compliance Schedules

Overview

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

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

The requirements for a Compliance Schedule in the Building Act 2004 are broadly similar to those in the Building Act 1991. However, the new Act allows more options for the administration of Compliance Schedules by territorial authorities and, significantly, the ability to charge a fee for services. New requirements include that:

- the administration of Compliance Schedules may be split between a building consent authority that is not a territorial authority, and a territorial authority
- a building consent authority issues a Compliance Schedule
- a building consent authority can charge a fee for issuing a Compliance Schedule
- a building consent authority must state in a building consent the specified systems that will be covered by a Compliance Schedule

- a Compliance Schedule must be issued with the code compliance certificate, where applicable
- building consent authorities that are not territorial authorities have 5 days after issuing a Compliance Schedule to notify the territorial authority that the Compliance Schedule has been issued
- a territorial authority and a building owner can agree to amend a Compliance Schedule as required, at any other time
- territorial authorities can charge a fee for issuing an amended Compliance Schedule
- after 31 March 2008, all buildings serviced by or attached to cable cars will require a Compliance Schedule
- a Statement of Fitness is now a Compliance Schedule Statement.

The Compliance Schedule has been made more flexible to reflect that as systems age, monitoring and maintenance requirements change.

Commencement dates

Although the majority of the Compliance Schedule provisions came into force on 31 March 2005, the inclusion of cable cars into Compliance Schedules is not required until 31 March 2008.

Location in Act

COMPLIANCE SCHEDULES		
Location – Building Act 1991	Location – Building Act 2004	Description
PART V Use of buildings Section 44	PART 2 Subpart 5 Section 100–107 Compliance schedules	Section 100–107 of the Building Act 2004 concerning Compliance Schedules is equivalent to section 44 Compliance Schedules of the Building Act 1991.

APPLICATION FOR A COMPLIANCE SCHEDULE

When should an application be made?

The application should be made as part of the building consent application, where building work includes specified systems within a building.

Where an application for a building consent involves building work in an existing building, and that work includes modifying or adding to the specified systems, that work will require an amendment to an existing Compliance Schedule.

How should the application be made?

An application for a new Compliance Schedule must be made as part of the application for a building consent.

What the application must include

The application should list each specified system or, if the building work is an amendment to an existing building, the application should list all specified systems in any way affected by the building work.

What is a specified system?

The 2004 Act defines a specified system as a system or feature that is:

- contained in a building
- contributes to the proper functioning of the building (eg, a sprinkler system)
- declared by the Governor-General, by Order in Council, to be a specified system for the purpose of this Act.

Regulation 4 and Schedule 1 of the Building (Specified Systems, Change the Use, and Earthquake-Prone Buildings) Regulations 2005 list the specified systems. Some examples of these are:

- automatic systems for fire suppression
- automatic or manual emergency warning systems for fire or other dangers
- electromagnetic or automatic doors or windows

- emergency lighting systems
- escape route pressurisation systems
- riser mains for use by fire services
- automatic back-flow preventers connected to a potable water supply
- lifts, escalators, travelators or other systems for moving people or goods within buildings
- mechanical ventilation or air conditioning systems.
- building maintenance units providing access to exterior and interior walls of buildings
- smoke control systems
- emergency power systems for, or signs relating to, any of the above systems.

ISSUING COMPLIANCE SCHEDULES

Who can issue

A building consent authority issues a new Compliance Schedule, or an amendment to an existing Compliance Schedule, with a code compliance certificate.

When to issue

A building consent authority must issue a Compliance Schedule with a code compliance certificate, where applicable.

Matters for consideration

Fees

A building consent authority can charge a fee for issuing a Compliance Schedule.

Notification to territorial authority

Building consent authorities that are not territorial authorities have 5 days after issuing a Compliance Schedule to notify the territorial authority.

Cable cars

Cable cars were not previously considered a specified system; however, after 31 March 2008 a Compliance Schedule must be issued for a building that has a cable car attached to it, or if it is serviced by a cable car.

AMENDING COMPLIANCE SCHEDULES

An amendment to a Compliance Schedule may be triggered by:

- a building consent application
- the request of a building owner
- the decision of the territorial authority at any time
- a suggestion from an independent qualified person (IQP) or a Licensed Building Practitioner (LBP).

When an application is made to amend a Compliance Schedule, the territorial authority may wish to consider whether that change has been brought about by building work that should have had a building consent, or will require one.

Territorial authorities will retain responsibility for making and considering recommendations for amending existing Compliance Schedules when a building consent application has not affected the change.

A territorial authority is responsible for considering recommendations made by an IQP or LBP for amending existing Compliance Schedules.

Where an IQP or LBP recommends an amendment to a Compliance Schedule, the owner has the right to make submissions and enter into dialogue with the territorial authority before the territorial authority makes its decision on whether to accept or refuse the recommendation.

Territorial authorities can charge a fee for issuing an amended Compliance Schedule.

An application for an amendment to a Compliance Schedule must be made on form 11 of the Building (Forms) Regulations 2004. This must include the details outlined in the 'forms' section of part 4 and the following information must be supplied.

- The location of the particular building.
- The owner of the building, including evidence of ownership.
- A copy of the existing Compliance Schedule.
- The specified system that the amendment is for.
- The reason for amendment.

CONSIDERATIONS FOR IMPLEMENTATION

- Is there a process in place to identify cable cars to enable the issuing of Compliance Schedules after 31 March 2008 to properties that have them?
- Is there a process in place to review and amend Compliance Schedules?
- Is there a process in place to issue a Compliance Schedule Statement?

RECOMMENDATIONS

Processes need to be put in place to vet any proposed changes to Compliance Schedules. This process should ensure changes do not lead to a situation where the building no longer complies with the Building Code or where faults in the systems could be left undetected for long periods of time.

Before a code compliance certificate is issued, a building consent authority must be satisfied that the specified systems are capable of performing to the performance standards set out in the building consent. A building consent authority could ask an applicant to provide some sort of information from an IQP or LBP so that it can be satisfied that the specified systems meet this test.

Audit

There may be buildings within the territorial authority district that have not had their Compliance Schedule updated since issue. The Building Act 2004 provides for the territorial authority to be proactive in inspecting these buildings and reviewing the Compliance Schedule. The territorial authority could adopt a policy to proactively review a percentage of buildings with Compliance Schedules each year. The policy could identify buildings that either have had no building work done for an extended period of time or where the Building Warrant of Fitness and Compliance Schedule have not been reviewed for an extended period of time.

It would be appropriate for the territorial authority to audit the Compliance Schedule and Building Warrant of Fitness for a building that the territorial authority is investigating for being dangerous, earthquake-prone or insanitary.

3.5 Building Warrants of Fitness

Overview

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

The requirements in the Building Act 2004 for BWoFs are similar to those of the Building Act 1991.

Important changes include that:

- an owner must provide to the territorial authority, with their BWoF, copies of Form 12A certificates from IQP/LBPs, including any recommendations made by the IQP/LBP
- the territorial authority must retain copies of the Form 12A certificates

- the territorial authority must consider any recommendation to amend a Compliance Schedule made by an IQP/LBP and where necessary make any changes to the Compliance Schedule after giving the owner an opportunity to provide comments
- after 31 March 2008, all buildings serviced by, or attached to, cable cars will require a BWoF
- a territorial authority can now charge a fee for undertaking a BWoF inspection.

Once a Compliance Schedule is issued, the territorial authority undertakes all subsequent functions associated with a BWoF. Unless a new building consent is sought from a building consent authority that is not a territorial authority, only the territorial authority can alter a Compliance Schedule associated with a BWoF.

Commencement

The BWoF provisions came into force on 31 March 2005.

Location in Act

BUILDING WARRANTS OF FITNESS		
Location – Building Act 1991	Location – Building Act 2004	Description
PART V – Use of buildings Section 45	PART 2 – Building Subpart 3 – Building work Sections 108–111	Part V, section 45 of the Building Act 1991, Building Warrants of Fitness, is equivalent to Part 2, Subpart 5, sections 108–111 of the Building Act 2004.

SUPPLYING A BUILDING WARRANT OF FITNESS

Who must supply

A building owner must supply a BWoF.

When to supply

The owner must supply the BWoF to the territorial authority on each anniversary of the issue of the Compliance Schedule.

Content

A BWoF must be supplied on form 12 of the Building (Forms) Regulations 2004. It must include the details outlined in the 'forms' section of this document (see the reference section, part 4) and must also include the following information.

- The location of the particular building.
- Current lawfully established use including number of occupants per level and per use (if more than one).
- The owner of the building.
- Original date the building was constructed.
- The highest fire risk category for building use.
- Certificates relating to inspections, maintenance and reporting.

The Building Act 2004 requires that:

- the BWoF must state that the inspection, maintenance and reporting procedures of the Compliance Schedule have been fully complied with for the previous 12 months
- a copy of each certificate issued by the IQP or LBP for each of the specified systems, along with any recommendations for amending the Compliance Schedule, must be attached to the BWoF provided to the territorial authority
- the owner must use the prescribed BWoF form in the Building (Forms) Regulations 2004, providing all the information and attachments required in that form.

Matters for consideration

Building owners will be required to continue to engage IQPs or LBPs to undertake the inspection, maintenance and reporting procedures listed on the Compliance Schedule.

Certificate of compliance (Form 12A)

IQPs or LBPs can provide building owners with a certificate verifying the inspection, maintenance and reporting procedures for each specified system have been fully complied with. IQPs/LBPs will issue the certificates on Form 12A of the Building (Forms) Amendment Regulations 2005 (certificate of compliance with inspection, maintenance and reporting procedures).

THE ROLE OF THE TERRITORIAL AUTHORITY

Document review

The territorial authority should review the IQP/LBP documents provided with a BWoF.

Where any recommendations have been made by an IQP/LBP, the territorial authority must determine whether the Compliance Schedule needs to be amended, based on those recommendations.

Inspections

The Act provides for the territorial authority to proactively check a building to ensure a BWoF is correct, and that IQP/LBP reports are correct.

The territorial authority can now charge for this inspection.

A territorial authority may authorise an agent to undertake this inspection work.

Procedures

A territorial authority should have procedures in place for:

- checking BWoF documentation provided
- considering recommendations made by the IQP/LBP
- inspecting buildings that have BWoFs.

Comments

If the owner requests a change to the inspection, maintenance and reporting procedures of the Compliance Schedule, the territorial authority must consider the effect of the proposed change on the compliance of the system.

Prior to the Compliance Schedule anniversary, many territorial authorities notify building owners that their BWoF is due. This is good practice.

CONSIDERATIONS FOR IMPLEMENTATION

- Is there a system in place to remind owners of the anniversary of the BWoF renewal?
- If the BWoF relates to premises that are used by members of the public, is there a process in place to notify owners of any outstanding building consents at the property and inform them of the section 363 offence, 'A person who owns, occupies or controls premises to which section 362A applies must not use or permit the use of any part of the premises that is affected by building work'?
- Is there an audit regime in place to audit a percentage of BWoFs?
- Is the BWoF audit regime governed by a policy that describes how the territorial authority will go about this work?
- Is there a process in place to check BWoF documentation when it is received from the building owner, including the Form 12A certificates provided by IQPs/LBPs?

RECOMMENDATIONS

A territorial authority may adopt a policy to proactively review a percentage of buildings with BWoFs per year. The policy may identify buildings that either have had no building work done for an extended period of time or where the BWoF and Compliance Schedule have not been reviewed for an extended period. A BWoF should be audited during investigations of dangerous buildings.

When renewing BWoFs, a check should be made to determine if there are any building consents issued to the property that do not have code compliance certificates. If any building consents are outstanding then this is a good time to raise the issue with the owner.

QUESTIONS AND ANSWERS

- Q.** Who is responsible for considering recommendations to change Compliance Schedules?
- A.** The territorial authority.
- Q.** When can building consent authorities that are not territorial authorities amend Compliance Schedules?
- A.** A building consent authority that is not a territorial authority may consider changing a Compliance Schedule when a building consent application is made in respect of an existing building, and should issue the new Compliance Schedule with the code compliance certificate.

3.6 Certificates of Acceptance

Overview

- A Certificate of Acceptance is a new tool in the Building Act 2004. It can be used in situations where work has been done without a building consent, or where a building consent authority cannot issue a code compliance certificate.
- A Certificate of Acceptance has some similarities to a code compliance certificate in that it will provide some verification for a building owner/future building owner that part or all of certain building work carried out complies with the Building Code.
- Certificates of Acceptance are based on the Code at the time the application is made rather than

what was in place at the time a consent was granted, should have been applied for, or when the work was actually carried out.

Territorial authorities will need to establish new processing systems for Certificate of Acceptance applications, inspections and grants/refusals. These should be similar to systems already in place relating to code compliance certificates.

Commencement

The Certificates of Acceptance provisions came into force on 31 March 2005.

Location in Act

CERTIFICATES OF ACCEPTANCE		
Location – Building Act 1991	Location – Building Act 2004	Description
Did not appear in the Building Act 1991	PART 2 – Building Subpart 3 – Building work Code compliance certificate, certificates of acceptance, and compliance schedules	Certificates of Acceptance appear in sections 96–99 of the Building Act 2004.

APPLICATION FOR CERTIFICATE OF ACCEPTANCE

When can an application be made?

An owner may apply for a Certificate of Acceptance when any of the following situations occur.

- Where an owner (or predecessor in title) carried out building work for which a consent was required but was not obtained (under either the 1991 or 2004 Acts).
- Where a building consent authority is unable or refuses to issue a code compliance certificate in respect of building work for which it granted a building consent.
- Where a building certifier is unable or refuses to issue a code compliance certificate or building certificate.
- Where building work started or consented before 31 March 2005 affects public premises.

An owner **must** apply for a Certificate of Acceptance for building work carried out urgently (see section 42 of the Building Act 2004).

The fact that a Certificate of Acceptance can be issued does not relieve a person from the requirement to obtain a building consent for their building work. The territorial authority still has the ability to issue a Notice to Fix and to prosecute.

When a Certificate of Acceptance cannot be issued

A Certificate of Acceptance cannot be issued if:

- building work was carried out prior to 1 July 1992 (when the building consent provisions of the Building Act 1991 came into force)
- a building consent was ever obtained for the work concerned (except in the situation where a building certifier or building consent authority that is not a territorial authority is unable or refuses to issue a code compliance certificate or if the building work, started or consented before 31 March 2005, affects public premises).

Who an application should be to

An application for a Certificate of Acceptance must be made to the territorial authority responsible for the district where the building work is located.

What the application must include

This application must be on form 8 of the Building (Forms) Regulations 2004. This must include the details outlined in the 'forms' section of this document (see the reference section, part 4) and must also include the following information.

- Current lawfully established use including number of occupants per level and per use (if more than one).
- Whether use was changed by the building work this application relates to. State the previous use.
- Total floor area affected by the building work.
- People undertaking the building work.
- Reason why the Certificate of Acceptance is required.
- Reason why a building consent was not applied for.

The Building Act 2004 requires this form to be accompanied by:

- the plans and specifications that are required by regulations, or if there are no requirements in the regulations then as required by the territorial authority (if they have any requirements)
- any other information that the territorial authority reasonably requires
- the charge fixed by the territorial authority
- any fees, charges or levies that would have been payable had the owner (or the owner's predecessor in title) applied for a building consent before carrying out the building work, where the application relates to work done without a consent where one was required
- a Project Information Memorandum, if one has been issued
- a list of all the specified systems for the building and those that are being altered, added to or removed from the building in the course of the building work, if a Compliance Schedule or an amended Compliance Schedule is required as a result of the building work.

Recommendations

The situation may arise where a building consent authority that is not a territorial authority is unable or refuses to issue a code compliance certificate for which it granted a building consent. In such a situation, the owner may apply for a Certificate of Acceptance. If this happens, the territorial authority should ask that building consent authority for the relevant records.

Energy work

The Building Act 2004 does not specifically mention energy work certificates in regard to Certificate of Acceptance applications. Where energy work has been undertaken as part of building work, a territorial authority could request an energy work certificate as part of the additional information requirement.

Offences/infringement

A person commits an offence if they fail to apply for a Certificate of Acceptance where building work is carried out urgently. A person also commits an offence by carrying out building work except in accordance with a building consent. See part 4 of this booklet for more information on offences.

PROCESSING A CERTIFICATE OF ACCEPTANCE

Processing time

A territorial authority has 20 working days from the date the Certificate of Acceptance application is received to decide whether to grant or refuse the application.

More information

The territorial authority may request more information in respect of the application within the 20 working days from the date the application was received.

When such a request is made, the 20-working-day period is suspended until the territorial authority receives the requested information.

Suggested procedure

A territorial authority should develop a formal policy/procedure for dealing with Certificates of Acceptance. The policy/procedure could contain the following steps.

1. Front counter assessment – check that application is complete (includes Compliance Schedule if relevant. Use a checklist.)
2. Receive application (enter into system, time clock starts).
3. Check files to establish whether a building consent has been issued for the work. (Refuse application where there is already a building consent, unless it

relates to the inability of a building consent authority that is not a territorial authority to issue a code compliance certificate or relates to public premises affected by building work started or consented before 31 March 2005.)

4. Detailed desktop assessment of application. (Use a notes page to record comments/queries.)
5. Inspect the building work. (Make detailed notes.)
6. Make a decision and record the reasons on a notes page. Detail what is included in the Certificate of Acceptance and what is excluded.
7. Use a senior officer to review the documentation.
8. Issue either a Certificate of Acceptance in the prescribed form, or formally advise the applicant that the application is refused, within 20-working-day time-frame (see Issuing section).
9. If the application concerns building work done without a consent, consideration should also be given to whether or not the situation justifies, or allows, a prosecution to be brought under section 40 of the Act for building work done without a consent.

Compliance Schedule

If the application involves work in a building in regard to 'specified systems' that require a Compliance Schedule or an amendment to an existing Compliance Schedule, the application must include the following information.

- If a Compliance Schedule is required, a list of all specified systems for the building.
- If an amendment to an existing Compliance Schedule is required, a list of all altered, new or removed specified systems.

An owner should also provide all information that a territorial authority will reasonably need to issue or amend a Compliance Schedule. If this is not provided, the territorial authority can request such information from the owner.

Inspection records

A territorial authority may wish to include the following details in an inspection record.

- A description of the building work that has been inspected.
- A description of the building work that cannot be seen and inspected.

- Building work that does comply with the Building Code.
- Any building work that does not comply with the Building Code.
- Whether the information, drawings and specifications accurately reflect what is built, and whether there is any variation between the documents provided with the application and what is observed on site.
- Whether more information (than can practicably be obtained) is required.
- Whether durability requirements can be met.
- Whether the building is dangerous, insanitary, or earthquake-prone.

Note: Photographs can provide a useful record of the inspection.

ISSUING A CERTIFICATE OF ACCEPTANCE

Who can issue

Only a territorial authority can issue a Certificate of Acceptance.

When to issue

The territorial authority should issue a Certificate of Acceptance only if it is satisfied to the best of its knowledge and belief and on reasonable grounds that, insofar as it can ascertain, the building work complies with the Building Code.

Content

A Certificate of Acceptance must be issued on form 9 of the Building (Forms) Regulations 2004. This must include the details outlined in the 'forms' section of part 4 and must also include the following information.

- Details of building work covered by the Certificate of Acceptance.
- Details of work inspected.

The Building Act 2004 requires this form to be accompanied by the Compliance Schedule for the building (if there is one).

The certificate will be qualified to the effect that only parts of the work were able to be inspected.

A territorial authority's liability is limited to the extent the territorial authority was able to inspect the building work.

Matters for consideration

Required information

Has all the information been received and considered? This includes such information as the Project Information Memorandum, the plans and specifications, and Compliance Schedule information.

Charges, fees and levies

Have all of the charges, fees and levies been paid that would have been payable if the owner had not carried out the building work without a building consent?

Note: These charges are in addition to the charges that the territorial authority can fix for the processes involved in issuing the Certificate of Acceptance.

Has a building consent already been issued?

A Certificate of Acceptance cannot be issued where a building consent already covers the work, unless it is where a building consent authority that is not a territorial authority is unable or refuses to issue a code compliance certificate or relates to public premises affected by building work started or consented before 31 March 2005. The absence of a building consent needs to be checked, as owners will not always know whether a building consent has previously been issued for the work.

CONSIDERATIONS FOR IMPLEMENTATION

- Has a procedure been established for processing an application for a Certificate of Acceptance? (This process will be similar to that required for a building consent application.)
- Has a procedure been established for undertaking inspections where an application for a Certificate of Acceptance has been received?
- Does the process include a peer review from a senior colleague/manager?
- Does the Certificate of Acceptance process include a check of the property file to ensure that no consent has already been issued for the building work?
- Does the Certificate of Acceptance process include a check of the Compliance Schedule?

QUESTIONS AND ANSWERS

- Q.** Can a Certificate of Acceptance be issued in respect of building work that was carried out before 31 March 2005, where a building consent was required but was not granted?
- A.** Yes (see section 437), provided it relates to building work carried out after 1 July 1992 (when the building consent provisions in the 1991 Act came into force).
- Q.** Can a Certificate of Acceptance be issued where a building certifier was unable or refused to issue a building certificate or a code compliance certificate?
- A.** Yes (see section 437).
- Q.** If a building consent has been issued under the Building Act 1991, can the owner apply for a Certificate of Acceptance?
- A.** Yes, but only if the consent relates to building work for which a building certifier refuses to issue a building certificate or code compliance certificate. Otherwise, the owner must apply for a code compliance certificate in accordance with section 436 of the Building Act 2004. In addition, an owner can apply if the building work affects public premises.
- Q.** Is it an offence for the public to use the part of the public premises affected by building work where a Certificate of Acceptance has been issued for that building work?
- A.** If the building work commenced, or the consent was granted, before 31 March 2005 there will be no offence. However, if the consent was granted and the work commenced after 31 March 2005 the offence still applies.
- Q.** What happens where a territorial authority discovers that building work that is subject to an application for a Certificate of Acceptance does not comply with the Building Code?
- A.** The application should be refused and a Notice to Fix issued. The Notice to Fix should set out what remedial work must be done to fix the non-compliance.

There are several possible ways to manage these issues.

Example: where minor remedial work is required.

A small internal alteration has been made and a tub and laundry space created. A tempering valve has been installed and the hot water is a safe temperature, but the floor and wall linings are not impervious.

- Issue Notice to Fix requiring remedial work to floor and walls linings.
- Request information on how work complies with the relevant section of the Building Code.
- Owner completes minor remedial work, advises the territorial authority and reapplies for a Certificate of Acceptance.
- Territorial authority grants Certificate of Acceptance.

Example: where significant remedial work is required.

A deck has been built 2 metres off the ground without a safety barrier.

- Issue Notice to Fix requiring a building consent be applied for to construct a deck barrier.
- Territorial authority grants Certificate of Acceptance for the deck platform only and excluding a safety barrier.
- Territorial authority issues a code compliance certificate for the deck barrier.

3.7 Notices to Fix

Overview

A Notice to Fix is a statutory notice requiring a person to remedy a breach of the Building Act 2004 or regulations under that Act. It is similar to a Notice to Rectify under the Building Act 1991 but, unlike a Notice to Rectify, a Notice to Fix can be issued for all breaches of the Act, not just for building work. The main points about Notices to Fix are:

- a building consent authority or a territorial authority must issue a Notice to Fix for any contravention of the Building Act 2004 and building regulations (eg, failing to obtain a building consent)
- if a Notice to Fix relates to building work carried out without a building consent, the Notice can require the owner to apply for a Certificate of Acceptance
- when a Notice to Fix has been issued by a building consent authority that is not a territorial authority, the matter is then handed to the territorial authority to decide whether the Notice has been complied with

- where a territorial authority is satisfied that the requirements of the Notice to Fix issued by a building consent authority have been met, it must confirm this in writing to the building consent authority
- if a territorial authority is not satisfied that the requirements of a Notice have been complied with (where building work is required), for example, after a follow-up inspection, it must provide written notice of its reasons and issue a further Notice to Fix to the specified person
- a Notice to Rectify issued under the Building Act 1991 is deemed to be a Notice to Fix under section 164 of the Building Act 2004.

Commencement

Notice to Fix provisions came into force on 31 March 2005.

Location in Act

NOTICES TO FIX		
Location – Building Act 1991	Location – Building Act 2004	Description
PART V Notices of rectification Section 42	PART 2 – Building Subpart 8 – Notices to fix Sections 163–168	Section 42 of the Building Act 1991 concerning notices to rectify is equivalent to Part 2, Subpart 8, sections 163–168 of the Building Act 2004.

ISSUING A NOTICE TO FIX

Who can issue

A **responsible authority** must issue a Notice to Fix.

A responsible authority includes a:

- building consent authority
- territorial authority.

Who to issue to

A Notice to Fix is issued to a **specified person**.

A specified person is the building owner and, where applicable:

- the person carrying out building work
- any other person supervising that building work.

When to issue

The responsible authority must issue a Notice to Fix if it considers on reasonable grounds that:

- a specified person is contravening the Building Act 2004 (eg, doing building work without a building consent, or doing work not in accordance with a building consent)
- a specified person is contravening any of the building regulations under the 2004 Act (including the Building Regulations 1992, containing the Building Code)
- a Building Warrant of Fitness is not correct
- the inspection, maintenance or reporting procedures stated in the Compliance Schedule are not being, or have not been, complied with.

Content of a Notice to Fix

The Notice to Fix must require a specified person to:

- remedy the contravention or comply with the Building Act 2004 or Regulations
- correct the Building Warrant of Fitness
- comply with the inspection, maintenance or reporting procedures stated in the Compliance Schedule.

A Notice to Fix must also:

- be issued on form 13 of the Building (Forms) Regulations 2004
- set a reasonable time-frame within which the Notice must be complied with

- instruct the specified person to contact the territorial authority, the regional authority, or both, on completion of the building work (if applicable).

A Notice to Fix may:

- instruct the owner to apply for a building consent, or for an amendment to an existing building consent
- instruct the owner to apply for a Certificate of Acceptance for building work without a building consent
- state that all or any building work must cease immediately until the responsible authority is satisfied that the specified person is able and willing to resume operations in compliance with the Building Act 2004 and Regulations.

Use of discretion

It is possible for other matters, besides those listed above, that relate to remedying a contravention of the Act or regulations, correcting a Building Warrant of Fitness, or complying with procedures in a Compliance Schedule to be included in a Notice to Fix.

Responsible authorities have some discretion in what they choose to include in Notices to Fix. They should use this discretion to ensure a Notice to Fix is appropriate to the circumstances of a particular situation.

Notice to Fix for building work

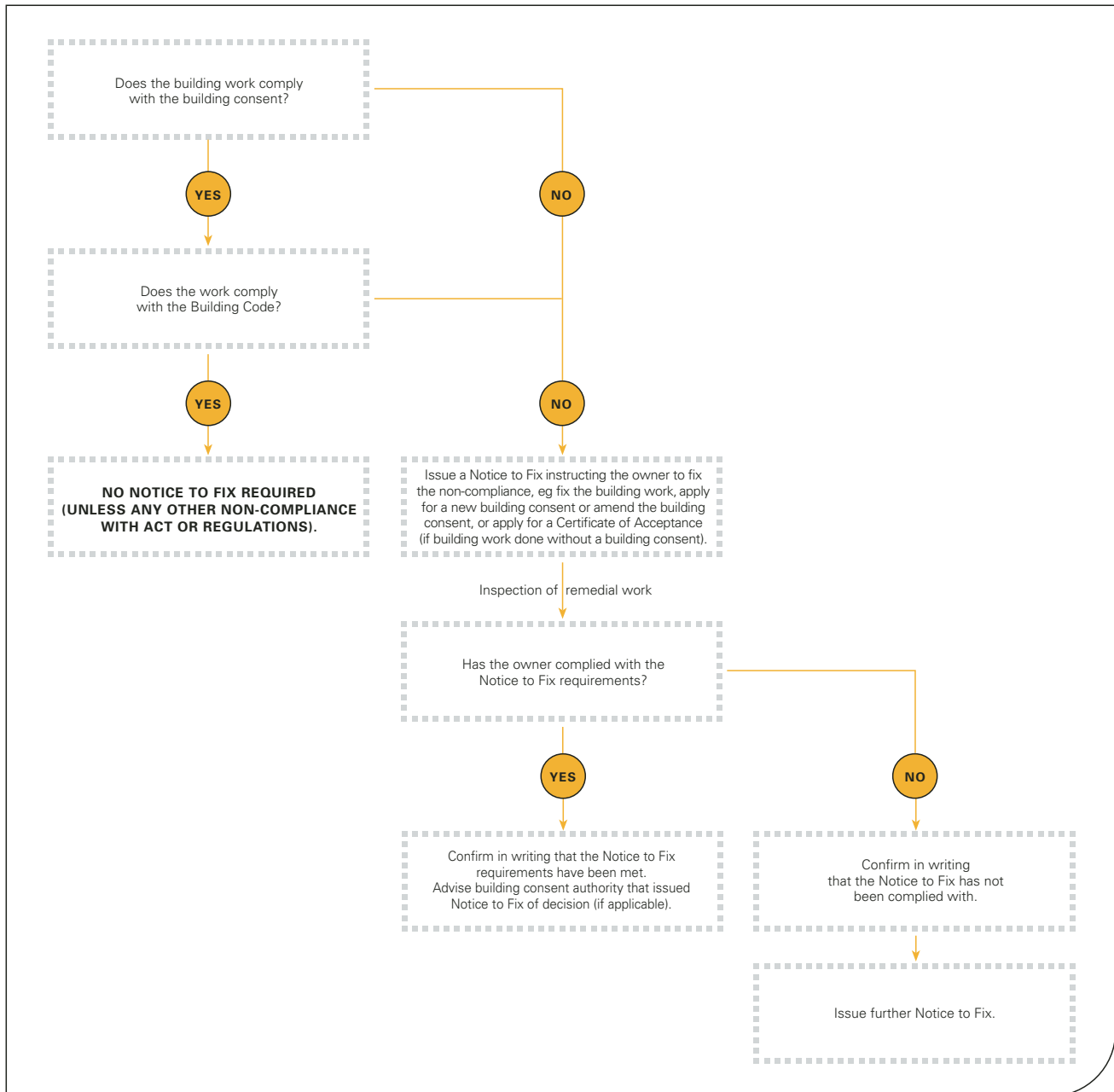
There are three situations in which a Notice to Fix can be issued for building work that has not been, or is not being, carried out in accordance with this Act or the building consent. The Notice to Fix applies only:

- to building work required during the period in which a building consent is operative
- in respect of building work for which a building consent should have been obtained
- in respect of building work for which a building consent was not required, but where there was a requirement that the work meet the Building Code.

The building consent authority must supply a copy of the Notice to Fix to the relevant territorial authority within 5 days of issuing it.

FOLLOWING UP A NOTICE TO FIX FOR BUILDING WORK

Notices to Fix – Issues with building work



1. Notification

The specified person to whom the Notice to Fix was issued must notify the territorial authority that the relevant building work has been completed.

2. Inspection

Once notified, the territorial authority must inspect the building work to which the Notice to Fix relates.

3. Decision

After inspecting the building work, the territorial authority must (in writing) either:

- confirm to the specified person that the Notice to Fix has been complied with, or
- confirm in writing that the Notice to Fix has not been complied with.

4. Confirming compliance with the Notice to Fix

The territorial authority must provide a copy of the confirmation advice to the building consent authority that issued the Notice to Fix.

5. Non compliance with Notice to Fix

If the territorial authority confirms that a Notice to Fix has not been complied with, the territorial authority must:

- give the specified person concerned written notice of the refusal and the reasons for it
- issue a further Notice to Fix in respect of the building work.

RECOMMENDATIONS

Inspecting work under a Notice to Fix

- Where a Notice to Fix requires building work to be undertaken, the territorial authority may need to inspect this work as it proceeds. If the work to be undertaken is not covered by the original consent, it may require that the specified person apply for a new or amended consent for that work. If this is the case, inspections will be arranged when the consent is issued.
- Section 222(4)(a)(iii) entitles an authorised officer to conduct inspections to determine compliance with a Notice to Fix.

Remedial work

Where building work has been done under a current building consent, and a Notice to Fix requires remedial work to be completed, it must describe the work to be carried out. Some discretion must be exercised by the building official, and this will depend on the complexity of the work involved.

Example: remedial work is relatively straightforward. The Notice to Fix should describe the required work, for example, by way of reference to an Acceptable Solution.

Example: remedial work is complex and requires specialist input. The Notice to Fix should set out some clear instructions, for example:

- certain work is to be remedied
- the specified person is to consult with a qualified person eg, an engineer
- the specified person is to apply for an amendment to the building consent detailing the design changes provided by the consulting engineer
- no remedial work is to be undertaken until the building consent is granted.

Policies/procedures

Responsible authorities should develop guidelines for the issuing and enforcement of Notices to Fix.

Achievable outcomes

When issuing a Notice to Fix, the responsible authority must consider what outcome it wants to achieve, and state requirements clearly. Requirements should be achievable as far as is possible.

QUESTIONS AND ANSWERS

- Q.** What happens to a Notice to Rectify issued under section 42 of the Building Act 1991?
- A.** It is to be treated as if it were a Notice to Fix under section 164 of the Building Act 2004 (refer section 435).
- Q.** Can a Notice to Fix be issued when the work was approved in a building consent but subsequently proves to be non-compliant during the construction process?
- A.** Yes. The Notice to Fix can instruct the owner to do remedial work, even if this work was not detailed in the building consent documentation.
- Q.** Can a Notice to Fix be issued for work that is outside the scope of the building consent?
- A.** Yes. The building officer must make a decision on the approach to adopt, depending on the scope and complexity of work. The Notice to Fix may require the specified person to apply for a Certificate of Acceptance or amend the consent and undertake remedial work, or remove the building work.
- Q.** Can a Notice to Fix stop all or part of a building project?
- A.** Yes. For example, where only one aspect of the project is in breach of the consent, a Notice to Fix can require that aspect to stop while the rest of the project continues.

- Q.** If a Notice to Fix requires a specified person to apply for a Certificate of Acceptance from the territorial authority, what should an owner do if the territorial authority refuses the application?
- A.** The specified person should discuss the Notice to Fix requirements with the responsible authority that issued the Notice to Fix. If the matter cannot be settled, the owner may apply to the Department of Building and Housing for a Determination.

EXAMPLE

A large laundry and a small kitchen/dining room are located in a lean-to at the rear of a house.

The owner obtains a building consent to:

- remove the wall between the laundry and kitchen
- relocate the laundry
- remodel the kitchen
- install one set of French doors from the kitchen out on to a deck that is only 900 mm high and not covered by the consent.

During the project the owner decides to install an additional set of French doors from the rear bedroom onto the same deck. The door opening is under construction when the building officer arrives at the site to inspect the work.

The building officer identifies that the work is not part of the building consent, and issues a Notice to Fix with the following instructions.

- Submit an application for an amendment to the building consent with updated drawings and a bracing calculation for approval by the territorial authority.
- Once approved by the territorial authority, install:
 - a correctly sized lintel over the new opening
 - additional bracing.
- Call for inspections before the lintel and bracing are covered over.

3.8 Certificates for Public Use

Overview

A Certificate for Public Use is a new provision under the Building Act 2004. It is a tool that can be used to certify that premises or parts of premises affected by building work are safe to be used by members of the public.

Certificates for Public Use can only be used where a consent has been granted for the building work but no code compliance certificate has been issued yet.

Certificates for Public Use do not relieve the owner of a building from the obligation to apply for a code compliance certificate after all the building work has been carried out.

Commencement

The certificate for public use provisions came into force on 14 April 2005.

Location in Act

CERTIFICATE FOR PUBLIC USE		
Location – Building Act 1991	Location – Building Act 2004	Description
Did not appear in the Building Act 1991	PART 5 – Miscellaneous provisions Subpart 1 – Other offences and criminal proceedings	Certificates for public use appear in section 363A of the Building Act 2004.

APPLICATION FOR CERTIFICATE FOR PUBLIC USE

When can an application be made?

A person who owns, occupies or controls premises intended for public use may apply for a Certificate for Public Use for the premises or part of the premises if:

- a a building consent has been granted for building work affecting part or all of the premises; and
- b no code compliance certificate has been issued for the work.

Who the application should be made to

An application for a Certificate for Public Use should be made to a territorial authority in the district in which the building work is located, using Form 15 of the Building (Forms) Regulations 2004.

PROCESSING A CERTIFICATE FOR PUBLIC USE

Processing time

A territorial authority must decide whether to issue the Certificate for Public Use within 20 days after receiving the application.

An agreement between the territorial authority and the applicant can be made to establish any further period during which the territorial authority has to decide whether to issue the Certificate for Public Use.

More information

Within the period described above the territorial authority may require the applicant to give further reasonable information in respect of the application.

If more information is requested, the period is suspended until that information is received.

ISSUING A CERTIFICATE FOR PUBLIC USE

Who can issue

Only a territorial authority can issue a Certificate for Public Use.

When to issue

The territorial authority may issue a Certificate for Public Use on Form 16 of the Building (Forms) Regulations 2004 for all or part of the premises only if it is satisfied on reasonable grounds that members of the public can use the premises or part safely. This is likely to involve some form of inspection.

Matters for consideration

Obtaining a Certificate for Public Use does not relieve the owner of a building from the obligation to apply to a building consent authority for a code compliance certificate after all the building work carried out under the building consent has been completed.



4.0 MISCELLANEOUS PROVISIONS

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4.0

This part of the document covers information about the Act that a building official 'needs to know'. Much of this material will be familiar from the Building Act 1991, but there are a number of changes as well as some new provisions.

4.1 The Building Code

Commencement date: 31 March 2005

Sections: 16–21

Overview

Sections 16-18 are similar to the Building Act 1991. Section 16 provides that the Building Code prescribes functional requirements for buildings and performance criteria with which buildings must comply in their intended use. Section 17 states that all building work must comply with the Building Code. Section 18 provides that no building work is required to achieve performance criteria additional to or more restrictive than that required by the Building Code.

Section 19 is equivalent to section 50 in the Building Act 1991, and states the ways in which compliance with the Building Code is established. These means are summarised as:

- compliance with regulations which provide only one means of complying with the Building Code
- compliance with a Compliance Document
- a Determination made by the Chief Executive of the Department of Building and Housing
- a current product certificate
- an energy work certificate.

In considering compliance with the Building Code, a building consent authority:

- must have regard to any relevant warning or ban
- may have regard to any guidance information published by the Chief Executive.

Sections 20 and 21 are new provisions, and allow for regulations to prescribe that only a specific Acceptable Solution, Verification Method or product certificate can be used to demonstrate compliance with the Building Code.

4.2 Warnings and bans

Commencement date: 31 March 2005

Sections: 26–30

Overview

The Chief Executive can:

- issue a warning about a building method or product
- ban a building method or product.

This can be done if the Chief Executive believes on reasonable grounds that the use of a building method or product is likely to result in building work failing to comply with the Building Code.

If the Chief Executive issues a warning or ban, he or she must publicly notify:

- the warning or ban
- the date when the warning or ban comes into force
- whether the ban applies to building consents already granted
- the procedure followed when issuing the warning or ban.

Where a warning has been given, a building consent authority must have due regard to that warning when issuing a code compliance certificate or determining whether something complies with the Building Code. Consideration would need to be given to whether or not that warning was relevant to the particular building work that had been inspected.

A building consent authority cannot grant a building consent or a code compliance certificate where a banned building method or product is involved. However, a building consent authority may issue a code compliance certificate if the consent was granted before the ban came into force.

It is an offence to use a banned building method or product (see offences, page 46).

4.3 Determinations

Commencement date: 30 November 2004

Sections: 176–190

Overview

The Building Act 2004 contains some important changes to the Determination process.

Parties

More parties can now apply for a Determination. The two notable additions are:

- a Licensed Building Practitioner concerned with the relevant building work
- any person who has a direct interest in the provision of access and facilities for people with disabilities to and within a building.

The change relating to the provision of access and facilities for people with disabilities is important, because users of a building intended for public use may apply for a Determination.

In addition to the parties, the Chief Executive of the Department of Building and Housing may now initiate a Determination.

Time period

The Chief Executive must make a Determination under the Building Act 2004 within 60 working days of receiving the application or deciding to initiate the Determination.

What matters can be determined?

A wide range of decisions that territorial authorities and building consent authorities make are able to be determined. This is a significant shift from the Building Act 1991, under which applications for determination were largely limited to whether building work complied with the Building Code.

Matters that can be determined are summarised below. Note that a territorial authority may perform the functions of a building consent authority. This means that all of the items listed under the building consent authority and territorial authority headings may be the subject of a Determination.

General decisions

Whether particular matters comply with the Building Code.

Building consent authority decisions

1. Building consent, code compliance certificate or Compliance Schedule.
 - Issuing.
 - Amending (not in respect of Compliance Schedules).
 - Refusal to issue.
 - Any conditions imposed (not in respect of building consents or code compliance certificates).
2. Time extensions.
 - Refusal to grant an extension of time for commencement of building work.
 - Refusal to grant an extension of the two-year period during which a code compliance certificate must be applied for.
3. Notices to Fix.
 - Issuing.
 - Amending.
 - Any conditions.

Territorial authority decisions

- Granting or refusing a waiver or modification of the Building Code.
- Issuing, or refusing to issue, a Certificate of Acceptance.
- Amending a Compliance Schedule.
- Issuing, amending or imposing a condition on a Notice to Fix.
- Exercising powers which relate to alterations to, or changes in the use of, a building.
- Issuing a certificate under section 224(f) of the Resource Management Act 1991.
- Exercising powers which relate to dangerous, earthquake-prone or insanitary buildings or the failure to exercise those powers.

Forms

An application for Determination must be made on form 14 of the Building (Forms) Regulations 2004.

4.4 Offences

The Building Act 2004 provides for a number of new offences. These offences are located with their relevant subjects, rather than being assembled in one part of

the Act. The offences aligned to functions described in this booklet have been summarised and grouped below. Other offences in the Act are not listed here.

SUBJECT	SECTION	OFFENCE	INITIAL FINE	FURTHER FINES (for each day the offence is continued)
Building consents	40	If a person carries out any building work except in accordance with a building consent.	\$100,000	\$10,000
	363	A person who owns, occupies or controls premises to which section 362A applies must not use, or permit the use of, any part of the premises where it is affected by building work that does not have a consent (see next page).	\$200,000	\$20,000
Code compliance certificates	363	A person who owns, occupies or controls premises to which section 362A applies must not use, or permit the use of, any part of the premises where it is affected by building work that does not have a code compliance certificate or certificate for public use (see next page).	\$200,000	\$20,000
	364	A residential property developer commits an offence if they (a) complete the sale of the household unit and/or (b) allow a purchaser of a household unit to enter into possession of the household unit, before a code compliance certificate is issued in relation to that household unit. This applies unless a Form 1 agreement from the Building (Forms) Regulations 2005 has been entered into. This offence does not apply to sale and purchase agreements entered into before 30 November 2004.	\$200,000	N/A
Certificates of Acceptance	42	If a person fails to apply for a Certificate of Acceptance after urgent building work has been carried out without a building consent.	\$5,000	N/A
Compliance Schedules and Building Warrants of Fitness	101	If a person is the owner of a building for which a Compliance Schedule is required but no Compliance Schedule has been obtained.	\$20,000	\$2,000
	108	If a person (a) fails to display a Building Warrant of Fitness that is required to be displayed under section 108, (b) displays a false or misleading Building Warrant of Fitness or (c) displays a Building Warrant of Fitness otherwise than in accordance with section 108.	\$20,000	N/A
Change of use, extension of life, and subdivision of land	114	If a person is an owner of a building and does not give written notice to the territorial authority if the owner proposes (a) to change the use of a building or (b) to extend the life of a building that has a specified intended life or (c) to subdivide land in a manner that affects a building.	\$5,000	N/A
Earthquake-prone, dangerous or insanitary buildings	124	Where a territorial authority is satisfied that a building is dangerous, earthquake-prone or insanitary and a written notice is given to (a) reduce or remove the danger or (b) prevent the building from being insanitary, and this is not carried out within the time stated in the notice, a person commits an offence.	\$200,000	N/A
	128	Where a territorial authority has put up a hoarding or fence in relation to a building or attached a notice warning people not to approach the building, and a person (a) uses or occupies the building or (b) permits another person to use or occupy the building.	\$200,000	\$20,000
Notices to Fix	168	If a person fails to comply with a Notice to Fix .	\$200,000	\$20,000
Warnings and bans	27	If a person uses a building method or product with a ban on it.	\$200,000	N/A
Building levy	58	If a person fails to pay the levy on their building consent.	\$5,000	N/A
Use of building	116B	If a person uses a building, or knowingly permits another person to use a building, (a) for use for which the building is not safe or not sanitary; or (b) that has inadequate means of escape from fire.	\$100,000	\$10,000

SECTION 363 OF THE BUILDING ACT 2004

Introduction

Section 363 creates a new offence concerning premises intended for public use that are being used when they are affected by building work. The purpose of section 363 is to ensure the public is safe when using buildings.

Application

From 31 March 2005 the section 363 offence applies to building work affecting public premises that started or was consented after 31 March 2005.

Transitional provision

The section 363 offence does not currently apply to building work affecting public premises if:

- a a building consent was granted for the building work before 31 March 2005
- b the building work began before 31 March 2005.

However, section 363 will apply to such building work after 31 March 2010.

No offence will be committed if either of the following have been issued for the building work before 31 March 2010:

- a a code compliance certificate
- b a Certificate of Acceptance issued under section 96(1)(d).

Exemption

The offence does not apply to building work commenced before 1 July 1992 that affects public premises.

This exemption applies regardless of when the work was completed.

The offence

When is the offence committed?

When a person who owns, occupies or controls premises either uses or permits the use of any part of those premises that:

- a is intended to be open to members of the public or is being used by members of the public; and
- b is affected by building work

and any of the following circumstances exist in respect of the building work.

1. A building consent is required for the work, but no building consent has been granted for that work; or
2. A building consent has been granted for the work, but neither of the following have been issued:
 - a code compliance certificate; or
 - a Certificate for Public Use; or
3. A building consent has been granted for the building work and a Certificate for Public Use has been issued, but:
 - no code compliance certificate has been issued for the work; and
 - the conditions set out in the Certificate for Public Use have not been met.

1. Premises intended to be open or to be used by members of the public

Premises can mean all or part of a building.

Premises to which the offence applies are premises that are:

1. intended to be open to members of the public; or
2. being used by members of the public.

Premises are 'intended to be open to the public' whether or not:

- members of the public are charged for using the premises
- it is intended that members of the public be charged for using the premises
- members of the public will be excluded from the premises:
 - regularly; or
 - from time to time.

In general terms this means that premises will be intended to be open to members of the public where there is:

- open access – examples of this include restaurants, hospitals, schools, churches and retail shops (note: this is not a complete list)
- access controlled by payment of a charge – an example of this could be a nightclub where entry from the street is on payment of a cover charge.

Buildings with restricted access (for example, key pad or coded entry) are unlikely to fall into the category of premises intended to be open to members of the public.

A reception area that is open to the public, even though the remainder of the building is closed off, would be categorised as premises intended to be open to members of the public.

2. Premises affected by building work

When is part of the premises affected by building work?

A part of the premises may be affected by building work whether or not the building work:

1. is complete
2. is yet to be completed
3. is being done or has been done in or to:
 - a the part itself
 - b some other part of the building that the premises comprise or form part of
4. involves or involved the building of:
 - a the part itself
 - b some other part of the building that the premises comprise or form part of.

3. Building work requiring a consent

A building consent is required for all building work with the exception of building work covered by sections 41 and 43, and Schedule 1 of the Building Act 2004.

Principles for applying section 363

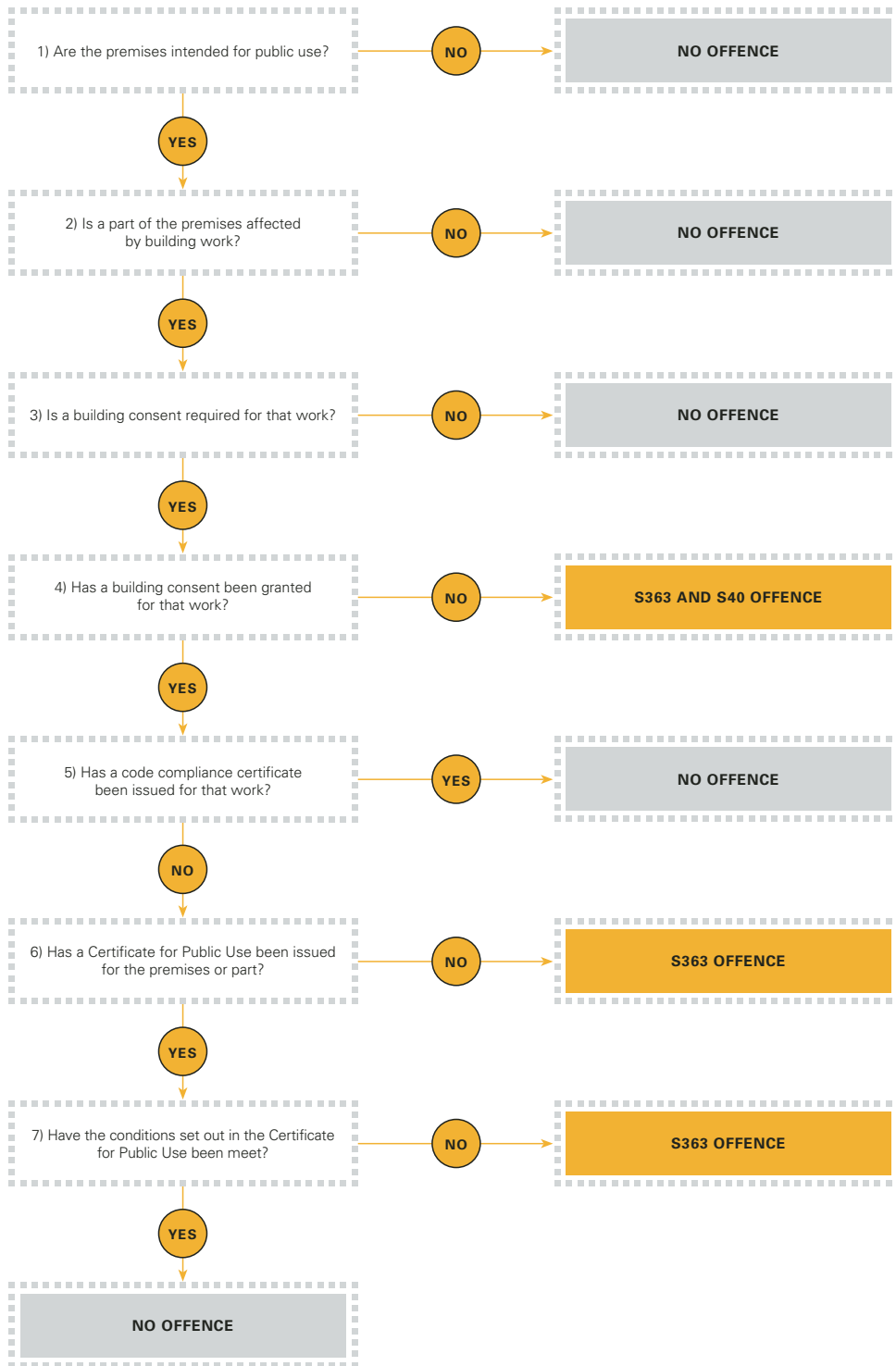
Each territorial authority should develop its own policy and approach to enforcement of section 363.

Building officials will have to balance working constructively with building owners to achieve solutions with the need to ensure the public safety objectives of the legislation are met.

Premises covered by section 363

The following flow chart will help determine whether the premises or part falls under the provisions of section 363 and, hence, whether there is potential for an offence to be committed.

The flow chart reflects the offence as it applies from 31 March 2005. It does not deal with the changes that will occur from 31 March 2010.



Suggested approach

1. Building work started or consented after 31 March 2005

Territorial authorities should make sure people who start building work after 31 March 2005 that may affect public premises are aware of section 363.

The PIM and building consent application processes are good opportunities to provide people with information on section 363.

Territorial authority officials should be aware of section 363 when they inspect building work.

If officials identify problems, the territorial authority should consider whether a certificate for public use is appropriate, whether a Notice to Fix should be issued, or whether the owner should be prosecuted.

2. Building work started or consented before 31 March 2005

The offence in section 363 will not apply until 31 March 2010 to building work started or consented before 31 March 2005.

Owners, occupiers and people who control public premises will have five years to sort out any problems with building work affecting the premises.

A code compliance certificate or Certificate of Acceptance will need to be obtained for the work to avoid committing an offence after 31 March 2010.

Territorial authorities should assist owners, occupiers and people who control public premises through this process, where possible.

Territorial authorities could use the warrant of fitness process to identify any problems with existing building work.

When a Building Warrant of Fitness form is provided to the territorial authority, the property file should be checked to determine whether there are any outstanding building consents or code compliance certificates.

If one of these conditions is identified and the building work affects public premises, the territorial authority should tell the owner about section 363.

The territorial authority should then follow up on this notification and help the owner to make sure the problem is fixed before 31 March 2010.

4.5 Fees

SECTION	FEE CAN BE CHARGED FOR
219, 33(1)	PIM application
219, 240, 45(1)(d)	Building consent application
60	Territorial authorities can retain a percentage of the building levy
219, 97(d)	Certificate of Acceptance application
102(2)	Issuing a Compliance Schedule
219, 106(3)(c)	Owner's application to amend a Compliance Schedule
107(5)	Issuing an amended Compliance Schedule
111(2)	Inspection of specified systems
217(4)(b)	Photocopying facilities
219	A territorial authority may charge a fee in relation to a building consent or the performance of any other function or service under this Act
240	A building consent authority may charge a fee in relation to a building consent or the performance of any other function or service under this Act

A fee may also be charged under the Local Government Official Information and Meetings Act 1987 where the territorial authority has supplied information to the public in accordance with that Act.

4.6 Regulations

The Act provides for regulations to be made in relation to the following.

- When Acceptable Solutions and Verification Methods must be used.
- Building levy.
- All building practitioner licensing matters.
- Regulating and controlling the construction, maintenance and demolition of buildings.
- Information to be provided to the Chief Executive by territorial authorities, building consent authorities and regional authorities.
- Restricted building work.
- Specified systems for Compliance Schedule purposes.
- Defining 'moderate earthquake'.
- Defining 'moderate flood'.
- Building consent authority accreditation and registration.
- Product certification.
- Charges and fees by the Chief Executive.
- Dam safety.
- Infringement offences.
- All forms.
- Any other matters contemplated by the Act necessary for its administration or necessary for giving it full effect.

4.7 Powers of the Minister

Commencement date: 31 March 2005

Sections: 277–281

Overview

If the Minister considers the territorial authority is not properly performing its functions or duties, or exercising its powers under this Act, the Minister may appoint one or more people to act in place of the territorial authority. That person or people will have all the functions, duties and powers of a territorial authority given to them by the Minister.

4.8 Functions and powers of the Chief Executive

Commencement date: 30 November 2004

Sections: 169–211

Overview

The Chief Executive must:

- report annually to the Minister on current and emerging trends in building design, building technologies and other factors
- consult with the New Zealand Fire Service Commission regarding fire safety and fire-engineering practice and the Chief Executive of the department of State responsible for disability issues in the case of disability issues.

The Chief Executive may:

- seek independent and specialist advice from a building advisory panel on any building issues
- publish guidance information for organisations and people carrying out functions under the Building Act 2004.

The Chief Executive may investigate complaints made about a registered building consent authority. After conducting an investigation the Chief Executive can:

- issue a warning
- require a building consent authority to take remedial action
- limit the functions that a building consent authority may perform
- in the case of a building consent authority that is not a territorial authority or regional authority, suspend registration and record the suspension in the building consent authority register, or revoke registration and remove the building consent authority's name from the register
- in the case of a territorial authority or regional authority, recommend to the Minister that the Minister appoint one or more people to act in the place of the territorial authority or, as the case may be, the regional authority in relation to all or any of its functions.

As well as responding to complaints, the Chief Executive has the power to:

- monitor the performance of territorial authorities, building consent authorities and regional authorities of their functions under the Act
- carry out reviews of territorial authorities and regional authorities.

The Chief Executive is given access to all relevant information and has broad powers of investigation, including the right to enter land or buildings where appropriate.

The Chief Executive may conduct a review of whether a territorial authority is properly performing its functions and duties, or is properly exercising its powers under this Act. They must report to the Minister if they believe the territorial authority is not doing so.

The Chief Executive may appoint various bodies to accredit building consent authorities, dam owners and product certification bodies.

4.9 Product certification

Commencement date: 31 March 2005

Sections: 261–272

Overview

A building method or product may be certified. A certified product is deemed to meet the requirements of the Building Code.

A product certificate must:

- clearly state any matters that should be taken into account in the use or application of a building method or product
- be reviewed annually.

A product certification body, for example, a laboratory, test facility or research institute, does the certification. Product certification bodies must be accredited. The accreditation process ensures an organisation has the necessary technical competence and adequate systems in place to undertake building method or product certification.

A product certification accreditation body, appointed by the Chief Executive, undertakes the accreditation. As part of the accreditation process, product certification bodies must be audited on a regular basis.

4.10 References

Compliance Documents

The term 'compliance document' under the Building Act 2004 is equivalent to an 'approved document' under the 1991 Act. Building officials know these documents as the 'Acceptable Solutions' and the 'Verification Methods'. A Compliance Document can make reference to material contained in a reference document or Standard. This material then forms part of the Compliance Document.

The Chief Executive must ensure that a digital copy of a new Compliance Document is available on the Department's website free of charge promptly after it has been issued.

Development contribution

The development contribution is provided for in the Local Government Act 2002. A territorial authority can require a contribution for development if the effect of the development is to require new or additional assets or assets of increased capacity and, as a consequence, the territorial authority incurs capital expenditure to provide for reserves and infrastructure. Examples would be roads and drains.

Forms

The Building (Forms) Regulations 2004 state specific information that must be included in forms, and the order that it must be presented in. The Department of Building and Housing will provide templates of the prescribed forms.

Generic information that must be included on most forms is as follows.

- Details of where the building work is located:
 - street address
 - legal description of land where the building is located
 - building name
 - number of levels, including ground level and any levels below
 - level and unit number
 - area: total floor affected by building work
 - current, lawfully established use, including number of occupants per level and per use.
 - Name of the owner:
 - mailing address
 - phone numbers
 - fax number
 - email address.
 - Name and details (as above) of the agent (only required if application is being made on behalf of the owner).
 - The year when the building was first constructed.
- ### Evacuation scheme
- The territorial authority should include a note in the PIM stating that under section 21A of the Fire Service Act 1975 provision for a scheme that provides for evacuation from the scene of a fire is required. It is then up to the applicant to resolve this matter with the New Zealand Fire Service.
- Many building officials may not be certain about when an evacuation scheme will be required. Section 21A of the Fire Service Act 1975 has been provided below.
- ### 21A Relevant building defined for purposes of sections 21B to 21H
- (1) In sections 21B to 21H, **relevant building** means a building or part of a building used for 1 or more of the following purposes:
- (a) the gathering together, for any purpose, of 100 or more persons:
 - (b) providing employment facilities for 10 or more persons:
 - (c) providing accommodation for more than 5 persons (other than in 3 or fewer household units):
 - (d) storing or processing hazardous substances in quantities exceeding the prescribed minimum amounts:
 - (e) providing early childhood facilities (other than in a household unit):
 - (f) providing nursing, medical, or geriatric care (other than in a household unit):
 - (g) providing specialised care for persons with disabilities (other than in a household unit):
 - (h) providing accommodation for persons under lawful detention (not being persons subject to home detention).

- (2) However, in sections 21B to 21H, relevant building does not include—
- (a) a Crown building, or class of Crown building, that is specified by the Minister by notice in the Gazette; or
 - (b) premises of the mission (as defined in the First Schedule of the Diplomatic Privileges and Immunities Act 1968).

Inspections

An authorised officer can enter the premises and inspect building work at all times during normal working hours or while building work is being carried out. The officer must produce to the occupier written evidence of his or her identity when first entering private land and when requested at any other time.

Restricted building work

This means building work that requires a building consent and relates to an element of a building that is critical to the integrity of the building and the health and safety of its occupants, and is declared by the Governor-General, by Order in Council, to be restricted building work for the purposes of the Building Act 2004. It also includes building work on the building envelope and the structural support of a building. Design work that relates to building work that is the type specified by the Governor-General by Order in Council to be restricted building work for the purposes of this Act is also included.

Section 37 Certificate

This is a notice that the work requires a resource consent, similar to the section 35(1A) form in the Building Act 1991.

Gazette notice

A *Gazette* notice is a notice issued by the Chief Executive of the Department of Internal Affairs in the *Gazette*. The *Gazette* is issued weekly. A *Gazette* notice is not a regulation. Rather, it is a formal public notice that has legal effect and must be complied with. The Chief Executive of the Department of Building and Housing must provide (section 46(1)) a copy of the notice to every building consent authority as soon as possible after the *Gazette* notice has been issued. A copy of this notice is included opposite.

Notice that Copies of Certain Applications for Building Consent to be Provided to the New Zealand Fire Service Commission

Pursuant to section 46(1) of the Building Act 2004 I give notice that copies of the following kinds of application for a building consent must be provided to the New Zealand Fire Service Commission:

1. An application for a building consent that relates to building work to be carried out in respect of any type of building or part of a building described in section 21A of the Fire Service Act 1975 regardless of whether the building or part of the building is sprinkler protected.
2. For the purpose of clause 1 an application for a building consent for building work means an application—
 - (a) where compliance with clauses C1-4, D1, F6 or F8 of the Building Code will be established other than by compliance with the provisions of an applicable compliance document; or
 - (b) that involves a modification or waiver of clauses C1-4, D1, F6 or F8 of the Building Code, under section 67 of the Building Act 2004; or
 - (c) that involves an alteration, change in use or subdivision and affects the fire safety systems, including any building work on a specified system relating to fire safety, except where the effect on the fire safety system is minor.
3. Clause 1 does not apply to an application for a building consent for building work to be carried out in respect of:
 - (a) single household units;
 - (b) buildings in which every fire-cell is a household unit separated vertically from the other fire-cells and each fire-cell has independent and direct egress to a safe place outside the building;
 - (c) an internal fit-out, unless the fit-out relates to a change of use under clause 2(c);
 - (d) outbuildings or ancillary buildings.
4. This notice comes into force on 22 April 2005.



5.0 APPENDICES

5.1 Appendix 1: Commencement tables **61**

5.2 Appendix 2: Building Act translation tables **62**

5.0

5.1 Appendix 1: Commencement tables

SECTION	SUBJECT	COMMENCEMENT DATE		
		30/11/04	31/3/05	30/11/09
PART 1: Preliminary provisions (2-14)				
1	Title	☐		
2-6	General	☐		
7-10	Interpretation	☐		
11	Regulatory roles	☐		
12-14	Regulatory roles		☐	
PART 2: Building (15-168)				
15	Preliminary		☐	
16-30	Building Code		☐	
31-44	Building work – PIM, consent		☐	
45	Building work – PIM, consent		☐	☐
46-83	Building work – PIM, consent		☐	
84-89	Requirements for building work			☐
90	Requirements for building work		☐	
91-120	Code compliance certificate, Certificate of Acceptance, Compliance Schedule, Building Warrant of Fitness		☐	
121-130	Dangerous, earthquake-prone, and insanitary buildings		☐	
131-132	Dangerous, earthquake-prone, and insanitary buildings	☐		
133	Dangerous, earthquake-prone, and insanitary buildings		☐	
134-162	Safety of dams		☐	
163-168	Notices to Fix		☐	
PART 3: Regulatory responsibilities and accreditation (169-281)				
169-211	Chief Executive	☐		
212-236	Territorial authorities		☐	
237-240	Building consent authority (not a territorial authority)		☐	
241-247	Regional authorities		☐	
248-255	Building consent authority accreditation		☐	
256-260	Dam owner accreditation		☐	
261-272	Product certification body		☐	
273-281	Miscellaneous		☐	
PART 4: Regulation of building practitioners (282-362)				
282-362	Regulation of building practitioners	☐		
PART 5: Miscellaneous provisions (363-451)				
363-389	Offences and criminal proceedings	☐		
390-393	Civil proceedings and defences	☐		
394-413	Miscellaneous	☐		
414-415	Amendments and repeal		☐	
416-428	Transitional provisions	☐		
429-448	Transitional provisions		☐	
449	Transitional provisions	☐		
450	Transitional provisions		☐	
451	Transitional provisions	☐		

5.2 Appendix 2: Building Act translation tables

The tables below can be used as a translation guide to help convert knowledge of the Building Act 1991 into the Building Act 2004. The tables show how the sections and clauses of the operational sections of the Building Act

1991 have been moved and altered to be included in the Building Act 2004. The differences between the two Acts have been outlined in the description column.

PROJECT INFORMATION MEMORANDA (PIMS)		
Location – Building Act 1991	Location – Building Act 2004	Description
PART V – Building work and use of buildings Project information memoranda	PART 2 – Building Subpart 3 – Building work Project information memoranda and building consents.	Sections 30 and 31 of the Building Act 1991, Project Information Memoranda, are equivalent to sections 31–39 of the Building Act 2004.
30. Applications for project information memoranda. (1) →	32. Owner may apply for project information memorandum.	The content is the same but rearranged.
30. Applications for project information memoranda. (2) →	31. Building consent authority must apply for project information memorandum.	An addition under the 2004 Act is that a BCA must provide a copy of the PIM to the owner once receiving it from the territorial authority.
30. Applications for project information memoranda. (3) (a) → (b)	33. Content of application. (1) (a) (b)(i)(ii)	An addition under the 2004 Act is that if more than 10 working days have passed since the application for the PIM then the territorial authority cannot make requirements for information in relation to authorisations or requirements (under section 33(1)(b)).
	(c)	
(b)(i)(ii)(iii)(iv)(v)(vi) →	(3) (a) (b) (c)(i)(ii)(iii)	
(c) →	(d)	
30. Applications for project information memoranda. (4) →	39. Territorial authority must advise New Zealand Historic Places Trust in certain circumstances.	The content is the same but rearranged.
31. Issuing a project information memorandum. (1) →	34. Issue of a project information memorandum.	Generally, the new section contains the same requirements; however, the content is more elaborate and specific time-frames have been included. <ul style="list-style-type: none"> • Territorial authority must issue PIM within 20 days after application. This can be extended if further information is requested for a further 10 days from when the information is received. • Territorial authority may reissue PIM within the specified period (above) if they receive information that affects the PIM or if territorial authority considers there is an error or omission in the PIM.

PROJECT INFORMATION MEMORANDA (PIMs) CONTINUED

Location – Building Act 1991	Location – Building Act 2004	Description
<p>31. Issuing a project information memorandum.</p> <p>(2)→</p> <p>(a)→</p> <p>(a)(i)(ii)(iii)→</p> <p>(b)→</p> <p>(c)→</p> <p>(d)→</p> <p>(3)→</p> <p>(a)→</p> <p>(b)→</p> <p>(4)→</p>	<p>35. Content of project information memoranda.</p> <p>(1)</p> <p>(a)(ii)</p> <p>(b)</p> <p>(c)(i)(ii)</p> <p>(d)(i)(ii)</p> <p>(g)(i)(ii)</p> <p>(2) Land concerned.</p> <p>(a)</p> <p>(b)</p> <p>(2) Special features of the land.</p> <p>(a)</p> <p>(b)</p> <p>(c)</p>	<p>Sections 31(2)–31(4) of the Building Act 1991 are now contained under section 35 of the Building Act 2004. The content and structure of the respective sections is generally the same. In addition to ‘content of a PIM’ are the following.</p> <p>PIM must include information formerly required under the 1991 Act, plus (if relevant):</p> <ul style="list-style-type: none"> • information regarding the heritage status of the building • a statement if the building is of historic nature • a statement if the building needs provision under 21A of the Fire Service Act 1975 • a notice advising that a development contribution needs to be paid before the code compliance certificate is issued. • certificate stating that building work may not proceed until a resource consent has been obtained (or as stated in the certificate).
<p>31. Issuing a project information memorandum.</p> <p>(5)→</p>	<p>38. Territorial authority must give copy of project information memorandum in certain circumstances.</p>	<p>Section 31(5) of the Building Act 1991 is now section 38 of the Building Act 2004. The content is the same, the only change being some wording, including: ‘statutory organisation’ = ‘statutory authority’</p>
<p>Did not appear in the Building Act 1991.</p>	<p>36. Territorial authority may attach development contribution notice to project information memorandum.</p>	<p>Note: This section is a new requirement for PIMs; however, it is comparable to the building consents section 35(1A) in Building Act 1991.</p> <p>If applicable, a PIM must include a notice advising that a development contribution needs to be paid before the code compliance certificate is issued.</p>
<p>35. (1A)→</p>	<p>37. Territorial authority must attach additional certificate to project information memorandum.</p>	<p>If applicable, a PIM must include a certificate stating that building work may not proceed until a resource consent has been obtained (or as stated in the certificate).</p>

BUILDING CONSENTS		
Location – Building Act 1991	Location – Building Act 2004	Description
PART V – Building work and use of buildings	PART 2 – Building Subpart 3 – Building work Project information memoranda and building consents	Sections 32–35, 41(1) of the Building Act 1991 concerning building consents are equivalent to sections 40–52 of the Building Act 2004.
32. Buildings not to be constructed, altered, or demolished without consent. (1) →	40. Buildings not to be constructed, altered, demolished, or removed without consent.	The content remains the same although the offence concerning a breach of this section has been included under section 40 of the Building Act 2004 as opposed to being included under a separate section (80) of the Building Act 1991. The fines remain the same.
32. Buildings not to be constructed, altered, or demolished without consent. (2) → (a) → (b) → (ba)(i)(ii) → (bb) → (c) → (3) →	41. Building consent not required in certain cases. (1) (a) (b) (c)(i)(ii) (d) (e) (2)	While the requirements are the same with no new sections, some of the references to other sections in the Act have changed, they are: <ul style="list-style-type: none"> • Section 5(2) Building Act 1991 = Section 6 Building Act 2004 • Section 32A Building Act 1991 = Section 43 Building Act 2004 • Schedule 3 Building Act 1991 = Schedule 1 Building Act 2004.
32. Buildings not to be constructed, altered, or demolished without consent. (2A) →	42. Owner must apply for certificate of acceptance if building work carried out urgently.	There are major changes here for building work that is carried out without a building consent. <ul style="list-style-type: none"> • You are no longer required to apply for a building consent for this work, but instead you must apply for a Certificate of Acceptance under section 96 (see guidance in Certificate of Acceptance section, page 32). • There is a new offence under this section. A person commits an offence if the person fails to apply for a Certificate of Acceptance. A person who commits an offence under this section is liable to a fine not exceeding \$5,000.
32A. Exemption for energy work. (1) → (2) → (a) → (b)(i)(ii) → (3) → (4) →	43. Building consent not required for energy work. (1) (2) (a)(i)(ii) (b) (3)	Section 32A of the Building Act 1991 now comes under section 43 of the Building Act 2004. There are no additions to this part.
33. Applications for building consents. (1) → (3) →	44. When to apply for building consent. (1) (2)	The content of this section remains the same; however, the application for a building consent must be made to a building consent authority that is authorised, within the scope of its accreditation, to grant a building consent for the proposed building work.
33. Applications for building consents. (2) → (4) →	45. How to apply for building consent. (1) (a) (b) (c) (d) (e) (f) (g) (5)	In addition to the requirements of an application for a building consent under the Building Act 1991, it must now be accompanied by: <ul style="list-style-type: none"> • plans and specifications that are required by the Regulations made under section 402 or if the Regulations do not so require, by a building consent authority • a list of all the specified systems for the building (from Compliance Schedule) whether the systems are existing, new, altered or removed (if any) • a certificate issued under section 37 (RC) (if any) • a development contribution notice (if any). Amendments to a building consent must be applied for in the same way as an application for a building consent (with any necessary modifications).

BUILDING CONSENTS CONTINUED

Location – Building Act 1991	Location – Building Act 2004	Description
<p>34. Processing building consents.</p> <p>(1)➔</p> <p>(2)➔</p>	<p>48. Processing application for building consent.</p> <p>(1) (a) (b)</p> <p>(2)</p>	<p>Generally the new section contains the same requirements, however:</p> <ul style="list-style-type: none"> the building consent authority must refuse or grant the building consent application within 20 working days; this can be suspended if the territorial authority reasonably requires more information territorial authorities must take into account (a) a memo from the New Zealand Fire Service Commission (if any) and (b) a warning or ban on it the building product to be used (if any). If a ban applies, the consent cannot be granted (see section 28(2)).
<p>34. Processing building consents.</p> <p>(3)➔</p>	<p>49. Grant of building consent.</p> <p>(1)</p>	<p>Building consent authority must grant consent if satisfied on reasonable grounds, etc, but is not required to grant consent until charge fixed for the consent and levy is paid.</p>
<p>35. Issue of building consent.</p> <p>(1)➔</p> <p>(3) (a)➔ (b)</p>	<p>51. Issue of building consent.</p> <p>(1) (2) (a) (b)</p>	<p>In addition to this section a building consent must have:</p> <ul style="list-style-type: none"> the PIM attached development contribution notice (if any) a Certificate under section 37 (resource consent) (if any) statement that the systems and performance standards of items from Compliance Schedule stated (if any) whether new or altered. <p>If a building consent authority does not receive a PIM within 20 days from the territorial authority, the building consent authority may issue the consent (if all other information has been obtained).</p> <p>When the building consent authority does receive the PIM it must provide a copy to the owner, a development contribution notice (if any), and a Certificate under section 37 (resource consent) (if any).</p>
<p>35. Issue of building consent.</p> <p>(2)➔</p>	<p>50. Refusal of application for building consent.</p>	<p>Section 35(2) of the Building Act 1991 is equivalent to section 50 of the Building Act 2004. There are no additions to this part.</p>
<p>41. Lapse and cancellation of building consent.</p> <p>(1)➔</p>	<p>52. Lapse of building consent.</p>	<p>There are changes to the lapse time-frame on building consents.</p> <p>A building consent lapses and is of no effect if the building work to which it relates does not commence within 12 months after the date of issue of the building consent or any further period that the building consent authority may allow.</p>
<p>Did not appear in the Building Act 1991.</p>	<p>46. Copy of certain applications for building consent must be provided to New Zealand Fire Service Commission.</p>	<p>Certain kinds of applications for building consents specified by the Chief Executive will be published in the <i>Gazette</i>. The Chief Executive must give a copy of the <i>Gazette</i> notice to every building consent authority and the building consent authority must provide a copy of every application, that is of kind specified in the <i>Gazette</i> notice, to the New Zealand Fire Service Commission.</p>
<p>Did not appear in the Building Act 1991.</p>	<p>47. New Zealand Fire Service Commission may give advice on applications under section 46.</p>	<p>Within 10 working days of receiving application from building consent authority, the NZFSC may provide the building consent authority with a memo advising on provisions for means of escape and the need for people authorised by law to enter the building for firefighting.</p> <p>NZFSC must not give advice in the memo that requires the building to meet performance criteria that exceed the requirements of the Building Code.</p> <p>If the NZFSC does not provide the memo within 10 days the building consent authority may proceed to determine the application without it.</p>

CODE COMPLIANCE CERTIFICATES

Location – Building Act 1991	Location – Building Act 2004	Description
PART V – Building work and use of buildings	PART 2 – Building. Subpart 3 – Building work Code compliance certificate, certificates of acceptance, and compliance schedules	Section 43 of the Building Act 1991, code compliance certificates is equivalent to sections 91–95 of the Building Act 2004.
<p>43. Code compliance certificate.</p> <p>(1) →</p> <p>(2) (a) → (b) →</p> <p>(2A) →</p>	<p>92. Application for code compliance certificate.</p> <p>(1) (2) (a) (b) (c)(i)(ii)</p> <p>(3) (a) (b)</p> <p>(4)</p>	Changes to this section under the Building Act 2004 are that the application must be made as soon as practicable, in the prescribed form to either the building consent authority who granted the building consent or to the building consent authority that is proposed to issue the code compliance certificate under section 91(2).
<p>43. Code compliance certificate.</p> <p>(3) (a) →</p> <p>(3A) →</p>	<p>94. Matters for consideration by building consent authority in deciding issue of code compliance certificate.</p> <p>(1) (a)</p> <p>(3)</p>	<p>Additional items to be considered when issuing a code compliance certificate under the Building Act 2004:</p> <ul style="list-style-type: none"> • Compliance with building consent is now required rather than with Building Code. • Performance of systems in the building (from Compliance Schedule). • Whether there is a current warning or ban on building products used (note that code compliance certificate must not be issued if ban in force before consent issued (section 28(2)), but ban may apply to building work where consent issued before ban published (see section 26(3)(c))). • No code compliance certificate issued until energy work certificate received and development contribution paid.
<p>43.</p> <p>(3) →</p>	<p>95. Issue of code compliance certificate.</p>	<p>A code compliance certificate must now be issued:</p> <ul style="list-style-type: none"> • by a building consent authority • in the prescribed form • on payment of any charge fixed by the building consent authority.
Did not appear in the Building Act 1991.	<p>91. Building consent authority that grants building consent to issue code compliance certificate.</p>	<p>Only the building consent authority that issued the building consent can issue the code compliance certificate. However, a code compliance certificate can be issued by another building consent authority if both the building owner and the building consent authority proposed to issue the code compliance certificate agree.</p> <p>The owner must apply for a Certificate of Acceptance if:</p> <ul style="list-style-type: none"> • a building consent authority that is not a territorial authority refuses to issue a code compliance certificate in relation to building work for which it granted a building consent • no other building consent authority will issue a code compliance certificate.
Did not appear in the Building Act 1991.	<p>93. Time in which building consent authority must decide whether to issue code compliance certificate.</p>	<p>Building consent authorities must decide whether to issue a code compliance certificate within 20 days of an application or any further period agreed upon by the owner and building consent authority.</p> <p>However, if no application is made, the building consent authority must decide whether to issue a code compliance certificate after 2 years from when the building consent was granted or after any further period agreed on between the owner and building consent authority.</p> <p>Territorial authority may, within the times above, require further information and, if so, the period is suspended until it receives the information.</p>

COMPLIANCE SCHEDULES		
Location – Building Act 1991	Location – Building Act 2004	Description
PART V – Building work and use of buildings Use of buildings	PART 2 – Building Subpart 3 – Building work Code compliance certificate, certificates of acceptance, and compliance schedules	Part V, section 44 of the Building Act 1991 on Compliance Schedules is equivalent to sections 100–107 of the Building Act 2004.
Did not appear in the Building Act 1991.	102. Compliance schedule must be issued with code compliance certificate in certain cases.	Building consent authority must issue a Compliance Schedule with the code compliance certificate if a Compliance Schedule, amended or new, is required as a result of building work. Building consent authority can now charge a fee for issue of a Compliance Schedule.
44. Compliance schedules. (2)→	103. Content of compliance schedule. (1) (c)	A Compliance Schedule must state: <ul style="list-style-type: none"> Specified systems covered by the Compliance Schedule. The performance standards of the specified systems. Inspection, maintenance and reporting procedures of LBP for systems specified.
(5)→ (a) (b) (c) (d) (e)(i)(ii)	(d)(i)(ii)(iii)(iv)(v)	<ul style="list-style-type: none"> (If applicable) the specified systems relating to means of escape from fire, safety barriers, means of access and for use by people with disabilities, handheld hose reels, and any signs required by the Building Code or section 120. In addition to the 1991 Act inspection, maintenance and reporting procedures may be identified by reference to: <ul style="list-style-type: none"> a prescribed Acceptable Solution or Verification Method in a regulation a Compliance Document a building method or product.
(3)→ (a)→ (b)→ (c)→	(2) (a) (b)(i)(ii)(iii)	<ul style="list-style-type: none"> a prescribed Acceptable Solution or Verification Method in a regulation a Compliance Document a building method or product. Note: there is no longer any provision for the procedures to be identified as being a procedure considered appropriate by the territorial authority (see section 44(3)(c) of the 1991 Act).
44. Compliance schedules. (4)→ (a)→ (b)→ (c)(i)(ii)	105. Obligations of owner if compliance schedule is issued. (c)(i)(ii)(iii) (d) (e)(i)(ii)	In addition to obligations carried over from the 1991 Act, the owners must now also ensure that the specified systems are performing and will continue to perform to the performance standards for that system. Note: although there is no offence provision if the owner does not comply with these obligations the territorial authority could now issue a Notice to Fix to enforce compliance.
Did not appear in the Building Act 1991.	100. Requirement for compliance schedule.	<ul style="list-style-type: none"> A Compliance Schedule is required for a building that has any specified systems (not including a single household unit). After 30 March 2008, a Compliance Schedule is required for any building, including a household unit or part thereof, that is either attached to, or serviced by, a cable car.
Did not appear in the Building Act 1991.	101. Owner must comply with requirement for compliance schedule.	It is now an offence if an owner does not obtain a Compliance Schedule under section 100 and if they do not they are liable for a fine not exceeding \$20,000, and a further fine not exceeding \$2,000 for every day the offence is continued.
Did not appear in the Building Act 1991.	104. Building consent authority must notify territorial authority of issue of compliance schedule.	Building consent authority must provide the territorial authority (in the building's district) with a copy of the Compliance Schedule within 5 working days after it was issued.

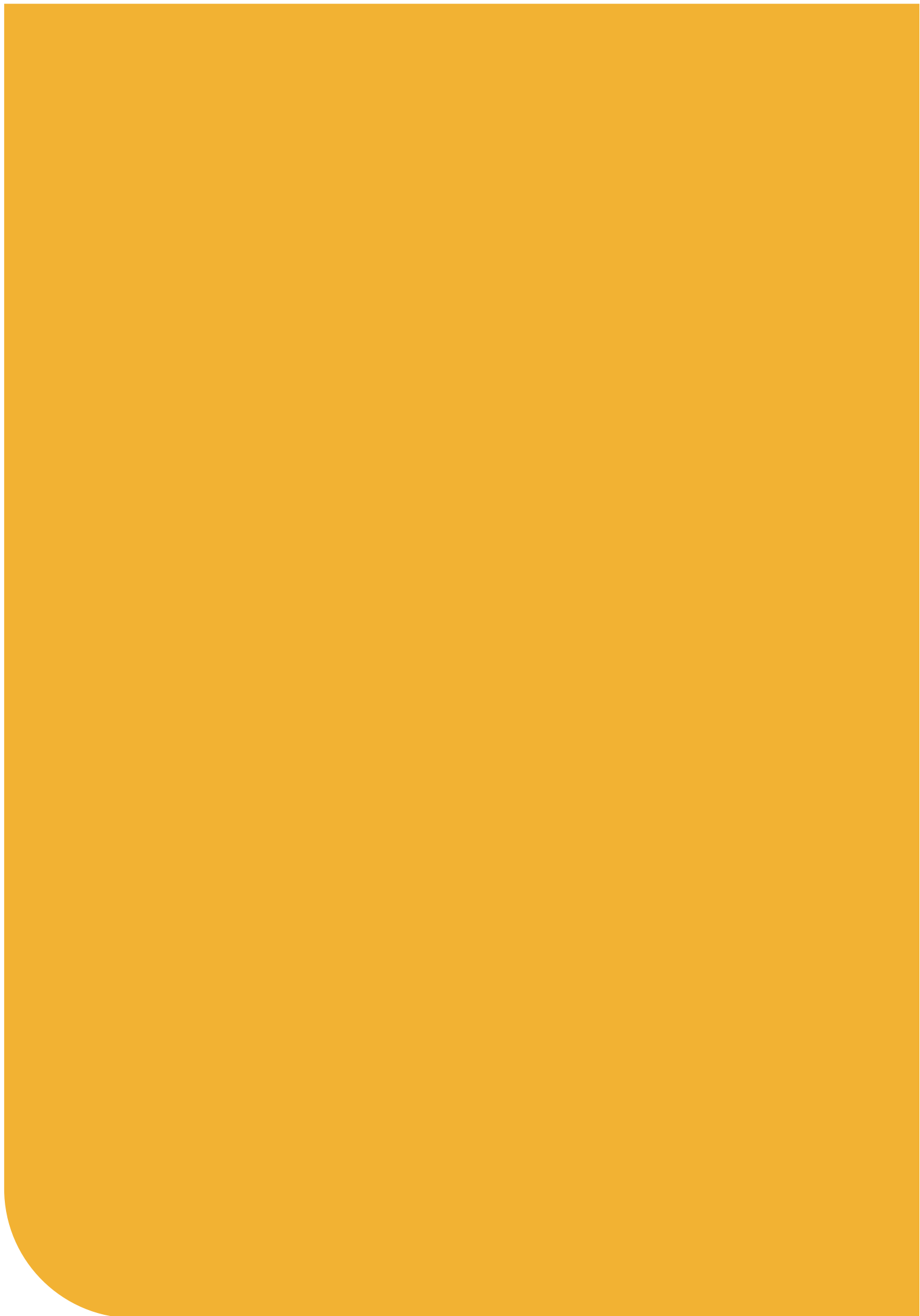
COMPLIANCE SCHEDULES CONTINUED

Location – Building Act 1991	Location – Building Act 2004	Description
<p>Did not appear in the Building Act 1991.</p>	<p>106. Application by owner for amendment to compliance schedule.</p>	<p>An owner may now apply for their Compliance Schedule to be amended at their own discretion.</p> <p>However, an owner MUST apply for their Compliance Schedule to be amended if they consider that it is required to ensure the specified systems are performing, and will continue to perform, to the performance standards for those systems. To do so, in either case, the owner must:</p> <ul style="list-style-type: none"> • apply to the territorial authority for the amendment in the prescribed form • provide any information to the territorial authority that they require in relation to the application • pay any charge fixed by the territorial authority. <p>Upon receiving this application the territorial authority must decide whether to amend the Compliance Schedule, and when this decision is made they must:</p> <ul style="list-style-type: none"> • where it is decided to amend the schedule, give written notice of this to the owner and attach a copy of the Compliance Schedule to this notice • where it is decided to refuse the amendment, give written notice of the refusal and the reasons for it.
<p>Did not appear in the Building Act 1991.</p>	<p>107. Territorial authority may amend compliance schedule on own initiative.</p>	<p>A territorial authority may now amend a Compliance Schedule, on its own initiative and without application, if they consider the amendment is required to ensure a specified system in the Compliance Schedule is performing, and will continue to perform, to the performance standards of that system. Before doing so they must:</p> <ul style="list-style-type: none"> • advise the owner of their intention to do so • give the owner a reasonable opportunity to make submissions on the matter and consider those submissions. <p>If they do amend the Compliance Schedule they must:</p> <ul style="list-style-type: none"> • give written notice of the amendment to the owner • attach a copy of the amended Compliance Schedule to the notice. <p>They may charge a fee for an issue of an amended Compliance Schedule.</p>

BUILDING WARRANT OF FITNESS (BWoF)

Location – Building Act 1991	Location – Building Act 2004	Description
PART V – Building work and use of buildings Use of buildings	PART 2 – Building Subpart 3 – Building work Code compliance certificates, certificates of acceptance, and compliance schedules	Part V, section 45 of the Building Act 1991 – Building Warrant of Fitness is equivalent to Part 2, Subpart 5, sections 108–111 of the Building Act 2004.
<p>45. Annual building warrant of fitness.</p> <p>(1) →</p> <p>(2) →</p> <p>80</p> <p>(1) →</p> <p>(d) →</p> <p>(2) →</p> <p>(d) →</p>	<p>108. Annual building warrant of fitness.</p> <p>(1)</p> <p>(3)</p> <p>(a)</p> <p>(b)</p> <p>(e)</p> <p>(f)</p> <p>(4)</p> <p>(5)</p> <p>(6)</p>	<p>Owner must supply to territorial authority an annual BWoF.</p> <p>The purpose of BWoF is now stated: to ensure specified systems in Compliance Schedule are performing and will continue to perform to the performance standards set out in the consent.</p> <p>The additional requirements that the BWoF must include under the Building Act 2004 are:</p> <ul style="list-style-type: none"> certificates from LBP certifying inspection, maintenance and reporting procedures have been complied with in the past 12 months recommendation from the LBP(s) for amendments (if any). <p>The relevant offences have now been pulled from section 80 of the Building Act 1991 to section 108(5) and (6). It is now an offence under this section if a person displays a BWoF otherwise than in accordance with this section. A person who commits an offence under this section is liable to a fine not exceeding \$20,000 (was \$5,000).</p>
<p>45.(3) →</p> <p>(a) →</p> <p>(b) →</p>	<p>110. Owner must obtain reports on compliance schedule.</p> <p>(a)</p> <p>(b)</p> <p>(c) (i) (ii)</p> <p>(d)</p>	<p>Changes to the requirements of the owner of a building that has had a Compliance Schedule issued are that the annual written reports they obtain relating to the inspection, maintenance and reporting procedures of the Compliance Schedule must be signed by each LBP who carried out one or more of those procedures.</p>
<p>Did not appear in the Building Act 1991.</p>	<p>109. Territorial authority must consider recommendation to amend compliance schedule.</p>	<p>For any recommendation(s) for Compliance Schedule amendments made by LBP(s) in section 108(3)(d), the territorial authority must:</p> <ul style="list-style-type: none"> give the owner an opportunity to make written submissions on the recommendation(s) and consider the submissions decide whether to accept or refuse the recommendation and, if accepted, amend the Compliance Schedule and give written notice to the owner.
<p>Did not appear in the Building Act 1991.</p>	<p>111. Inspections by territorial authority.</p>	<p>Inspections of buildings with Compliance Schedules:</p> <ul style="list-style-type: none"> can be carried out by an agent for the territorial authority which includes an inspection of the specified systems (a fee may be charged for this) includes taking all reasonable steps to ensure the BWoF is correct and every report from LBP is correct.





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