Disclaimer

This document is issued as guidance under section 175 of the Building Act 2004. The Department of Building and Housing has taken reasonable care to ensure that the information provided in this guidance is correct at the time of writing. However, readers should always refer to the Building Act 2004 and Regulations as the source documents. The Department will not accept any liability for anything done or not done in reliance on this information.

December 2011

Contents

1 Section 1: Introduction
1 About this guide
1 What is RBW?
1 What does RBW seek to do?
2 Section 2: How RBW is defined
2 Introduction
2 Kind of work
4 Type of building
4 Building elements
9 Section 3: BCA involvement
9 Public information about RBW
9 Building consent application vetting
10 The consenting process
13 During RBW Construction
17 Issuing of CCC
20 Helpful website addresses
Section 1: Introduction

About this guide
This guide has been developed to help building consent authorities (BCAs) adapt their policies and procedures to cater for the restricted building work (RBW) requirements which starts on 1 March 2012.

In the interest of national consistency the Department encourages all BCAs to adopt the procedures detailed in this guide. The suggested BCA procedures are expected to become the benchmark for good industry practice by BCAs.

This guide also provides an overview of the RBW scheme. Additional information on the scheme can be found in the frequently asked questions which have been included on the Department’s website.

What is RBW?
RBW is:
• the design, construction and alteration of the primary structure and external moisture management systems of houses and small-medium apartment buildings; and
• the design of fire safety systems for small-medium apartment buildings.

RBW can only be carried out or supervised by a Licensed Building Practitioner (LBP).

What does RBW seek to do?
RBW, together with licensing, is one of the key components aiming to lift the performance of the building industry.

RBW aims to ensure that design and construction work that is critical to the integrity of a residential building is only carried out or supervised by people who have been independently assessed as competent (LBPs).
Section 2: How RBW is defined

Introduction

The Building (Definition of Restricted Building Work) Order 2011 (RBW Order) outlines what design and construction work is RBW.

RBW is identified by reference to:

- the kind of work undertaken (design, construction or alteration work); and
- the type of building being designed, constructed or altered (houses and small to medium sized apartment buildings); and
- the building elements being designed, constructed or altered (primary structure, external moisture management systems or the design of fire safety systems).

RBW does not include:

- building work that does not require a building consent (covered by section 41, section 43 and Schedule 1 of the Building Act 2004)
- Off-site manufacture of building components (for example pre-built frames and trusses), because a building consent is not required.
- Manufacture design (for example design of a proprietary fire alarm system)
- Design, construction and alteration work in relation to an application for a building consent made before 1 March 2012.

Kind of work

RBW includes design and building work. It does not include demolition or removal work.

Design work

In the context of RBW, design work is the preparation of drawings, specifications, or other documents, according to which certain building elements of a certain type of building are proposed to be constructed or altered.

Design work that is RBW can only be carried out by (or carried out under the supervision of) a LBP who is licensed in the design class (working within their level of competency). Registered Architects and Chartered Professional Engineers are automatically treated as Building LBPs licensed in the design class and can therefore also carry out or supervise design RBW.

Regulations 6 and 7 of the RBW Order define design work that is RBW.

---

1 ‘application for a building consent made’ is intended to mean the point at which the BCA accepts the consent application for processing and the ‘clock’ starts.
Building work
In the context of RBW, building work is the construction or alteration of certain building elements of certain types of buildings.

Construction and alteration work is only RBW where that work falls within the scope of work of the five licensing classes as described in Schedule 1 of the Licensed Building Practitioners Rules 2007. These classes are:
• carpentry
• external plastering
• bricklaying or blocklaying
• foundation
• roofing work.

This means, there has to be a licence class with scope to carry out a certain type of work in order for that work to be RBW.

Building work that is RBW can only be carried out or supervised by a person licensed in the relevant trade class eg external plastering must be carried out by a person licensed in the external plastering class. However, there are overlaps within the LBP Scheme. For example, a person licensed in the carpentry class may also carry out or supervise: the construction of concrete foundations and/or pile foundations and/or the installation of lightweight profiled metal roofing.

Licensed and certifying plumbers and gasfitters are automatically treated as LBPs in the brick and blocklaying; external plastering; and roofing licensing classes. This recognises that licensed or certifying plumbers and gasfitters carry out and supervise fitting and sealing or flashing of pipework through exterior walls, and certain roofing and cladding work in the ordinary course of their work.

Regulation 5 defines building work that is RBW.

Owner-Builder Exemption
The Building Amendment Bill (No.3), currently awaiting a second reading by Parliament, contains an owner-builder exemption from RBW.

It is unlikely however, that the Bill will be passed and become law prior to 1 March 2012. As such, an owner-builder who carries out or supervises RBW on their own home will need to be a LBP, or be supervised by a LBP. This will be the case until such time as the proposed owner-builder exemption becomes law and comes into force.
**Type of building**

RBW applies to residential buildings only. The Order achieves this by limiting the application of RBW to houses and small to medium apartment buildings. The Order defines these, and other applicable terms, in Regulation 3 as outlined below.

<table>
<thead>
<tr>
<th>house</th>
<th>means a free-standing, fully detached building consisting of a single residential unit (or a single residential unit and 1 or more residential facilities)</th>
</tr>
</thead>
</table>
| RBW does not apply to: | • mixed use apartment (eg buildings with shops)  
• ancillary and outbuildings (detached garages, carports, bridges, swimming pools etc)  
• any commercial building of any height  
• any large apartment building (those that exceed 10m in height). |
| small-to-medium apartment building | means a building that –  
(a) contains 2 or more residential units or residential facilities; and  
(b) does not contain parts that are neither residential units nor residential facilities  
(c) has a maximum calculated height of less than 10m. |
| residential unit | means a building, or part of a building, that is so designed that it is more suitable for being lived in by a single household or family than for any other use. |
| residential facility | means a part of a building that is not a residential unit, but is a facility (for example a corridor, foyer, garage, laundry, lift, sauna, or storage unit) whose principal or only purpose is ancillary to the use of a residential unit in the building (or 2 or more residential units in the building). |
| maximum calculated height | in relation to a building, means the vertical distance between the highest point of its roof (excluding structures such as aerials, chimneys, flagpoles, and vents) and the lowest point of the ground. |

**Building elements**

The Order only applies to building elements that are critical to the integrity of the building.

Work that is critical to the integrity of the building includes:

- the design, construction and alteration of primary structure and external moisture-management systems; and
- the design of fire safety systems (for small to medium apartment buildings only).
Primary Structure
Primary structure is the principal structural system of the building. It includes all structural elements of the building intended to contribute in resisting vertical and horizontal loads and is defined in Regulation 3 as follows:

<table>
<thead>
<tr>
<th>Order definition</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>primary structure, in relation to a building, (a) means those of its building elements that are intended to contribute to its ability to withstand vertical or horizontal loads (for example, its beams, bracing, columns, foundations, roof, subfloor framing, and walls); and (b) includes any part of its primary structure.</td>
<td></td>
</tr>
<tr>
<td>Primary structure does not include secondary structural elements, for example internal partitions or substructures to hold up false ceilings, because the building could still resist loads without these elements being present. Some building elements may contribute to the building’s ability to resist loads even though they were not ‘intended to’ or designed to contribute – in these cases those elements do not form part of the primary structure.</td>
<td></td>
</tr>
</tbody>
</table>

The table below, although not exhaustive, shows examples of primary structure, or areas it may be found. The right-hand column provides further examples of these building elements that could be, or form part of, the primary structure.

Each LBP will need to detail in their Memorandum (Certificate of Design Work) or Memorandum (Record of Building Work) which details all aspects of the RBW they carried out or supervised.

<table>
<thead>
<tr>
<th>Examples of Primary structure (or areas where it may be found)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foundations and subfloor framing</td>
</tr>
<tr>
<td>Floors</td>
</tr>
<tr>
<td>Walls</td>
</tr>
<tr>
<td>Roof</td>
</tr>
<tr>
<td>Columns and beams</td>
</tr>
<tr>
<td>Bracing</td>
</tr>
</tbody>
</table>
External moisture management system

A building’s external moisture management system is comprised of the building elements and systems that prevent the ingress of external moisture and help control moisture within the building fabric. Regulation 3 of the Order defines it as follows:

<table>
<thead>
<tr>
<th>Order definition</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>external moisture-management system</strong>, in relation to a building,</td>
<td>These elements of the external envelope deflect moisture away from, or provide an impenetrable barrier into, the building. For example: cladding material, flashings and joinery.</td>
</tr>
<tr>
<td>(a) means a system (whether comprising only one or 2 or more building elements) that is intended to provide</td>
<td>These <strong>secondary measures of the external envelope</strong> ensure that if water goes through the primary deflecting part of the system it does not go beyond the building fabric into the building itself. For example: drainage cavities and any means for venting these cavities.</td>
</tr>
<tr>
<td>(i) resistance to the penetration of the building by moisture from outside it; or</td>
<td></td>
</tr>
<tr>
<td>(ii) resistance to the accumulation within the building’s fabric of moisture that has penetrated it from outside the building; and</td>
<td></td>
</tr>
<tr>
<td>(b) includes any of the building’s building elements that are or form part of damp-proofing, roof-cladding or a roof-cladding system, a ventilation system, wall-cladding or a wall-cladding system, or water-proofing; and</td>
<td></td>
</tr>
<tr>
<td>(c) includes any part of its external moisture-management system.</td>
<td></td>
</tr>
</tbody>
</table>

The table below shows examples of external moisture management systems. The right-hand column provides examples of where these building elements may be used (damp-proofing and water-proofing) and, in the case of roof/wall cladding systems, the building elements that are likely to form part of the external moisture-management system.

Each LBP will need to detail in their Memorandum (Certificate of Work) or Memorandum (Record of Building Work) which details all aspects of the RBW they carried out or supervised.
Examples of External Moisture Management Systems (or areas where they may be found)

| **Damp-proofing** | Damp-proofing of:  
• Floors, walls and roofs in direct contact with the ground or floor  
• Sub-floor/suspended floors and solid walls exposed to airborne moisture including Damp-proofing protection. |
| **Roof/wall cladding and roof/wall cladding systems** | • Building wrap  
• Drained cavities  
• Cladding  
• Fixings  
• Windows, doors and skylights  
• Ventilators  
• Openings and penetrations  
• Flashings and seals  
• Joints and junctions. |
| **Water-proofing** | • Water-proof coating to solid walls and roofs exposed to airborne moisture  
• Waterproof membranes to deck/balcony areas. |

Fire safety systems

The overall design of the fire safety systems for the building, including those building elements that are intended to protect people and household units adjacent to the building or other property from fire or the effects of fire.

| **Order definition** | **Explanation** |
| Fire-safety system, in relation to a building, means those of its building elements that are intended to protect people, household units adjacent to it, or other property, from fire or the effects of fire; and includes building elements that are, or are parts of, (a) emergency warning systems; and (b) systems intended to enable or facilitate the evacuation of the building in an emergency; and (c) systems intended to enable or facilitate fire-service operation (d) systems intended to suppress or control fire or smoke. | The design of fire safety systems does not include manufacturer design (eg, the design of a proprietary alarm system) or specific fire design detail (eg, work that would usually be done by a fire protection provider and would not be included in consent documentation) For fire-safety systems, only design work for small-to-medium apartments is RBW. |

The table below gives examples of fire-safety systems, and areas where they may be found. Such a list will be provided in the Memorandum (Certificate of Work).

Note: Some of the examples listed can be categorised under more than one group of systems.
# Examples of Fire Safety Systems (and areas where they may be found)

<table>
<thead>
<tr>
<th><strong>Emergency warning systems</strong></th>
<th>Automatic or manual emergency warning systems.</th>
</tr>
</thead>
</table>
| **Evacuation and fire service operation systems** | Electromagnetic or automatic doors or windows  
• Emergency lighting systems  
• Fire service lift control  
• Escape routes  
• Final exits  
• Signs  
• Fire hose reels  
• Fire separations  
• Smoke separations  
• Refuge areas. |
| **Suppression or control systems** | Automatic systems for fire suppression  
• Mechanical or passive ventilation or air handling systems  
• Pressurisation systems  
• Smoke control systems  
• Dampers  
• Fire hose reels  
• Building hydrant systems  
• Fire separations  
• Smoke separations. |
| **Other parts of design** | Interface of systems  
• Fire systems centre  
• Emergency power supply. |

Note ‘other parts of fire design’ can be part of the overall fire design but relate to multiple other systems and features, so cannot be readily categorised under one group of systems.
Section 3: BCA involvement

Public information about RBW

An enquiry of a BCA is an opportunity to advise the consent applicant or their agent of the RBW requirements. The Department has published guidance on RBW targeted toward the home owner as well as trades people including specific information booklets for each of the license class holders. The BCA should include guidance information provided by the Department at its front desk and link the existing Department’s RBW on-line information to the Council’s website.

Building consent application vetting

Any building consent application that incorporates design RBW made on or after 1 March 2012 must be accompanied by one or more Memoranda (Certificates of Design Work). The Memoranda (Certificates of Design Work) must be made in the prescribed form, be fully completed and signed.

Statutory requirements

Section 45 and 30C of the Act requires:

• In the case of an application for a building consent that relates to RBW, state the name of each licensed building practitioner who, as far as the applicant is aware at the time the application is made, will be involved in carrying out or supervising the RBW that is the subject of the application.

• If an application for a building consent is accompanied by plans and specifications that contain design work that is RBW, that design work must be carried out or supervised by 1 or more LBPs who are licensed to carry out or supervise that design work.

• The plans and specifications that contain the design RBW must be accompanied by a Memorandum (Certificate of Design Work) that states:
  (a) the design RBW complies with the Building Code and
  (b) whether waivers or modifications of the Building Code are required and, if so, what those waivers or modifications are.

Responsibility

It is the responsibility of the ‘design LBPs’ (including registered architects, or chartered professional engineers) to ensure their Memoranda (Certificates of Design Work) covers all RBW they have designed.

It is the responsibility of the owner to include all Memoranda (Certificates of Design Work) that collectively cover all the RBW, in the consent application.

BCA involvement

For building consent applications made on or after 1 March 2012, the design RBW is required to be covered by a Memorandum (Certificate of Design Work). At consent application vetting stage the BCA should check:

1. if one or more Memoranda (Certificates of Design Work) have been provided with the consent application
2. the Memoranda (Certificates of Design Work) identify the RBW it/they cover
3. the Memoranda (Certificates of Design Work) state that the RBW complies with the Building Code (including any waivers or modifications to the Building Code that are required)
4. The Memoranda (Certificates of Design Work) are signed. (It may be appropriate at this point (or during the consenting process) for the BCA to check the register (LBP register / registered architect/IPENZ) and ensure the design LBP holds a valid license.)

If any of the above checks identify a gap, the BCA could ask the consent applicant to provide the missing information and may refuse to accept the consent application on the basis that it is incomplete.

**The Memorandum (Certificate of Design Work)**

The Memoranda (Certificate of Design Work) is a prescribed form that identifies the person(s) who did the design RBW.

The design LBP must state whether or not waivers or modifications are required and must certify that the RBW design elements comply with the Building Code.

The provision of the Memoranda (Certificate of Design Work) does not alter the BCAs existing decision to grant a building consent application (section 49 of the Act).

The Memoranda (Certificate of Design Work) enables the LBP to provide a lot of information should they choose to do so. For example, by cross-referencing to their design summary, and for the design summary to, in turn, reference RBW elements as part of demonstrating code compliance. The RBW guidance for designers encourages LBPs to provide as much detail as possible.

**The consenting process**

**BCA involvement – During processing**

Once a building consent has been accepted for processing, the BCA should:

1. check whether the person who has signed the Memorandum (Certificate of Design Work) is a design LBP, registered architect or CPEng (if this has not already been done as part of the consent application vetting stage)
2. check whether the Memoranda (Certificates of Design Work) collectively cover all of the design RBW covered by the consent application. If more than one LBP designer has been involved in the RBW design work then each must provide a Memorandum (Certificate of Design Work) identifying which part of the RBW design work they completed
3. compile a list of any trade LBPs that have been notified in the consent application including what licence(s) they hold. Trade LBP names may be added to/amended during construction.

If a Memorandum (Certificate of Design Work) has been provided by someone who is not a design LBP or automatically treated as a design LBP (they signed the certificate of work but do not appear on any of the applicable registers), then the BCA should notify the consent applicant and request a Memorandum (Certificate of Design Work) be provided and signed by a ‘design LBP’.

If the Memorandum (Certificate of Design Work) does not cover all of the design RBW in the consent application then the BCA should notify the consent applicant and request a Memorandum (Certificate of Design Work) be provided covering the remaining design RBW.

The BCA may suspend the 20 day processing time in the above situations.
The naming of trade LBPs

The building consent application may contain the names of the trade LBPs who will be carrying out or supervising the RBW if the consent applicant knows at that time who will work on the building project. Trade LBPs are holders of one or more of the following licences: carpentry, roofing, external plastering, brick and blocklaying, and foundations.

The purpose of this part of the application is to assist all parties in ensuring that only trade LBPs carry out or supervise the residential construction or alteration work that is RBW.

Requiring LBPs to be named on the consent application (if known at the time) does two things:

• reminds the consent applicant that they need to ensure that the key practitioners on their job are licensed, and
• provides a reference for BCAs to verify who the correct people are undertaking the RBW work when construction is taking place.

The Act does recognise that on a number of occasions, the consent applicant may have not yet engaged with a building contractor to do the building work, and so allows the names of the LBPs to be provided to the BCA at a later date – however this must be done prior to RBW construction work being started.

Ideally, the earlier in the process the LBPs are named, the easier it will be for RBW requirements to be complied with and the less work for the BCA during the inspection and CCC issuing process. Consent applicants should therefore be encouraged to name the LBPs as soon as they are known.

Complaints to the Board

If the BCA is not satisfied, and repeatedly seeks further information due to the submitted plans and specifications not fully demonstrating code compliance, then the BCA should consider whether the Design LBP has acted:

• incompetently, or
• negligently.

In judging whether a design LBP has acted in a incompetent or negligent manner, the BCA should consider whether the LBP has failed to meet the standards reasonably expected of a practitioner working in that area. As a starting point, the relevant standards are those set out in the LBP Rules (ie the minimum competencies and performance indicators) but are not necessarily limited to these. If the BCA considers this to be the case, then it (or any other person, such as the consent applicant) may lay a complaint with the Building Practitioners Board.

If the Board determines that a design LBP has acted incompetently, or negligently, it can do one or more of the following:

• cancel a licence
• suspend a licence for up to 12 months
• restrict the type of building work that can be done under the licence
• censure the LBP
• order that training be undertaken
• order the LBP to pay a fine of up to $10,000.

If the complaint relates to a registered architect or a Chartered Professional Engineer the complaint should be directed to NZIA or IPENZ respectively.
Transition to RBW
Due to the introduction of RBW on 1 March 2012 BCAs will need to clearly identify which consents are subject to the RBW requirements and which are not (based on when the application for consent is made). This will allow the correct processes to be used during the inspections and code compliance certificate process.

The Department recommends that a copy of the Memorandum (Certificate of Design Work) is attached to the building consent when issued.

BCA involvement – Consent issue
At this point the BCA should assist the consent applicant by:
1. Providing advice to the consent applicant that they need to notify the BCA if any of the LBPs change during the project (s87)
2. Providing advice to the consent applicant that they need to collect a Memorandum (Record of Building Work) from each trade LBP who carried out and supervised RBW, and submit these as part of the CCC application at the end of the project (s88 and s92).

Assisting the consent applicant to be fully aware of their obligations will make it easier for them to comply with the RBW requirements.

This advice can form part of the inspection schedule or advisory notes as part of the building consent documentation.

Code compliance – decision to issue the consent
The provision of the Memoranda (Certificate of Design Work) does not alter the BCAs existing decision to grant a building consent application (section 49 of the Act).

It is up to each individual BCA what, if any, reliance they place on Memorandum (Certificate of Design Work) in relation to the reasonable grounds test.
**During RBW Construction**

**Statutory Requirements**
Section 87 of the Act states that before RBW commences under a building consent, the owner must give the BCA written notice of the name of every LBP who:
- is engaged to carry out, or supervise, the RBW under the building consent, and
- was not stated in the application for the building consent.

Section 87 also states that, after RBW commences, the owner must provide the BCA written notice as soon as practicable if:
- an LBP ceases to be engaged to carry out or supervise RBW, or
- another LBP is engaged to carry out or supervise the RBW.

Section 88 provides that each LBP who carried out or supervises RBW must, on completion of that RBW:
- provide the owner, and the territorial authority for the district in which the RBW is situated, with a Memorandum (Record of Building Work) stating what RBW the LBP carried out or supervised.

**Responsibility**
The statutory requirements listed above relate to the owner/consent holder and trade LBPs. There is no statutory requirement for the BCA to do anything in relation to RBW during the construction stage but there are a number of practical steps that should be taken as set out in this guide.

**BCA involvement**
Responsibility during construction in relation to RBW primarily rests with the owner. However, to assist the owner in complying with the RBW requirements and to avoid potential or actual RBW breaches, or identify them as soon as possible, the BCA should:

1. Ensure that the owner is fully aware that:
   - appropriate trade LBPs must be engaged to carry out or supervise RBW
   - various RBW work cannot start until the BCA has been advised, in writing, of the relevant trade LBP who will be doing the work.

2. Add or remove names and details to the list of trade LBPs, which have been notified as part of the consent application, as information/changes are known.

3. Before accepting a booking at inspection stage ensure the trade LBPs are known to the BCA.
   - If the trade LBPs have been notified, then the first inspection should be booked.
   - If the trade LBPs have not been notified the BCA could consider refusing to book the first inspection until such time as the trade LBPs are named.

**Written notice**
The Building Act 2004 allows written notice to be provided in stages. This recognises that LBPs who will be engaged to do RBW towards the end of the project may not be known at the start of the project.

The BCA should encourage the consent holder to provide the BCA with the names of the trade LBPs for the whole of the project if possible. This will make it easier for the BCA to check RBW compliance.
4. Check if RBW being carried out or supervised by:
   - trade LBPs who have not been notified to the BCA
   - non-LBPs
   - an LBP who does not hold the appropriate licence.

The BCA should check and record on the inspection sheet the LBP carrying out or supervising RBW on site.

If the BCA becomes aware that RBW construction work has started before it has been notified of the trade LBPs carrying out or supervising that work, the BCA should:
   - warn the owner/building consent holder
   - order that building work be stopped (ie issue a notice to fix) until it has received written notice of the names of those trade LBPs.

**Photo ID**

LBPs are issued with a photo identification card outlining the licence(s) they hold. This must be produced on demand to any person. A trade LBP who fails to do this, when requested by any party, could be prosecuted and face a Court fine of up to $5,000.

If a BCA detects that a trade LBP has failed to provide identification within a reasonable timeframe then it should refer the matter to the Department of Building and Housing, who will consider what action to take.
If a BCA detects that unlicensed person(s) are carrying out (without supervision by a LBP) or supervising RBW then it should:

- require that building work stop
- issue a Notice to Fix requiring that an appropriately licensed trade LBP be engaged to carry out or supervise the RBW for the rest of the project
- refer the matter to the Department, who will consider what action to take.

**Offence**

Undertaking or supervising RBW by a non-LBP is considered a serious offence in that critical building work is being done (without supervision) by practitioners who have not demonstrated their competence.

The holder of the building consent or their agent could be prosecuted and face a Court fine of up to $20,000 if they knowingly engaged an unlicensed person to carry out or supervise RBW. Similarly, the unlicensed person who supervises RBW or carries out RBW without being supervised by an appropriately licensed trade LBP, could be prosecuted and face a Court fine of up to $20,000.

If a BCA detects that a trade LBP is/has supervised or carried out RBW without holding the appropriate licence or they have held themselves out as having the appropriate licence when not actually having this licence, then it should:

- require that building work stop
- issue a Notice to Fix requiring that an appropriately licensed trade LBP be engaged to carry out or supervise the RBW for the rest of the project
- consider whether to lay a complaint with the Building Practitioners Board, or advise the building consent holder to do so.

**Working within licence class scope**

A trade LBP can only carry out or supervise RBW if they hold a licence with scope covering the particular RBW.

The LBP Rules outline the scope of each licence. The Department has developed a guide for each licence which sets out what work is within the scope of that licence. It is an offence for a trade LBP to carry out (without supervision) or supervise RBW if they don’t hold the appropriate licence for that work.

A trade LBP who supervises RBW or carries out RBW unsupervised without holding the appropriate licence could:

- be prosecuted and face a Court fine of up to $20,000.
- also be disciplined by the Building Practitioners Board.

A trade LBP may also face the same disciplinary action if they have held themselves out as having the appropriate licence when not actually having this licence.
5. During normal inspections the BCA should remind LBPs of their obligation to provide a record of work when they finish their part of the construction work. If a BCA detects that a trade LBP has failed to provide the building consent holder with a Memorandum (Record of Building Work) then they should advise:

- the owner to contact the trade LBP and request that a copy be provided to them as soon as possible
- the owner that, if a copy is still not provided, they should consider laying a complaint with the Building Practitioners Board
- the owner that they may not get a Code Compliance Certificate (CCC).

If the breach becomes evident during the building project, and outside the agreed inspection schedule, then the BCA should carry out a special inspection to check that the RBW work complies with the building consent.

6. Remind owners of their obligation that they need to have Memorandum (Record of Building Work) from all of the trade LBPs who have undertaken RBW for their CCC application.

**Infringement notices**

It should be noted that currently none of the RBW offences under the Act are infringement offences (although an infringement notice could be issued for failure to comply with a NTF issued for a RBW breach). Work is underway to amend the Regulations to enable RBW infringement notices to be issued.

Until such time as the Regulations are amended, BCAs will need to rely on warnings, notices to fix, and prosecutions to enforce RBW breaches that come to their attention during the construction stage. Where the BCA considers prosecution of a non-LBP is required, this should be referred to the Department.

**Supervision**

In terms of RBW, supervision is providing control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work is performed competently, and complies with the building consent. An LBP who supervises RBW need not be on-site at all times, but must supervise sufficient aspects of the RBW to be able to take responsibility for the work’s Code Compliance. In the end, the LBP is putting their licence at risk if the work they supervised is found to be sub-standard.

Note that a site LBP (who does not hold a trade LBP license) cannot currently supervise or carry out (without being supervised by a trade LBP) any RBW design or construction work.
Issuing of CCC

Statutory Requirements
Section 92 states that:
• the owner/CCC applicant must include with a CCC application, any Memorandum (Record of Building Work) provided by LBPs.

Responsibility
It is the responsibility of the trade LBPs to ensure their Memorandum (Record of Building Work) identifies all RBW they have constructed/altered.

It is the responsibility of the owner to include all records of work which collectively identify all the RBW in the CCC application.

It is the responsibility of the BCA to:
• determine whether it is satisfied on reasonable grounds that the building work compiles with the building consent (existing test)
• ensure the RBW component of the CCC application is complete.

BCA involvement
Upon receipt of the application for CCC the BCA should check:
1. If all of the RBW construction has been covered by one or more Memorandum (Record of Building Work). If there is any gap (for example, there is no RBW Memorandum (Record of Building Work) covering the RBW brick and blocklaying), then the BCA should advise the CCC applicant of the gap and the need for there to be a Memorandum (Record of Building Work) covering this part of RBW.
   If the owner/CCC applicant is unable to provide record of work for this part of RBW the BCA needs to determine why this is the case.

   In either of the following cases the BCAs should treat an application for a CCC, even if it does not include all of the RBW Memoranda (Records of Building Work) relating to RBW work, as being complete (and therefore able to be processed).

   Case 1: Where:
   • the owner/CCC applicant has provided all of the RBW Memoranda (Records of Building Work) given to them by the trade LBPs; and
   • a trade LBP has good reason for failing to provide the CCC applicant with a Memorandum (Record of Building Work).

   Case 2: If the trade LBP has failed to provide a record without good reason, where:
   • The owner/CCC applicant has provided all of the RBW Memoranda (Records of Building Work) given to them by the trade LBPs; and
   • the owner/CCC applicant has contacted the BCA as soon as it was evident that an LBP would not provide a Memorandum (Record of Building Work), and
   • the BCA is satisfied that the owner/CCC applicant took all practicable steps to get the LBP to provide the Memorandum (Record of Building Work).
The Memorandum (Record of Building Work)

Trade LBPs who carried out or supervised the RBW must provide the owner/building consent holder, and the appropriate territorial authority, with a Memorandum (Record of Building Work) in the prescribed form.

The owner gets a copy of the Memorandum (Record of Building Work) because at the end of the building project, they need to submit such Memoranda (Records of Building Work) as part of the application for a CCC.

The territorial authority gets a copy so it can put this on the property file. This provides a publicly available record of which trade LBPs did RBW.
Failure to provide a Memorandum (Record of Building Work)

Aside from death, and serious medical problems, there are unlikely to be any good reasons for not providing a RBW Memorandum (Record of Building Work).

The following are not good reasons:
• the LBP has gone overseas – (they can sign it from overseas and send it to the owner)
• the LBP has forgotten that they need to provide this to the owner
• the LBP is in dispute with the owner
• the LBP’s employer is in dispute with the owner over some aspect of the project (eg over payment or workmanship).

The Department does not want to see CCC applicants unduly penalised by trade LBPs who refuse to provide them with a Memorandum (Record of Building Work) without good reason.

The Department recommends that a complaint should be laid with the Building Practitioners Board for LBPs who fail to provide a Memorandum (Record of Building Work) without good reason.

What this means is that the BCA should treat CCC applications without all of the required RBW Memorandum (Record of Building Work) as grounds for disciplining the LBPs who have failed to provide such memoranda – not as grounds for refusing to issue a CCC.

A lack of RBW documentation does not play any part in whether the BCA is satisfied on reasonable grounds that the building work complies with the building consent.

2. Are the trade LBPs who provided the RBW Memoranda (Records of Building Work) appropriately licensed?

If the BCA determines that a trade LBP has provided a RBW Memorandum (Record of Building Work) when they should not have, the BCA should:
• consider laying a complaint with the Building Practitioners Board, or advise the building consent holder to do so.
• continue to process the CCC application unless there is reason to believe that the CCC applicant knowingly engaged a trade LBP who did not hold the appropriate licence – in which case it should consider declining to issue the CCC.
Helpful website addresses

- Background information on licensing and RBW for trade LBPs as well as the consumer.
  http://www.dbh.govt.nz/lbp

- The Department of Building and Housing public LBP register

- NZ registered Architects register

- IPENZ register
  http://www.ipenz.org.nz/ipenz/finding/search-ipenz.cfm

- Plumbing, Gasfitters and Drainlayers register
  https://www2.pgdb.co.nz/PGDB/PublicRegister.aspx

- The Building Practitioners Board complaint form
  http://www.dbh.govt.nz/lbp-about-the-scheme#aid4

- Licensed Building Practitioner Rules
  http://www.dbh.govt.nz/lbp-rules