



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

Building Officials' FAQs

Frequently Asked Questions on
consents and inspection processes
under the Building Act 2004



Introduction

Life of this document

This document is likely to be updated. For this reason it will be published in electronic format only. This is **Version 1**, dated August 2005.

The content of this document is based on:

- 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 has been prepared for building officials. It is intended to provide additional guidance on particular aspects of the consents and inspection processes under the Building Act 2004. It is not intended to replace the Act. The reader should consider these FAQs as additional to the Building Officials' Guide to the Building Act 2004.

It intends to provide responses to some of the more common questions asked on the 0800 242 243 helpline number, the Department website link info@building.govt.nz, and questions asked at industry group presentations.

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 details can be found in the Building Act 2004. A copy of the Act is located at www.building.govt.nz.

Information covered in this document

Over time, it is likely that the range of questions and answers covered in this document will extend to other measures under the Building Act 2004. Currently it covers:

- Compliance schedules
- Building Warrant of Fitness
- New Zealand Fire Service Commission
- Project information memoranda (PIMs)
- Building consents
- Certificates of acceptance
- Code compliance certificates (CCCs)
- Notices to fix
- Section 362A
- Section 363
- Certificate for public use
- Section 364

Compliance schedules

Forms

Q. Why is there is no form for a compliance schedule in the Regulations?

- A. The Building Act 2004 does not require a compliance schedule to be on a 'prescribed form'. As a result, there is no authority in legislation that allows this form to be created in Regulations.

The Department recognises that it is important to achieve national consistency in the format, layout and content of compliance schedules, and has provided a model form that complies with the requirements of the Building Act 2004. This was publicised in the Department's newsletter *Newsline* in February 2005.

The Department has also published on its website some examples of what a compliance schedule might contain. The form and the examples can be found on the Department's website for the Building Act, www.building.govt.nz

Q. The application for amendment to a compliance schedule (Form 11) and the warrant of fitness (Form 12) contain a requirement to state the 'current lawfully established use'. If 'current lawfully established use' is filled in, does this have to be one of the uses listed in Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-Prone Buildings) Regulations 2005?

- A. There is no requirement in the Building Act 2004 for the lawfully established use to be one of the uses in Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-Prone Buildings) Regulations 2005, although Schedule 2 can be referred to for guidance. Regardless of the approach adopted, the description should be clear. For example, an office building containing shops on the ground floor should be called 'office and retail', and not simply 'commercial'.

Issuing the compliance schedule

Q. It appears from section 103 that a compliance schedule for a building must also incorporate the features listed in section 103(1)(d) – safety barriers, means of escape, etc. However section 103(1)(c) requires only that the inspection, maintenance and reporting requirements must be listed for specified systems. What does a compliance schedule need to contain for the features in s103(1)(d)?

- A. The importance of having adequate means of escape from fire in buildings is highlighted by a specific reference in the Building Act 2004 (section 3). The Department of Building and Housing has a clear interest in ensuring that means of escape are maintained. Issues have been raised with the Department concerning the need for all means of escape to be included in compliance schedules. The Department has considered the practical implementation of the regulations that define specified systems, taking into account enforcement practice under other legislation and previous practice of including means of escape in compliance schedules.

As a result, the Department has recommended to the Minister for Building Issues that he should consider seeking an amendment to the regulations to require mandatory inspection, maintenance and reporting of the relevant systems and features that make up 'means of escape from fire'.

There are approximately 30,000 existing compliance schedules in New Zealand, most of which include 'means of escape from fire'. Given the recommendation to the Minister, the Department is advising territorial authorities that the references to 'means of escape from fire' on existing compliance schedules should not be removed.

Since 31 March 2005, territorial authorities will have issued new compliance schedules under the Building Act 2004 that do not include means of escape from fire as a specified system. The Department is advising territorial authorities that these compliance schedules may need to be amended to include references to the systems and features that contribute to means of escape once the regulations are amended.

Further details on compliance schedules and 'means of escape from fire' will be provided shortly by the Department.

Q. When is the compliance schedule issued if there are staged building consents?

- A. The Building Act 2004 requires that a compliance schedule be issued with a code compliance certificate. Where there are staged consents, this means that the compliance schedule will be issued with the first code compliance certificate that is issued for the project. Subsequently, amendments to the compliance schedule can be made if future consents add new specified systems or alter the existing systems.

Q. When a building already has a compliance schedule, how should staged building consents be managed?

- A. The Building Act 2004 requires that an amended compliance schedule be issued if the alterations have somehow affected the specified systems in the building. The amended compliance schedule should be issued with the code compliance certificate. This means that for an existing building that has staged consents, amendments to the compliance schedule will be issued with each code compliance certificate that is issued for the project, if appropriate.

Q. Where a building consent application is made for work on an existing building and that work involves changes to specified systems, does a building consent authority also amend the compliance schedule or is this done by the territorial authority?

- A. Where a building consent application triggers the requirement for a compliance schedule to be issued or amended, that work is done by the building consent authority.

Changes or amendments to the compliance schedule that are not associated with work done under a building consent are managed by the territorial authority.

Q. When an existing compliance schedule is reissued, should it refer to the 1991 or 2004 Act?

- A. A compliance schedule issued under the Building Act 1991 has effect as if issued under the Building Act 2004. While there is no express requirement in the 2004 Act that an existing compliance schedule be updated, it is the Department's view that territorial authorities should put a process in place to update existing compliance schedules to reflect the changes to the systems and features that constitute specified systems (and the advisory issued on dealing with means of escape from fire).

There is no particular requirement to include the Act and section reference in a compliance schedule form. However, it would be sensible to have a reference to section 103 of the 2004 Act in the form.

Q. Section 103(1)(b) states that a compliance schedule must state the 'performance standards for the specified systems'. What are these 'performance standards'?

- A. At a high level, the performance standard is the Building Code that applied at the time the building work was done. In practice, though, this is normally achieved by referring to a compliance document or a relevant Standard. An example would be NZS 4541 for sprinkler systems. Although the term 'performance standards' may be unfamiliar, this is no change from the existing practice.

Q. Section 44(1)(j) of the Building Act 1991 covered 'Any other mechanical, electrical, hydraulic, or electronic system whose proper operation is necessary for compliance with the building code'. This section of the Building Act 1991 was listed in Form 12 of the Building Regulations 1992, and corresponded to CS10 in the *New Zealand Building Code Handbook*.

Where an existing compliance schedule lists a building system (for example, a sanitary pump) under this category, what requirements are there in regard to that system now that this category has been removed from the list of specified systems in Schedule 1 of the Building (Specified Systems, Change the Use, and Earthquake-Prone Buildings) Regulations 2005?

- A. Section 44(1)(j) (like CS10) was a catch-all clause. The *New Zealand Building Code Handbook* notes that section 44(1)(j) provided flexibility to include specialist building elements and new systems (developed after the 1991 Act came into force) in compliance schedules. Following submissions on the Building Bill, a decision was made to provide for flexibility by listing specified systems in regulations, which can be amended or added to.

The Department of Building and Housing is responsible for advising the government on the development of the regulations. Building officials and IQPs should advise the Department if they believe any new specified systems need to be added to Schedule 1 of the Building (Specified Systems, Change the Use, and Earthquake-Prone Buildings) Regulations 2005.

Q. The Building Amendment Act 2005 introduced certificates for public use. If a certificate for public use is issued, does a compliance schedule need to be issued as well?

- A. There is no requirement to issue a compliance schedule with a certificate for public use – the Building Act 2004 requires that this takes place with the issue of the code compliance certificate. However, before a territorial authority can issue a certificate for public use, it must be satisfied that members of the public can use the building premises safely. Where building work involves specified systems, this would include gathering evidence that the specified system(s) in the building or premises are performing as intended. A territorial authority may choose to insert conditions on a certificate for public use to address any concerns it may have about specified systems in a particular case.

CABLE CARS

7 Interpretation

In this Act, unless the context otherwise requires,—
cable car—

- (a) means a vehicle—
- (i) that carries people or goods on or along an inclined plane or a suspended cable; and
 - (ii) that operates wholly or partly outside of a building; and
 - (iii) the traction for which is supplied by a cable or any other means; but
- (b) does not include a lift that carries people or goods between the floors of a building

Q. Given the definition of cable car in the Building Act 2004, are any of the following devices a cable car?

- **A flying fox.**
- **A ski chair lift.**
- **A ski tow.**
- **A cage used to pull a boat out of the water and onto a property. In some cases, a person remains in the boat during the operation.**
- **A stair climber (for elderly and disabled people).**

- A. Section 7 of the Building Act 2004 contains a definition for 'cable car' (set out above). Section 100 provides that a compliance schedule is required in relation to a cable car where it is attached to or servicing a building. Therefore, a compliance schedule will be required for a cable car only where it meets the definition of 'cable car' in section 7 and also where it is attached to or servicing a building.

A flying fox does not involve carrying people in a 'vehicle', so will not meet the definition of 'cable car'. In any event, flying foxes are not attached to or servicing a building. The Department's view is that flying foxes will not require compliance schedules.

A ski chair lift will probably fit within the definition of 'cable car' in section 7, where it involves carrying people in a 'vehicle' such as a chair structure. In such cases, provided that the ski lift is attached to or servicing a building, the lift will require a compliance schedule.

The Department's view is that a rope or pommel tow does not involve a 'vehicle', so will not be a cable car. Accordingly, a compliance schedule will not be required.

A boat cage probably does fall within the definition of 'cable car'. However, boat cages are not attached to or servicing a building, meaning that they do not fit within the scope of section 100 and so do not require compliance schedules.

In some cases a stair climber could be a cable car, if it operates wholly or partly outside of a building. Stair climbers are normally installed on internal stairs catering for people with disabilities, and this kind of installation does not trigger the requirement for a compliance schedule. However, occasionally stair climbers are installed on external stairs that service, for example, a front entrance to a residential dwelling. Such a case falls within the definition of 'cable car' in section 7 and within the scope of section 100, and would trigger the requirement for a compliance schedule.

Q. Where a compliance schedule is issued for a cable car attached to a residential dwelling if other specified systems are also contained in the residential dwelling, for example, a lift or a sprinkler system, are they required to be listed in the compliance schedule?

A. No. The question has been clarified by the new section 100 of the Building Act 2004, introduced in the Building Amendment Act 2005. Where a compliance schedule is required because a residential building (single household unit) has a cable car attached to it, there is no requirement that the compliance schedule cover any other systems or features that may be installed in the residential building.

Q. Where a cable car services more than one property, and is able to stop at several houses along its journey, does each residential dwelling need a compliance schedule?

A. No. A compliance schedule is normally issued for a single building, but can be issued for a building complex where that building complex has shared specified systems.

A cable car that services a number of residential dwellings can be seen as a shared system, and could be covered by a single compliance schedule. In this case, the compliance schedule would need to list each property serviced by the cable car, as it would pertain to more than one property title. This approach may not be appropriate if any of the buildings involved are not residential dwellings, as compliance schedules for such buildings may have to list other specified systems in addition to cable cars.

Q. Is a territorial authority required to proactively issue a compliance schedule for a cable car from 31 March 2005?

A. No. There is no requirement in the Building Act 2004 for a compliance schedule to be issued for a cable car before 31 March 2008. A transition period was included in the in Building Amendment Act 2005 to allow building owners with cable cars attached to or servicing their buildings 3 years to apply for a compliance schedule.

Q. Should territorial authorities take enforcement action against owners of cable cars after 31 March 2008, where the owner fails to apply for a compliance schedule?

A. The Building Act 2004 places the onus on the property owner to make an application for a compliance schedule. This is a change from the Building Act 1991, which placed the obligation on territorial authorities to proactively issue a compliance schedule.

In the interim, territorial authorities should begin to include information about this requirement in their publications or with rates notices, and perhaps begin to note addresses in their district that contain a cable car. Eventually, where property owners fail to make an application for a compliance schedule, enforcement action may be required.

Q. What should a compliance schedule for a cable car contain?

A. At present there is no standard that a cable car can be inspected or maintained against. The Department of Building and Housing is working with Standards New Zealand to create a Standard covering this work. This Standard is expected to be complete in 2006.

Q. There are currently no approved IQPs for cable cars. Can a territorial authority approve an IQP after 31 March 2008?

A. Yes. Territorial authorities can approve IQPs until the licensing regime for licensed building practitioners comes into force, and should continue to use existing processes to approve IQPs. These questions have been clarified by the new section 438 of the Building Act 2004 that was included in the Building Amendment Act 2005.

COMPLIANCE SCHEDULE STATEMENTS

Q. Does a territorial authority or a building consent authority issue the compliance schedule statement?

- A. A compliance schedule statement is issued by the territorial authority – refer to section 105(e).

Q. Does a compliance schedule statement need to be issued each time there is an amendment to the compliance schedule?

- A. No. A compliance schedule statement is issued only once – when a compliance schedule is issued for the first time. This is no different from the practice under the Building Act 1991 with statements of fitness.

Q. It is likely that there will be more situations where staged building consents will be issued for multistorey buildings, in order to manage sections 363 and 364 of the Building Act 2004.

A compliance schedule must be issued with the first code compliance certificate that is issued.

Section 105(e) requires that a compliance schedule statement be displayed in the building for the first 12 months of the period of the compliance schedule, which means that it must also be issued with the first code compliance certificate that is issued.

Will there be a problem if the building work is not all completed when the compliance schedule statement is issued?

- A. Where a project involves staged building consents, the compliance schedule must be issued with the first code compliance certificate that is issued. This means that the compliance schedule statement must also be issued at that time. The building work covered by this consent must be finished in order to issue the code compliance certificate, even though building work on other consents is not complete.

It is important to note that the compliance schedule statement is not a statement about the performance of the specified systems that are listed. The compliance schedule statement simply lists the specified systems contained in the building work to which the code compliance certificate relates and notes where the compliance schedule is kept. This means there is nothing to prevent this statement being issued before all stages of the project have been completed.

If further stages of the project include new specified systems or alter existing specified systems, then an amended compliance schedule should be issued with the code compliance certificate at the completion of each of the relevant stages of the project. Any such new or amended specified systems do not need to be included on the compliance schedule statement.

Building warrant of fitness

Building warrant of fitness administration

Q. If the building owner changes the lawfully established use when filling in Form 12, does this constitute notice to the territorial authority under section 114 that a change of use has occurred?

A. The Department's view is that simply slipping a change of use into a building warrant of fitness does not constitute written notice to the territorial authority of a proposed change of use in terms of section 114. However, it would be good practice for territorial authorities to check the information provided in a building warrant of fitness, as well as checking any certificates attached to the building warrant of fitness. In some cases, this will involve some research to verify that the stated 'lawfully established use' is correct.

Q. How does the territorial authority know what the 'lawfully established use' is?

A. 'Lawfully established use' is not defined by the Building Act. In the absence of a definition, a territorial authority should adopt a sensible approach when considering what lawfully established use is. In most cases the existing compliance schedule will state the use of the building. If doubt exists after checking the compliance schedule, the next step could be to establish whether a building consent has been issued that includes a change of use. Further information can be gained by comparing the 'intended use' description of work in past building consents and code compliance certificates.

Q. Can a territorial authority charge a fee for checking the building warrant of fitness and IQP/LBP certificates?

A. Yes. Section 219 of the Building Act 2004 provides for a territorial authority to charge for any function or service performed under the Act.

Q. Can a territorial authority insist that the owner notes the relevant IQP registration number(s) on a building warrant of fitness?

A. Some territorial authorities have followed this practice in the past, and may wish to continue doing so. However, this practice is not a requirement of the Building Act 2004. This means that while a territorial authority may encourage this approach, it cannot lawfully insist upon it.

Form 12

Q. Form 12 only refers to the 'Signature of the owner', where the old Form 14 stated 'Signed by or for and on behalf of the Owner'. Can a building warrant of fitness now be signed by an agent?

A. Form 12 has been amended by the Building (Forms) Amendment Regulations (No.2) 2005 and can now be signed by the owner or their agent.

Q. Where a compliance schedule has been amended so that new specified systems have been added, what date is the building warrant of fitness issued on?

A. Amending a compliance schedule will not affect the timing of the subsequent issue of the building warrant of fitness. Section 108(3)(a) provides that the building warrant of fitness is issued on the anniversary of the issue of the compliance schedule (meaning the original compliance schedule, not any amended compliance schedules).

However, in such a situation, a building warrant of fitness will not be able to cover all specified systems for the full 12-month period. For example, if a compliance schedule is issued at the completion of the first stage of a project, and a new specified system is completed 9 months later in the second stage of the project and an amended compliance schedule is issued, then the building warrant of fitness should be provided on the anniversary of the issue of the original compliance schedule. It will relate to the original specified systems for the full 12-month period, but will relate to the new specified system for the first 3 months of its life only.

Q. Sometimes a building belongs to a building complex (for example, a tertiary institution) where there are a number of buildings that share specified systems and therefore share a compliance schedule. Form 12 seems to address single buildings. How should Form 12 be filled in where the building warrant of fitness relates to multiple buildings?

A. Although Form 12 only refers to a single building, this does not mean that a building complex cannot be listed, provided that the complex is a 'building' that shares specified systems. A clear description of the building complex should be entered in the appropriate place on the Form. It may also be helpful if the owner keeps a copy of the compliance schedule in multiple locations throughout the complex.

Form 12A

Q. When a new specified system has been added to a building with an existing compliance schedule, it is possible for the anniversary of the building warrant of fitness to fall due in less than 12 months. For example, an automatic or manual emergency warning system for fire or other dangers could have been installed in a building 3 months prior to the due date of the building warrant of fitness. How is Form 12A managed in this situation?

A. If a specified system has been installed part-way through a building warrant of fitness period, an IQP/LBP could add further information to Form 12A to reflect that the particular specified system has been operating for less than 12 months. For example, the usual statement for the specified systems that have been in the building for the full 12 months could be followed by a statement like:

The inspection, maintenance, and reporting procedures of the compliance schedule have been fully complied with during the 3 months prior to the date stated below in relation to the following specified system(s):

- Automatic or manual emergency warning system for fire or other dangers.

In the Department's view, an addition to Form 12A of the kind shown above would not change the effect of the prescribed form and would not be misleading. The purpose of the prescribed form is to certify that all procedures have been carried out for the specified systems in the building during the time those specified systems have been in the building.

Q. Can an IQP/LBP add notes or make other changes to Form 12A if a specified system has been in the building for 12 months, but not all procedures have been complied with? For example, can Form 12A be changed to note that a particular inspection was not undertaken, but later inspections indicate that the specified system is safe and functioning?

A. No. An IQP/LBP cannot amend Form 12A to provide for exceptions where the inspection, maintenance and reporting procedures have not been fully complied with. Regulation 6 in the Building (Forms) Regulations 2004 states that using a form that has minor

differences from a prescribed form will not make the form invalid, as long as the form:

- has the same effect as the prescribed form
- is not misleading
- contains all the information required by the prescribed form
- presents the information in the same order as it appears on the prescribed form.

In the Department's view, an IQP/LBP cannot comply with regulation 6 if he or she amends Form 12A to provide for exceptions where the inspection, maintenance and reporting procedures have not been fully complied with. This is because adding an exception of this kind will give the form a different effect from the prescribed form. The effect of the prescribed form is to certify that all procedures have been carried out during the previous 12 months. To amend the certification statement to state that some inspection procedures have been complied with, but others have not, changes the substantive effect of the form. It becomes a lesser standard of certification.

While it is desirable that Form 12A be signed for all specified systems, the Department is aware that there may be situations where an IQP will not be able to issue Form 12A for a specified system. This could occur, for example, where a particular inspection was not undertaken, or where maintenance work has not been undertaken. The IQP will need to explain to the building owner why he or she cannot issue Form 12A certificate for the specified system.

In such a case, an IQP could choose to provide a written report to the building owner, setting out the procedures that have been complied with, the procedures that have not been complied with and the reasons for and effect of the non-compliance. The building owner can provide the report to the territorial authority with the building warrant of fitness (even though the report will not constitute a Form 12A certificate). The territorial authority should then consider the degree of non-compliance with the procedures and decide what action, if any, it will take.

IQPs (Independent Qualified Persons)

Q. Is an IQP an LBP?

- A. Yes. An IQP can do the work of an LBP until 30 November 2009, or until a territorial authority considers that the IQP is no longer a suitable person to be on its IQP register.

Q. Can IQPs be approved after 31 March 2005?

- A. Yes. Territorial authorities can approve IQPs until the licensing regime for licensed building practitioners comes into force. This will apply until 30 November 2009. Until that date, IQPs should issue Form 12A.

New Zealand Fire Service Commission (FS)

DESIGN REVIEW UNIT (DRU)

(Refer also to the New Zealand Fire Service website:
www.fire.org.nz/building/faq/DRU.htm)

Q. What will the New Zealand Fire Service Commission provide advice on?

- A. The Fire Service can only provide advice on provisions for means of escape from fire and the needs of people who are authorised by law to enter the building to undertake fire fighting (section 47(1)(a) and (b)).

Q. Will the New Zealand Fire Service Commission be providing comment on applications lodged before 22 April 2005?

- A. No.

Q. Some people think that the New Zealand Fire Service Commission often requires more than the Building Code requires. Will this continue?

- A. No, the Act is clear that the New Zealand Fire Service Commission cannot do this when giving advice (refer to section 47).

Q. If the building consent authority requires a change to a building consent application as a result of the New Zealand Fire Service Commission memorandum, does the building consent authority need to send the application back to the New Zealand Fire Service Commission?

- A. No, but a building consent authority could choose to do so.

Q. What is the difference between a fit-out and an alteration as identified in the *Gazette* notice?

- A. An 'alteration' will cover any building work to rebuild, re-erect, repair, enlarge or extend the building, and a 'fit-out' may involve a similar type of building work. However, each term is used in a different way in the *Gazette* notice. The reference to 'alteration' in clause 1(c) of the *Gazette* notice means that building consent applications for alterations that affect the fire safety systems will need to be reviewed by the New Zealand Fire Service Commission. The reference to 'fit-out' is an exemption provision and means building consent applications for that work will not have to be reviewed by the New Zealand Fire Service Commission. 'Fit-outs' are internal building work and are only exempt where they are the subject of a separate consent that is associated with staged building consents. For example, if a consent is obtained to build a new building but the floor fit-outs are to be covered by a separate consent, these will not be required to be reviewed by the DRU.

If the fit-out work is covered by the same building consent as other building work that is required to be reviewed by the New Zealand Fire Service Commission, then the fit-out exemption will not apply.

Q. Does the building consent authority have to act on the New Zealand Fire Service Commission's advice?

- A. No, however it must consider that advice and be able to explain why it did or did not take action as a result of that advice.

Q. What information does the New Zealand Fire Service Commission expect to receive?

- A. The New Zealand Fire Service Commission website suggests the following.

To expedite the review process the New Zealand Fire Service Commission recommends that at the time of application for a building consent, the applicant or more preferably the fire engineering consultant clearly identifies the pertinent information. This information should be comprehensive and include how the means of escape from fire is achieved and the needs of the Fire Service to undertake fire fighting and rescue operations within the building. This could include

- 1 x copy of the fire engineering drawings, dated, clearly indicating drawing number, version, author and originating company. Plans will not be returned but retained on file by New Zealand Fire Service Commission.
- 1 x fire report,
- 1 x New Zealand Fire Service Commission checklist, dated and signed by New Zealand Fire Service Commission Chief Fire Officer.

Paper or electronic formats are acceptable to the New Zealand Fire Service Commission however this is left to the discretion of the building consent authority so as to align with their document control procedures.

Q. What are the contact details for the DRU?

- A. **Physical (courier):** New Zealand Fire Service, Design Review Unit, 2 Poynton Terrace, Newton, Auckland.

Mail: New Zealand Fire Service, Design Review Unit, PO Box 68-042, Newton, Auckland.

Email: dru@fire.org.nz

Phone: (09) 369 5301

Fax: (09) 309 0483

Project information memorandum (PIM)

Q. Do PIMs have to be issued if a building consent has been applied for?

- A. Section 31(1)(a) of the Act provides that a building consent authority must apply to a territorial authority for a PIM when an application is made to it, unless the building consent authority is the territorial authority, in which case it must issue the PIM itself (section 31(2)(a) of the Act).

Q. Do territorial authorities that are building consent authorities have to apply for a PIM from themselves?

- A. No, but they must issue the PIM for the building work and provide a copy to the owner (see above).

Q. Do building consent authorities have to apply for a PIM, even if a PIM is provided by the applicant?

- A. No, refer to section 31(2)(b).

Q. Can an owner apply to a territorial authority for a PIM before applying for a building consent?

- A. Yes, refer to section 32(2) of the Act. If the owner has the required information, an application for a PIM may be made. When applying for a building consent the owner must provide a copy of the PIM with that application (section 45(1)(f), (i) of the Act).

Q. Why is it not mandatory to obtain a PIM prior to applying for a building consent?

- A. An owner can apply for a PIM prior to applying for a building consent if they wish, as it may provide information that is relevant to working out the best design for the building work. However, an owner is not required to obtain a PIM at this stage. The PIM must be applied for when the building consent application is received.

Q. In what section of the Act does it allow for a PIM to be used for another project?

- A. There is nothing specific in the Act about this. The PIM in each case relates to the land and building for which the building work is contemplated. Where the building work and land are the same, the territorial authority should be able to re-use the same PIM, although it should check that the information is still appropriate and that there is no further information that should be included on the PIM.

Q. Does a PIM have an expiry date, as in the Building Act 1991?

- A. No.

Q. Why is there not a prescribed form for issuing the PIM?

- A. The Act does not require a PIM to be issued on a form prescribed by regulations.

Q. If a PIM is issued and changes have occurred that affect the PIM, does the territorial authority have to issue a new one?

- A. The PIM must contain information known by the territorial authority at the time it is issued that may have some effect on the project. If there is a change, for example, to the district plan after the issue of the PIM, there is no requirement to re-issue the PIM. If the PIM is provided with a building consent application at a later date, it would be prudent for the building consent authority to ensure it is still relevant to the new project. If a considerable time has elapsed, the building consent authority might ask the applicant to obtain a more up-to-date PIM.

Q. How long must a PIM be held on the property file?

- A. For the life of the building.

Code compliance certificates (CCCs)

Q. Why did the new Act change the emphasis of the code compliance certificate to compliance with the building consent?

- A. During the design process, considerable time is spent to ensure a proposed building complies with the Building Code. The new Act supports this process. When a building consent application is made, the building consent authority verifies that design and issues the building consent. Good design supported by the building consent authority review provides a level of surety that, if work is completed in accordance with the building consent, compliance with the Building Code will be achieved and a code compliance certificate should be easily obtained.

Often it is not possible to build exactly to plan because of on-site situations or because clients have changed their minds. Where changes are required, both the designer and the building consent authority should be given time to consider the proposed changes to ensure the requirements of the Building Code will continue to be met as a result of the change. This may lead to an amendment to the building consent. This would also mean that the building consent documentation remains an accurate reflection of the work that is being carried out on site.

Where compliance with the Building Code is established at time of consent or subsequent amendment, any Building Code changes that occur later will not result in the need to alter the work to comply with the new Code in order to obtain a code compliance certificate.

Another consideration is that people undertaking a review of historical files should be able to obtain drawings and specifications that are a true reflection of the actual work carried out on site.

Q. Can work undertaken prior to July 1992 under a permit be issued with a CCC?

- A. No, a CCC is issued against a building consent. Prior to 1 July 1992 this system did not exist and councils issued permits under their bylaws.

Q. Is sighting an energy work certificate sufficient to issue the CCC?

- A. No a copy should be attached to the CCC application (Form 6), along with the other relevant documentation.

Q. What happens if the owner does not apply for a CCC within 2 years of the building consent being granted?

- A. Section 93 of the Act provides that where no application for a CCC is made within 2 years from the date the building consent was granted, the building consent authority must decide whether or not to issue a code compliance certificate. In order to make this decision, a building consent authority will need to inspect the work to see if it complies with the building consent. The building consent authority must decide within 20 working days of the expiry of the 2 years or any further period it allows. Owners must obtain a code compliance certificate as soon as building work is complete.

Q. Does the 2-year period apply to building consents issued before 31 March 2005?

- A. No.

Building consents

Q. What's the difference between granting and issuing a building consent?

- A. A building consent is granted when the decision is made that the application complies with the requirements of the Building Code and the building levy is paid. Issuing occurs once the building consent authority has granted the building consent, produced the relevant documentation and attached other relevant information such as the PIM and development contribution notice (refer to section 51 of the Act).

Q. When a building consent application is lodged that includes building over two allotments (section 77), when can the building consent authority issue the consent? Must the building consent authority wait for the certificate to be issued or until it has been lodged with the Registrar-General of Land before issuing the building consent?

- A. A building consent authority should not issue a building consent until a certificate has been issued by the territorial authority. The certificate must have been authenticated by the territorial authority and signed by the owner. It would also be good practice not to issue a building consent until a copy of the certificate has been lodged with the Registrar-General of Land and accepted. However, if this cannot be done within the 20-working-day time-frame for processing the building consent application, then the building consent authority should issue the building consent. In such a case, it would be good practice for the building consent authority to notify the applicant when issuing the building consent that the section 77 certificate has not yet lodged and/or accepted by the Registrar-General.

Q. Will a form be provided for building consent amendments?

- A. No. Section 45(5) requires that 'an application for an amendment must be made as if it were a building consent'. This means that the building consent application Form 2 should be used for the amendment.

Q. When does the building consent applicant become liable for the building levy?

- A. The applicant becomes liable for the levy where the building consent is granted and must pay the levy no later than at the time the consent is granted (section

53(1) of the Act). Many territorial authorities take the levy at the time of application. The Act does not prevent this, although such levy payments would need to be returned if the consent were not granted.

Q. Where drawings differ from the specification, which takes precedence?

- A. There should not be any significant inconsistencies between the drawings and specifications. Where inconsistencies do exist, the building consent authority may need to suspend the building consent and ask that the inconsistencies be clarified.

Q. Does a building consent have a limited life?

- A. 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. If building work does commence within 12 months, then the owner has 2 years from the date of the grant of the building consent to complete the building work before the building consent authority will follow up on the building consent and decide whether or not to issue a code compliance certificate. A building consent authority can agree to an extension to the 2-year period.

Q. How long must a territorial authority hold copies of building consent applications?

- A. For the life of the building.

Q. Can a territorial authority waive access and facilities for people with disabilities?

- A. No. Section 67(3) has been amended (refer to Building Amendment Act 2005) to clarify that access and facilities for people with disabilities cannot be waived by a territorial authority. Under section 69, the Chief Executive may issue a waiver or modification for access and facilities for people with disabilities in relation to building work on existing buildings, but not new buildings.

Certificate of acceptance

Q. Can a building levy fee be taken at the time of a certificate of acceptance application.

A. Certificate of acceptance applications for building work carried out without a consent (section 96(1)(a)) must be accompanied by any fees, charges or levies. (The levy does not have to be refunded if the certificate of acceptance application is refused.)

Q. Does the building levy get collected where work has been done under urgency (96(1)(b)?)

A. No, only where people have done work without a building consent that required a consent. Work required to be undertaken urgently to remove a risk or danger can lawfully be undertaken without consent.

Q. Does a territorial authority have to issue a certificate of acceptance when an application is made?

A. No, if the territorial authority is not satisfied that the building work complies with the Building Code insofar as it can ascertain. If the territorial authority is not satisfied in this respect, it should refuse the application. A refusal to issue a certificate of acceptance may be challenged in an application for a determination to the Chief Executive of the Department of Building and Housing.

Q. Can a territorial authority refuse to accept certificate of acceptance applications as a blanket policy?

A. No, the territorial authority must consider each application on its merits. A decision to either issue or refuse to issue a certificate of acceptance should only be made on the facts of each application and whether the work concerned can be verified as complying with the Building Code.

Q. If a certificate of acceptance inspection reveals further building work is required, should the territorial authority require the owner to apply for a building consent to complete the work?

A. A building consent authority may use a notice to fix to require building work to be done to fix a problem that fits within the scope of section 164(1)(a) to (c), eg, requiring building work to be done to ensure compliance with the Building Code. A certificate of acceptance does not relieve a homeowner of a breach of the Building Act (doing building work without a building consent), but merely provides a level of verification.

Q. Because the building levy is based on the value of the work at the time the work was undertaken, what have the value of the levies been and when did they change?

A. Historical building levy charges are as follows.

Building levy order 2005	The rate of building levy payable under section 53 of the Act is \$1.97 for every \$1,000 (or part of \$1,000) of the estimated value of the building work for which a building consent is issued.
Building industry authority levy order 1995	This order, which comes into force on 1 December 1995, reduces the rate of levy payable under section 23B of the Building Act 1991 from 80c to 65c for every \$1,000 (or part thereof) of estimated value of the building work concerned.
Building industry authority levy order 1994	This order, which comes into force on 1 November 1994, reduces the rate of levy payable under section 23B of the Building Act 1991 from \$1 to 80c for every \$1,000 (or part thereof) of the estimated value of the building work concerned.
Building Amendment Act 1993	The levy was first introduced by the Building Amendment Act 1993, effective from 1 January 1994 at a rate of \$1 for every \$1000.

Q. How long must a certificate of acceptance be held on territorial authority records?

A. For the life of the building.

Notice to fix

Q. What is a reasonable time to comply with a notice to fix?

- A. When deciding on an appropriate compliance time to put in a notice to fix, consideration should be given to, among other things, issues such as human and site safety, the scope of the work, and availability of people and materials to do the work. Each case will have to be judged on its own merits. If someone is required to build a barrier around a deck it may be a job that can be done within 10 days. However, if someone is required to build a large retaining wall it may not be possible to build it within 10 days and the specified person may be given a longer period.

Q. Should a notice to fix tell the specified person how to fix the problem?

- A. This will also need to be considered on a case-by-case basis. The instruction may be to comply with the building consent. The purpose of the notice is to identify the problem, and instruct the specified person to fix it. The notice does not need to design the solution.

Q. Can a notice to fix instruct the specified person to do work not covered by a building consent?

- A. Yes, but the notice may also require that the owner apply for a building consent to do the work.

Q. Can a territorial authority charge for resolving a notice to fix issued by a building consent authority that is not a territorial authority? If so who do they charge, the specified person or the building consent authority?

- A. A territorial authority can charge the owner for the reasonable costs associated with resolving a notice to fix (section 219).

Section 362A

Q. What are some examples of premises intended to be open to the public?

A. Hospitals, sports stadiums, hotels, shops and restaurants.

Q. What are some examples of premises not intended to be open to the public?

A. Private homes, apartment buildings and office space that members of the public cannot access.

Section 363

Q. Why is the Department recommending that information about section 363 be placed in PIMs?

- A. People should be informed about section 363 as it is likely to have an impact on the way that building work is undertaken. Putting information in a PIM ensures people are aware of section 363 from the beginning of the process. (NB This is a suggestion only).

Certificate for public use (CPU)

Q. When can a certificate for public use be used?

A. A certificate for public use can only be used where a building consent has been granted for the building work affecting the premises and no code compliance certificate has been issued (section 363A(1)(a), (b)). The territorial authority can only issue a CPU if it is satisfied on reasonable grounds that the premises or part of the premises can be used safely by members of the public. When considering building safety, the territorial authority should consider, among other things, the reliability of safe paths, fire alarm systems, access to work-in-progress areas, barriers and signage.

Q. If an owner has obtained a CPU, do they have to obtain a code compliance certificate?

A. Yes.

Q. When can a certificate for public use not be issued?

A. Where the territorial authority is not satisfied that the premises affected by building work are safe for members of the public to use or where no building consent was issued for the work.

Section 364

Q. Does section 364 apply to contracts entered into prior to 30 November 2004?

A. No.

Q. If a residential property developer is unable to obtain a code compliance certificate because a building certifier or a building consent authority that is not a territorial authority cannot or refuses to issue a code compliance certificate, can they on-sell the property without using Form 1 from the regulations?

A. No, a residential property developer would be in breach of the Act if they entered into the contract on or after 30 November 2004.

Q. Does 'take possession' mean move into the household unit?

A. Not necessarily. Taking possession means that you have legal control of the property (eg, having the right to move into the house – whether that is actually done or not). Usually physical possession occurs at the same time as the legal possession.

Q. Can a residential property developer be a person or a company?

A. A residential property developer can be either a person or a company or any other type of body corporate.