



Department of
Building and Housing
Te Tari Kaupapa Whare

Technical Review
of the Compliance Schedule and Building
Warrant of Fitness systems of
Rotorua District Council
Summary Report
September 2009



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Important notice to people reading this technical review report

This report is only to be used by the building consent authorities or territorial authorities that are the subject of this review, for the purpose of improving their building control operations.

The report may not be used by any other person for any purpose. In particular, it:

- may not be used as evidence of the compliance or non-compliance of a particular building with the Building Code
- may not be used as evidence that the building consent authorities or territorial authorities under review have failed to exercise reasonable care when carrying out their functions.

An owner of a building considered as part of a technical review should seek advice from an independent building expert and/or a legal expert regarding any issues that might arise from the review, such as compliance with the Building Code.

The purpose of technical reviews

The Department of Building and Housing carries out technical reviews as part of its function to monitor and review the performance by building consent authorities, territorial authorities, and regional authorities of their functions under the Building Act 2004.

The purpose of a technical review is to monitor and assist the building consent authority, territorial authority, or regional authority under review to improve its building control operations.

A technical review is not a comprehensive audit. A technical review is a performance review based on a snapshot of information about the building control activities of the building consent authority, territorial authority, or regional authority. It cannot be taken as a full and comprehensive assessment of the competency and quality of those activities. A technical review is carried out by:

- assessing whether the processes and procedures used by the building consent authority, territorial authority, or regional authority under review are sufficient to enable it to satisfy the requirements of the Building Act 2004, Building Regulations, and the Building Code
- providing advice and assistance on best practice building control to help the building consent authority, territorial authority, or regional authority under review achieve an effective building control procedure that is consistent with national best practice
- enabling the Department of Building and Housing to receive feedback from the building consent authority, territorial authority, or regional authority under review about its practical operations, ability to assess building compliance, and the role of the Department of Building and Housing in the regulatory process.

1. Overview

Purpose and scope

This report sets out the key findings and recommendations from a technical review of Rotorua District Council's building control operations. The review was undertaken by the Department of Building and Housing (the Department) in November 2008.

The review primarily focused on how the Council was undertaking some of its statutory responsibilities under the Building Act 2004 – specifically around compliance schedules, specified systems, and building warrants of fitness.

More generic issues such as the capacity and technical capability (competency) of the Council's building control unit were also considered, along with the Council's relationship with building control units in other territorial authorities.

This particular technical review was part of a programme that assessed four councils from the Lakes/Bay of Plenty cluster group:

- Rotorua District Council
- Taupo District Council
- South Waikato District Council
- Tauranga City Council.

Reasons for the review

The Department undertook the review because it considered that councils across the country needed to strengthen how they are managing compliance schedules, specified systems, and building warrants of fitness. Such areas have been identified by industry experts and previous technical reviews undertaken by the Department throughout New Zealand.

The implementation of the building consent authority (BCA) accreditation scheme has also identified a need for better understanding by councils, industry professionals and building owners of their responsibilities under the Building Act 2004¹. For example, around three quarters of BCAs have needed to improve their policies and procedures for issuing (or refusing to issue) code compliance certificates, compliance schedules, and/or notices to fix.² Another common problem was a lack of systems for compliance schedules to define who had authority to issue these documents, and ensure that compliance schedules were attached to code compliance certificates and met the requirements of the Act.

¹ This scheme is one of a number of reforms introduced by the Building Act to help improve the control of, and encourage better practice and performance in, building design, regulatory building control and building construction. Information about the scheme is available at: www.building.dbh.govt.nz

² *Summary of findings report: 2007/08 building consent authority accreditation assessments*. Published by the Department in November 2008 and available at: www.building.dbh.govt.nz

Key findings from the review

The review found that the Council was performing reasonably well in a number of areas in that it:

- has implemented an appropriate organisational management structure and is properly delegating the relevant powers and responsibilities looked at in this review
- is appropriately recording statistics around compliance schedules and building warrants of fitness
- had recently developed better processes to enable it to meet its statutory time frames for issuing compliance schedules and compliance schedule statements
- has undertaken significant improvements with its application vetting and new procedures around compliance schedules and building warrants of fitness, which have resolved many of the issues picked up in Department's older case studies (there are still inconsistencies occurring though, as discussed under terms of reference 4 of this report)
- is providing reasonably sound public information for building owners about their responsibilities and obligations under the Building Act 2004 (but needs to also develop information around amending compliance schedules)
- has a reasonably sound procedure for amending compliance schedules (although some improvements are recommended in this report)
- is proactively providing guidance to building occupiers about the need for regular maintenance and inspections of specified systems and recording the outcomes of such inspections.
- undertaken a survey to identify any cable cars that may trigger the compliance schedule requirements of the Building Act 2004
- has a relatively sound system for receiving, assessing, accepting and inspecting building warrants of fitness (although the full suite of enforcement options needs to be considered (eg, infringement notices) for those buildings without a current building warrant of fitness or compliance schedule statement
- has an existing system to manage the region's IQP register which is largely appropriate, but could still be improved as recommended in this report (the Council is considering transferring this function to a neighbouring council)
- has provided some training for staff on compliance schedule and building warrant of fitness matters
- is complying with the record-keeping requirements in sections 216 and 217 of the Building Act 2004 which specifically relates to the access and storage of information relating to buildings within their jurisdiction.

The review identified four areas where the Council faced challenges and needed to strengthen their operations. Addressing these issues will improve the quality of service to customers, alleviate confusion for building owners and independently qualified persons, and assist the sector to comply more consistently with the Act. These four performance areas were:

- understanding and application of statutory responsibilities in relation to compliance schedules, specified systems, and building warrants of fitness
- documentation around building control decision-making
- ensuring effective systems, policies, and procedures in relation to compliance schedules, specified systems, and building warrants of fitness
- the capacity and capability of the councils.

Some of the key findings for Rotorua District Council under the four common themes noted above are summarised as follows:

Understanding and application of statutory responsibilities

The review highlighted that the Council's building control staff need to more thoroughly understand and consistently apply certain areas of the Building Act 2004 and Building Regulations. Some examples include:

- The certificates and documents issued by the Council need to consistently include all the relevant information and correctly identify the specified systems rather than using generic descriptions. Performance standards for specified systems also need to be included in building consents and compliance schedules issued by the Council.
- Ensuring it clearly distinguishes any systems or features that are non-specified systems (from specified systems) that it wishes to keep or include on any compliance schedules it issues.

Documentation around building control decision-making

A recurring theme identified across the review was the need to strengthen how key regulatory decisions were being recorded by Council staff. In some cases there was only limited evidence on file to show:

- how the Council's documented procedures were followed
- the reasons for decisions and evidence to support them
- whether any follow-up action was required or occurred
- final outcomes achieved.

Some of the main examples of this included the need to better document:

- the Council's decision-making around public safety issues when issuing certificates for public use
- the actual specified system, their performance standards, and the design, inspection and maintenance, and reporting procedures complete with the date of any standards referred to (see section 103 of the Building Act 2004).

Effective systems, policies and procedures

Systems, policies and procedures that need improvement and more effective implementation include the following.

- Ensuring its PIM/Building Consent application form provides for the inclusion of specified systems being altered or removed.
- Documenting some of its current informal processes around compliance schedules and building warrant of fitness (see terms of reference 5 and 6 of this report).
- Implementing its new system around cable cars and compliance schedules, including ensuring that existing and new cable cars are covered by compliance schedules.
- Considering and addressing the Department's recommendations about IQPs as part of its negotiations to transfer responsibility to manage the regional IQP register (see terms of reference 8 of this report).

Capacity and capability

The following issues were identified regarding the Council's capacity and technical building control capability (competency) (see parts 9 and 10 of the Review's terms of reference).

- While the Council is currently performing to statutory time frames for building consents (partly

due to the current downturn in building activity in the sector as a result of the economic recession), further performance improvements are noted throughout this report. Additional human resources are likely to be needed to make such improvements and continue the Council's business as usual activities. Performance is also likely to be affected by the reduction of administrative support.

- The Council needs to monitor that it has adequate staff resources to fulfil its responsibilities in administering the Act (transferring responsibility for the regional IQP register may help free up some resource).
- Technical staff need adequate administrative staff to support their roles.
- The Council also needs to enhance its competency assessment and training systems to better identify and manage gaps in its technical knowledge and ability relating to specified systems so it can ensure consistent compliance with the Building Act 2004.

The Department's recommendations associated with these key findings are set out in section 4 of this report and includes the Council's response to those recommendations.

Recent initiatives

Since the Department's visit the Council advises it has:

- amended its building consent application form to include the alteration and removal of specified systems
- revised its compliance schedule statements to include details about where the compliance schedule was kept and the period the statement is valid for
- amended its compliance schedule processing checklist to capture the types of systems, the method used to demonstrate compliance, and the reasons for decisions
- reviewed its documentation to standardise the prefixes it uses for specified systems.
- amended its processing and inspection checklists to ensure correct and accurate information is assessed and documented
- reviewed the consent endorsements it uses to inform applicants of their obligations to provide the required specified system information before the issue of a code compliance certificate
- trained staff around certificate of public use
- attaches plans to compliance schedules to show means of escape, signage, passive fire protection, backflow prevention, or other systems that may not be readily identifiable on site.

The Department would like to thank Rotorua District Council's building control management and staff for their cooperation and assistance during the review.

2. Roles of the Department of Building and Housing and the Council

The Department's role

The Department is responsible for conducting technical reviews of territorial authorities and building consent authorities. This is part of its wider statutory responsibilities for building and housing, and administration of New Zealand's building legislation. In summary, the Department's key building control functions include:

- advising the Minister for Building and Construction on matters relating to building control
- administering and reviewing the Building Code
- producing Compliance Documents that specify prescriptive methods as a means of complying with the Building Code
- providing information, guidance, and advice on building controls to all sectors of the building industry and consumers
- implementing, administering and monitoring a system of regulatory controls for a vibrant, innovative sector with skilled building professionals
- making determinations, or technical rulings, on matters of interpretation, doubt, or dispute relating to compliance with the Building Code or certain decisions of building consent authorities and territorial authorities.

Role of the Consent Authority Capability and Performance Group

The Department's Consent Authority Capability and Performance Group are responsible for technical reviews. The Group's broad functions include:

- monitoring, reviewing and improving performance outcomes of the regulatory building control system
- managing and strengthening relationships with building consent authorities, territorial authorities, regional authorities, and other key industry stakeholders
- providing advice and guidance to the regulatory building control sector.

Role of territorial authorities

The core building control functions of a territorial authority under the Building Act 2004 (the Act) include:

- issuing project information memoranda
- granting building consents where the consent is subject to a waiver or modification of the Building Code
- issuing certificates of acceptance
- issuing compliance schedule statements
- amending and issuing amended compliance schedules
- granting waivers and modifications (with or without conditions) of building consents

- issuing notices to fix
- administering annual building warrants of fitness
- enforcing the provisions relating to annual building warrants of fitness
- deciding the extent to which certain buildings must comply with the Building Code when they are altered, their use is changed, or their specified intended life changes
- performing functions relating to dangerous, earthquake-prone or insanitary buildings
- determining whether building work is exempt under Schedule 1 from requiring a building consent
- carrying out any other functions and duties specified in the Act.

Role of building consent authorities (that are territorial authorities)

Building consent authorities (that are territorial authorities) perform the following functions:

- inspecting building work for which they have granted a building consent
- issuing notices to fix
- issuing code compliance certificates
- issuing compliance schedules
- receiving, considering, and making decisions on applications for building consents within set time limits
- determining whether applications for a building consent subject to a waiver or modification of the Building Code, or any document for use in establishing compliance with the Building Code, should be granted or refused
- ensuring compliance with the Building Code and Regulations.

Rotorua District Council

The Rotorua district is centrally located in the North Island province of the Bay of Plenty. The centre of the district is Rotorua city, which has a population of around 66,400 and is located on the southern shoreline of Lake Rotorua. The district includes substantial rural land with 14 lakes, areas of geothermal activity and considerable areas of public open space. The economy is based on tourism, agriculture and forestry. Many of the businesses associated with these industries have buildings that contain specified systems.

3. Process

Purpose of technical reviews

Technical reviews are undertaken to monitor and assist building consent authorities and territorial authorities to fulfil their obligations under the Building Act 2004 (the Act). The review is a tool that helps such organisations to:

- enhance the performance of their building control activities
- implement appropriate systems, processes, and resources so they can carry out their building control operations
- effectively fulfil their obligations under the Act and Building Regulations.

Technical reviews also examine whether territorial authorities or building consent authorities have the appropriate systems and resources to enable their building control personnel to undertake their work effectively and efficiently.

Technical reviews are not intended to evaluate the performance of individual staff and are not comprehensive audits involving detailed examinations of all aspects of a territorial authority's building control operations. Nor do they assess the territorial authority against a particular model, or expressly measure it against the performance of other territorial authorities.

Legislative basis

This review is initiated under sections 204 and 276 of the Act. It is a function of the Chief Executive to monitor and review the performance of territorial authorities and building consent authorities to determine whether they are properly exercising their powers and performing their functions.³

Scope of the review

This review's terms of reference covered 11 areas, which collectively cover the key components of the Council's territorial authority functions. The terms of reference are set out below.

³ The Building Act 2004 is available at www.legislation.govt.nz

Figure 1: The terms of reference for the technical review

1	Organisational and management structure
2	Consent statistics
3	Statutory timeframes – sections 102, 104, 104A and 108(3)
4	Building Act requirements – compliance schedules
5	Building Act requirements – amending a compliance schedule
6	Building Act requirements – annual building warrant of fitness
7	Private cable cars (section 100)
8	Independent qualified person register
9	Human resources
10	Technical knowledge and ability of staff
11	Access to and storage of compliance schedule and building warrant of fitness documentation

Method

The Department use four broad approaches to gathering information about the Council's building control activities. These are:

- observing staff undertaking work
- reviewing written material used and produced by staff (eg, policies, procedures, processing checklists and records, manuals and approved consent documentation)
- interviewing staff about their use of material and their work
- assessing a random sample of building projects (case studies) that have recently been, or are currently being, handled by the territorial authority or building consent authority.

For this review, five case studies of processed commercial/industrial building consents were undertaken to assess compliance with the Act and its associated Regulations, with particular focus on specified systems, compliance schedules and building warrants of fitness requirements.

Building consent records were reviewed to assess the adequacy and effectiveness of the Council's systems. Aspects considered were the adequacy and completeness of approved documentation (in particular, the adequacy of the compliance details), the assessment of building consent documentation, and the effectiveness of quality control systems.

4. Technical review findings and operational building control recommendations

1 Organisational and management structure

Purpose

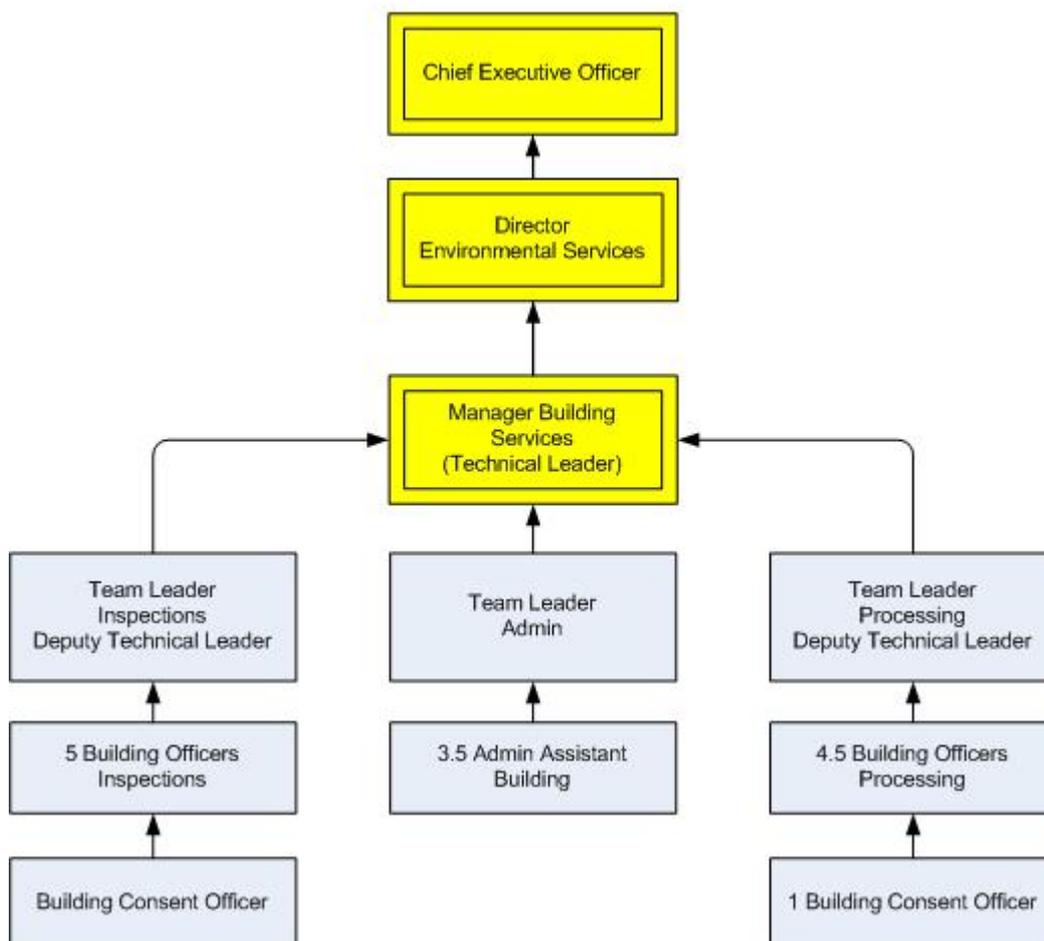
To examine the organisational and management structure of the Council's building control operations, consider how it delegates legislative powers, duties, and responsibilities, and identify any issues with its efficiency.

Background

Section 232 of the Building Act 2004 states that clause 32 in Schedule 7 of the Local Government Act 2002 applies. This covers territorial authorities' broad powers of delegation.

Findings

Organisational chart



The Council staff involved in the compliance schedule and building warrant of fitness system had delegated authority under section 232 of the Building Act 2004. Building control staff that enter land and carry out inspections are currently authorised under section 222 of the Building Act 2004.

Council officers are authorised and warranted under section 372 to issue infringement notices. Council was in the process of adopting a policy and procedure for issuing infringement notices.

Conclusion

The Council's organisational management structure and delegation of powers and responsibility were found to be appropriate.

2 Council statistics

Purpose

To review a series of building control statistics to provide an indication of the volume and type of work the Council manages.

Findings

12 month period ending 30 June 2008
1548 building consents issued
Total value of consented construction work was \$114,667,184
1523 code compliance certificates issued
4387 live building consents
27 compliance schedules issued
756 buildings have a compliance schedule
647 current building warrants of fitness
38 certificates of acceptance issued
126 certificates for public use issued
300 audits of building warrants of fitness carried out
78 compliance schedules do not have a current compliance schedule statement or current building warrant of fitness

The Department was concerned at the number of compliance schedules that do not have a current building warrant of fitness and that are no longer covered by a compliance schedule statement. The Council has recently implemented a process to manage this (see terms of reference 6 of this report).

The Council has systems in place to report on and collect statistics that assist it to perform its duties and functions under the Building Act 2004.

Conclusion

The Council is appropriately recording statistics around compliance schedules and building warrants of fitness.

3 Statutory timeframes – sections 102, 104, 104A and 108(3)

Purpose

To assess how well the Council is meeting the statutory time frames for issuing compliance schedules and monitoring the timeliness of owners providing building warrants of fitness.

Background

The Building Act 2004 specifies a range of requirements for a building consent authority regarding compliance schedules. Section 102 requires building consent authorities to issue compliance schedules with code compliance certificates (or an amended compliance schedule) if required as a result of building work.

Section 104 of the Act requires that a building consent authority provide a copy of the compliance schedule to the territorial authority within five working days of issuing the compliance schedule. Section 104A requires a territorial authority that receives a copy under section 104 to, within five working days after receiving it, provide the owner with a compliance schedule statement (as described in section 105 (e))⁴.

A building warrant of fitness must be supplied by the owner to the territorial authority on the prescribed forms on each anniversary of the issue of the compliance schedule (section 108(3)). Section 110 requires the owner to keep written reports for two years, together with the compliance schedule.

Findings

The case studies undertaken by the Department in this review generally related to processes that were in place in 2006 – 2007. It was found that compliance schedules were often issued several months after the code compliance certificate, which is contrary to the requirements of section 102(1) of the Building Act 2004. At the time of the review, the Council had addressed this issue as part of the BCA accreditation process. Generally the compliance schedules and compliance schedule statements were now being issued with the code compliance certificate.

For the 12 month period ending 30 June 2008, there were 78 buildings where the building owner had not provided the building warrant of fitness at the anniversary date of the issue of the compliance schedule, or the building had no current compliance schedule statement. This issue is dealt with under terms of reference 6.

Conclusion

The Council has developed better processes to enable it to meet its statutory time frames for issuing compliance schedules and compliance schedule statements

⁴ This five working day requirement dates from 15 March 2008. Previously it was implicit that the statement be issued with the compliance schedule.

4 Building Act requirements – compliance schedules

Purpose

To examine the Council's compliance schedule system to determine if it has appropriate checks and balances to ensure that compliance schedules are issued in accordance with the requirements of the Building Act 2004.

Background

Sections 100 to 107 of the Act set out the particular requirements about compliance schedules, including the responsibilities for owners of commercial, institutional, and industrial buildings, and for territorial authorities and building consent authorities. In summary, buildings containing certain specified systems such as fire alarms and lifts require them to be listed on a compliance schedule. The owner must ensure continued effective operation of those systems and demonstrate this by displaying a current building warrant of fitness in their building.

Findings

Policies and procedures

The Council has appropriate policies, procedures and flowcharts pertaining to compliance schedules in their *'Building Consent Authority Quality Manual'*.

Public information

The Council's information pamphlets include information on specified systems, compliance schedules, building warrants of fitness, IQPs and owner/tenant responsibilities.⁵ This information was generally appropriate, but could have been expanded in places. For example, there was no comment on compliance schedule amendments (this is covered under terms of reference 6, below). These information pamphlets are available in both hard copy and on the Council website.

The Department endorses the Council's current proactive practice of a compliance officer providing guidance to building occupiers about the need for regular maintenance and inspections, and their recording. This is facilitated by carrying out a site visit shortly after the compliance schedule statement is issued.

Building consent applications

The Council's application form for PIMs/Building Consents is generally consistent with the form prescribed by the Buildings (Forms) Regulations 2004. However, the Council's form does not provide for the inclusion of specified systems being altered or removed. This should be included.

Building consent processing

The Council has a commercial consent processing procedure that includes general specified system items such as backflow prevention, HVAC (heating, ventilation and air-conditioning), lifts, escalators, sprinklers, and means of escape. This documentation was quite comprehensive, but best practice would involve recording the actual specified systems (eg, type 4 alarm system) and

⁵ These include pamphlets entitled: *'The Building Consent Process'* and *'Compliance Schedules and Building Warrants of Fitness'*.

the means of compliance, or recording that the compliance schedule processing checklist has been completed.

The Council's recently implemented compliance schedule processing checklist specifically asks how compliance is achieved, but does not make provision for the recording of the actual specified system proposed. For example, under the title '*Specified System 2 - Automatic or manual emergency warning systems for fire or other dangers*', there is no record of the actual system or the relevant design standard (eg, a type 2 (manual) alarm system in accordance with NZS 4512:2003).

These issues need to be taken on board as the current system is too generic in its consideration of specified systems to ensure sound compliance decisions are consistently made.

Building consent issuing

Section 51 of the Building Act 2004 sets out the requirements for councils when they issue building consents. Building consents must state if a compliance schedule is needed or not. For building work where a compliance schedule is required, the building consent must state the specified systems and include the performance standards for the specified systems that are required by the Building Code.

The building consents considered by the Department during this review were generally issued in accordance with the Section 51 requirements. However, the specified systems listed were often generic descriptions only and the performance standard for such systems was sometimes listed as the related clauses of the Building Code. If a compliance schedule is required as a result of building work, then the building consent must state what the specified systems are, and the performance standards the specified systems are designed to (eg, the relevant New Zealand or international standard, where applicable, and the date of that standard, such as, NZS 4512:2003).

The Department considers it good practice that the Council also include an alert in the building consents it issues to advise what documentation needs to be provided by the applicant or their agent in relation to specified systems, before a code compliance certificate (CCC) can be issued. Such documentation might include commissioning results, test reports and third party certification from mutually agreed parties.

Inspections of building work

Historically, the Council used a '*Field Inspection Card*' that recorded handwritten inspection reports noting observations, but did not always include information about the inspectors' reasons for determining that a specified system's compliance had been achieved during construction.

The Council recently implemented a check sheet which now includes a section to record supporting documentation for specified systems and a list of specified systems to be included in the compliance schedule. The Department considers that this has improved the Council's processes to ensure compliance with the Building Act 2004. However, it is still sometimes difficult to identify how the Council has considered the compliance of passive fire systems in the means of escape.

The building consent records examined during the review provided evidence that producer statements, commissioning documents and the like were received for specified systems before a CCC was issued. However, in some cases specified systems were being installed in some buildings but not then being recorded in the final Council's inspection notes. This meant that such specified systems did not get included in the compliance schedule issued with the CCC.

The Department also found that specified systems that were incorporated in the building works were not consistently included on the Council's Form 6 (Application for CCC). The use of the *'Inspection Checklist: Commercial Final'* with the suggested modifications, is likely to prevent this problem occurring in the future.

Form 7 (CCC) often did not comply with the requirements of the Building (Forms) Regulations 2004. For example, cases were observed where such forms did not state whether the specified systems in the building were capable of performing to the performance standards set out in the building consent. The compliance schedule is often not issued or attached to the CCC as required by section 102(1) of the Building Act 2004.

Certificate for public use (CPU)

The Department found that the Council was often issuing certificates for public use (CPU) for buildings that were being occupied and used by the public before the issue of a CCC. In a number of cases the CPUs did not have an expiry date. Several CPUs had a condition requiring that the CCC be applied for as soon as work was completed or that the CPU is valid until the CCC is issued.

CPUs should include an expiry date, so that the Council has a clear expectation of when a CCC can be issued (or an extension sought). Where buildings require a CPU for a long period of time, the CPU should include a requirement for the owner to inspect and maintain the specified systems within the building for that period.

Inspection records were inconsistent in recording how the Council was satisfied that the specified systems were operational to ensure the safety of the occupants. Some CPU applications were supported by documentation from installers and third parties for some specified systems whereas other CPU applications had no supporting information whatsoever.

Compliance schedule statements

The Department noted that on older consent files the compliance schedule statement usually did not comply with the form prescribed by the Building (Forms) Regulations 2004. For example, it often did not state where the compliance schedule was kept and the time period covered by the statement. The compliance schedule statement was often issued a substantial amount of time after the issue of a CCC (in one case the compliance schedule and statement were issued seven months after the issue of the CCC).

The Council has largely addressed this problem during the work it undertook to get accredited as a BCA. However, ongoing effort is still required because the Department noted that several statements issued in October and November 2008 still did not include the required details about where the compliance schedule is kept, or the period that the statement is valid for.

Compliance schedules

Case studies which looked at compliance schedules issued in 2006-2007 identified that the Council numbered the specified systems according to the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005. However, some of the systems had the prefix 'CS' before the specified system number (eg CS 15/2, CS 15/4). 'CS' was often used for compliance schedules issued prior to 31 March 2005. Although not mandatory, the Department's *'Compliance Schedule Handbook'* publication uses the prefix 'SS' for specified systems in new or amended compliance schedules issued since 31 March 2005. For the purposes of consistency,

and to be less confusing, it is suggested that whatever prefix is used should be adopted for all specified systems.

In some cases standards were being referred to under the maintenance requirements of some compliance schedules without the approval year of the standard being included (eg, NZS 4512:2003). This is important as independent qualified persons or licensed building practitioners could in the future consider compliance with new revised standards that were not applicable at the date of design or construction.

In some case studies several options of standards for the maintenance of the specified systems were included (eg, *'in accordance with NZS 4512 or AS 2220 and AS 1851.10'* for emergency warning system). Designers need to nominate what standard the specified system is designed to so that compliance with the Building Code can be assessed. It is acknowledged that this was past practice and that there has since been some improvement. However, a review of several compliance schedules issued in October and November 2008 still showed some inconsistency in recording the approval year of the stated standards for inspection and maintenance procedures.

The compliance schedules examined also largely referred to the specified systems in generic terms only and some included features that are not specified systems under the Act. For example *'Means of Access & Facilities for Use by Persons with Disabilities'*. Some compliance schedules were found to have listed specified systems which had not actually been installed or were not relevant to the building in question.

Conclusion

The case studies undertaken by the Department during the review provide a 'snap shot' at any given point in time. They are historical and in this particular technical review the five case studies highlighted a number of concerns. Since the completion of the buildings covered by these case studies, and particularly within the last 18 months, the Council has addressed many of the concerns found by implementing new compliance schedule and building warrants of fitness procedures. However there are still some issues that need ongoing monitoring and updating (eg, ensuring compliance schedules are site specific and not generic).

Recommendation 1	
The Department recommends that the Council:	Response from the Council:
<ul style="list-style-type: none"> ensure that the Council's forms are clear and capture all of the information required by the forms prescribed in the Building (Forms) Regulations 2004 (eg, the Council's building consent application and compliance schedule statement forms) 	<p>The Council advises that its building consent application form was recently amended and now meets these requirements.</p> <p>The compliance schedule statement has been amended to comply with the regulations.</p>
<ul style="list-style-type: none"> ensure that the consent applicant or their agent provides a proposed inspection and maintenance procedure for each specified system with the building consent application. It is suggested that the current Building Vetting Checklist be modified to include specified systems and proposed inspection and maintenance information 	<p>The Council advises that its building consent application and vetting forms are currently structured to ensure this information is captured on application as required by the Act.</p>
<ul style="list-style-type: none"> review the compliance schedule processing checklist to ensure the recording of the reason for being satisfied of compliance for each specified system is recorded 	<p>The processing checklist used to process compliance schedule items has been amended to capture the types of systems, method used to demonstrate compliance and the reasons for decisions.</p>
<ul style="list-style-type: none"> adopt a consistent prefix for the specified systems across all documents 	<p>All documentation has been reviewed and uses the prefix from the handbook to reference all specified systems.</p>
<ul style="list-style-type: none"> ensure that standards referred to in the compliance schedule include the approval year of the standard 	<p>The Council advises that its processing checklist is used to capture this information and staff are aware of these requirements.</p>
<ul style="list-style-type: none"> ensure that compliance schedules contain site-specific information on what the specified systems are, and their particular inspection and maintenance requirements 	<p>The Council advises that its processing and inspection checklists have been amended to ensure correct and accurate information is assessed and documented throughout the process.</p>
<ul style="list-style-type: none"> include with the building consent, details of what documentation is to be provided in relation to certification for specified systems during construction, before the code compliance certificate is issued. Such documentation would include commissioning results, test reports and third party certification from mutually agreed parties 	<p>The Council advises that the consent endorsements used to inform applicants of their obligations have been reviewed and amended to ensure that correct certification; commissioning information from appropriately qualified authors are generated and supplied on completion of the project.</p>
<ul style="list-style-type: none"> ensure that appropriate consideration of public safety is assessed when issuing a certificate for public use and that decisions are recorded 	<p>The Council advises that staff have been trained in the parameters that must be met before a certificate of public use is issued and the processing checklists have been amended to ensure assessment and reasons for decisions are recorded.</p>
<ul style="list-style-type: none"> place conditions on certificates for public use in relation to an expiry date and the requirement for the owner to inspect and maintain the specified systems within the building 	<p>The Council advises that certificates of public use are published with an expiry date and Council uses a register to monitor this.</p>
<ul style="list-style-type: none"> attach a plan to the compliance schedule showing means of escape, signage, passive 	<p>The Council advises that this practice has been in place for the past 9 months and is</p>

fire protection, backflow prevention or other systems that may not be readily identifiable on-site.	working well.
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5 Building Act requirements – amending a compliance schedule

Purpose

To examine the Council's process for amending compliance schedules.

Background

Section 45(1)(g)(ii) of the Building Act 2004 (the Act) requires that if an amendment to an existing compliance schedule is required as a result of the building work, then the building consent must list the specified systems that are being added, altered, or removed.

Section 106 allows the owner of a building to apply for an amendment to a compliance schedule for the building. Section 107 allows a territorial authority to amend a compliance schedule on its own initiative with strict consultative requirements with the owner.

Findings

As discussed under terms of reference 4, the Council's public information pamphlets do not cover amendments to compliance schedules

The Council has a policy and procedure for amending compliance schedules that covers applications for amendments and Council initiated amendments. Form 11 (application for amendment to compliance schedule) was being used as prescribed by the Building (Forms) Regulations 2004. The Council has a prompt/checklist, but there was no evidence from the amended compliance schedules considered by the Department that this document is being used.

The Department found that there was evidence that the Council was amending compliance schedules as a result of building consent applications, certificates of acceptance, Council building warrants of fitness inspections, or after a request from an IQP.

The Council was updating existing compliance schedules to bring them into line with the specified systems as defined by the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005. This was occurring even when a building consent was issued which did not affect the existing specified systems.

The Department noted that the Council has elected to retain and include safety barriers on new and historic compliance schedules, even though this feature is no longer a specified system under the Building Act 2004. This is due to the corrosive geothermal atmosphere that exists in the district, which affects the durability of barrier fixings and creates a safety risk.

Conclusion

The Council has an appropriate system for amending compliance schedules which could be improved by implementing the following recommendations.

Recommendation 2	
The Department recommends that the Council:	Response from the Council
<ul style="list-style-type: none"> • review public information to include specific information on amending a compliance schedule 	<p>Council advises that this is under review and due for completion by the end of September 2009.</p>
<ul style="list-style-type: none"> • when amending compliance schedules that include items that are not specified systems under the Act (eg, safety barriers, fire hose reels and the like), these should be clearly identified on the compliance schedule as not being specified systems or, alternatively, removed from the compliance schedule 	<p>Council considers that the wording in section 103(1)(d) of the Building Act 2004 should be amended to clarify this position.</p>
<ul style="list-style-type: none"> • ensure staff consistently use the council's prompt/checklist when processing any amendments to compliance schedules. 	<p>Council advises that amendments to compliance schedules are made using the checklist as necessary.</p>

The Department notes the Council's suggestion about changing section 103(1)(d). However, for this section to apply, the system in question must fulfil the definition of a specified system in the first place. The definition of a specified system for the purpose of the Building Act 2004 (including section 103(1)(d) is contained in section 7. A specified system means a system or feature that:

- “(a) (i) is contained in a building; and
(ii) contributes to the proper functioning of the building (for example, an automatic sprinkler system); and
(iii) is declared by the Governor-General, by Order in Council, to be a specified system for the purposes of this Act; **and**
(b) includes a cable car”

In terms of (iii), above, specified systems are prescribed in Schedule 1 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005. Systems or features that do not meet this definition are not specified systems for the purposes of the Building Act 2004.

If the Council chooses to include such systems or features on its compliance schedules it should clearly state that they are not specified systems for the purposes of the Building Act 2004, or otherwise remove them from its compliance schedules.

6 Building Act requirements – annual building warrant of fitness

Purpose

To examine the Council's building warrant of fitness system to determine if it has appropriate checks and balances to ensure that building warrants of fitness are assessed appropriately and the requirements of the Building Act 2004 are being complied with.

Background

Sections 108 to 111 of the Building Act 2004 set out the relevant responsibilities for building owners and for territorial authorities. In summary, the owner must ensure continued effective operation of the specified systems that are listed on the compliance schedule and demonstrate compliance by displaying a current building warrant of fitness in their building.

Findings

The Council sends a reminder letter to the owner/agent of a building that has a compliance schedule one month prior to the building warrant of fitness expiring. If necessary, a second reminder letter is sent once the building warrant of fitness is overdue. This good practice does not appear to be included in the Council's documented policy and procedures.

Non-compliance with the second reminder letter results in a Council site inspection and the issuing of a site instruction. If the non-compliance continues, a notice to fix is then issued. After recurring incidences of non-compliance, the Council advises the owner or their agent in writing that it will be monitoring their performance and how they are ensuring appropriate inspections, maintenance, and reporting of specified systems is occurring over a given time period. This is followed by an unannounced inspection prior to the expiry of the building warrant of fitness. The Department considers this proactive monitoring to be good practice in enforcing the provisions relating to the annual building warrants of fitness (refer to section 12(h) of the Act).

At the time of the review, infringement notices were not being used. However, the elected members of Council were considering the adoption of a policy to use infringement notices and internal procedures for such notices. If adopted this will add another valuable tool for enforcing the building warrant of fitness provisions in the Building Act 2004.

The Council has a policy and procedure for vetting incoming building warrants of fitness for completeness of information. However, there is no supporting promptsheet/checklist for staff to use and help record information and ensure consistency and correctness of building warrant of fitness information. Where the information is found to be incomplete, the documentation is returned to the owner/agent with a request for the correct information. Council records are updated when a compliant building warrant of fitness has been received. Buildings with non-compliant building warrants of fitness are subject to an inspections process.

The Council carries out inspections of 25 percent of buildings with building warrants of fitness. This policy provides for unannounced inspections on a random basis or where there is knowledge of non-compliance. The Department was advised that the building officer (compliance) is targeting specific types of buildings based on risk (eg, motel accommodation, day care centres, tertiary education, training institutions, etc) to educate the various sectors in their building warrants of fitness responsibilities. The Department endorses such a commonsense approach.

The Department accompanied one of the Council's compliance officers on two on-site building warrants of fitness inspections and made the following findings:

- The officer followed the Council's procedure.
- A building warrant of fitness/ inspection report was fully completed by the officer on site for each of the buildings.
- The inspection report included:
 - viewing the compliance schedule
 - checking that the building warrant of fitness was displayed in a public area
 - reviewing the inspection and maintenance log book records
 - checking that the specified systems in the building were consistent with those on the compliance schedule.
- The content of the report was discussed with the building owner/agent on site.
- The compliance officer advised that an instruction notice and letter would be provided to the owner, stating the issues and actions needed to rectify these.

The site visits undertaken by the Department often found that owners were not aware of their compliance schedule and building warrants of fitness obligations. These included regularly checking egress routes to final exits; having and publicly displaying a building warrant of fitness; keeping compliance schedules in their recorded location; and keeping complete inspection records. The Department acknowledges that these findings are a result of previous practices, and notes that the Council is now being more proactive in providing written information and making personal visits to sites.

The Department is concerned at the percentage of buildings that do not have a current building warrant of fitness or compliance schedule statement (refer to Terms of Reference 2, Statistics, above). The Building Act 2004 and its associated Regulations provide for enforcement action such as infringement notices and prosecutions. The Council had not pursued either of these actions at the time of the review.

It is acknowledged that over half of these buildings have had a notice to fix issued and that reminder notices have been sent to the balance. The reports provided by the Council identified that some building warrants of fitness had expired in 2006, therefore providing the potential for buildings to be dangerous or unsafe, due to the possibility of certain specified systems not being inspected or maintained.

Conclusion

Council has an appropriate system for receiving, assessing, accepting and inspecting building warrants of fitness. However, further improvements are needed – particularly around documenting some of its processes and appropriately considering all viable enforcement options (eg, use of infringement notices) for buildings without a current building warrant of fitness or compliance schedule statement.

Recommendation 3	
The Department recommends that the Council:	Response from the Council
<ul style="list-style-type: none"> • review and update its Building Warrant of Fitness - Inspection Report sheet to include all the specified systems; and follow the numbering system as per the Building (Specified Systems, Change the Use and Earthquake-prone Buildings) Regulations 2005 	<p>Council advises that this process will be reviewed by the end of September 2009.</p>
<ul style="list-style-type: none"> • review and update existing policies and procedures to include the current building warrant of fitness reminder practice 	<p>Council advises that this process is under review and due for completion by the end of September 2009.</p>
<ul style="list-style-type: none"> • fully performs its role under section 12(2)(h) of the Building Act 2004 to enforce the provisions relating to annual building warrants of fitness 	<p>Council advises that current outstanding building warrants of fitness generally relate to vacant buildings, or those under construction, or those under review by either Council or the IQP where no building warrants of fitness was possible because of incomplete inspections over the previous 12 months. Action is instigated as necessary.</p>
<ul style="list-style-type: none"> • implement the following best practice suggestions: <ul style="list-style-type: none"> - develop and implement a prompt/checklist for the assessing of building warrants of fitness for correctness and compliance with the Act and Regulations - enhance existing information to include owner inspection responsibilities and ensure that this information is supplied to these people. 	<p>Council advises that this process will be reviewed by the end of September 2009 as will its public information.</p>

7 Private cable cars (section 100)

Purpose

To assess the Council's system for ensuring that any domestic cable car within its district has a compliance schedule. The Department also considered how the Council has advised the general public of the requirement that all cable cars must have a compliance schedule.

Background

Sections 100 to 107 of the Building Act 2004 set out the particular responsibilities for building owners who have cable cars attached to their household units or are serviced by them. Requirements on territorial authorities and building consent authorities are also included in the Act.

In summary, household units with cable cars, or serviced by cable cars, require a compliance schedule. The owner must also ensure continued effective operation of the cable car and display a current building warrant of fitness in their building.

Findings

The Department was advised by the Council that after undertaking an informal survey it had identified that there were two cable cars servicing household units within its district. As the Council was reviewing its formal processes to include cable cars, compliance schedules had not been issued at the time of the review.

Conclusion

The Council has strengthened its system around cable cars and compliance schedules, but this needs to be fully implemented - including ensuring that existing and new cable cars are covered by compliance schedules.

Recommendation 4	
The Department recommends that the Council:	Response from the Council
<ul style="list-style-type: none">• complete the review of policies and procedures to ensure that cable cars, including those associated with household units, are issued with compliance schedules.	The Council advises that cable cars are now assessed at the time of the building consent application and will receive a compliance schedule statement and compliance schedule on completion.

8 Independent qualified person register

Purpose

To determine the appropriateness of the Council's policy and procedures for evaluating independent qualified persons' (IQPs) competency and how such people are accepted as IQPs.

Background

Section 438(2) of the Building Act 2004 sets out a transitional provision, until 30 November 2010, for IQPs to continue to act in relation to specified systems, unless the Council's acceptance is withdrawn.

Findings

The Council relies on the Bay of Plenty region list of approved IQPs. The Department could find no formal agreement in relation to this matter, but was advised that this was being considered.

The Council manages the IQP register for the wider Bay of Plenty region (Whakatane, Kawerau, Opotiki, Western Bay of Plenty, Tauranga, Taupo and Rotorua). This includes the assessment and approval of IQPs for inclusion on the register. The approval is carried out in conjunction with a representative from Tauranga City Council.

The Council has a documented policy and procedure for assessing IQPs on behalf of the region. This includes assessing application forms, CVs, references and a competency questionnaire. This information is then assessed against the technical requirements relating to the particular specified system or systems that the applicant requests IQP status for. If accepted, a successful applicants' IQP status is individual, rather than as a corporate entity.

The review found that IQPs who are accredited under IANZ-type competency accreditation were assessed in the same manner as any other IQP applicant. Accreditation should be sufficient to be accepted on the IQP register for the specified systems relevant to the accreditation scope.

The term of registration is for two years and on expiry IQPs must reapply and be fully reassessed as competent to remain on the register. The renewal process is the same as the original registration process.

The Council also administers a process to manage complaints about IQPs and undertake inspections of IQPs for the region. Any resulting action regarding continued inclusion on the register is assessed in conjunction with a representative from Tauranga City Council. The Department noted documentation about IQPs being suspended from the register for a given period. Reinstatement on the register was not approved until monitoring inspections confirmed that the non-complying practices had been rectified satisfactorily. However, there was no formal process or procedure identified for this practice.

The regional group held meetings that included guest speakers and discussions relating to compliance schedules, building warrants of fitness, and IQP issues.

Conclusion

The processes and procedures for the region's IQP register were largely appropriate, but could be improved by implementing the following recommendations.

Recommendation 5	
The Department recommends that the Council:	Response from the Council
<ul style="list-style-type: none">• makes a formal agreement with member councils in the regional group around the process used to assess IQPs and the use of the regional register	The Council advises that it is negotiating to transfer its role of managing the regional IQP register to a neighbouring council.
<ul style="list-style-type: none">• has an agreed formal process with all member Councils on how to deal with non-compliant IQP practices	
<ul style="list-style-type: none">• reviews the assessment process of accredited signatories in conjunction with the regional group.	

The Department acknowledges the Council's plans, and recommends that the issues raised in our recommendations are considered and addressed as part of the negotiations to transfer responsibility to manage the regional IQP register.

9 Human resources

Purpose

To assess the strength and depth of the Council's building control resources, and how effectively they are being used.

Background

Although current activity in the building sector is well down on the activity levels of two or three years ago, the Council needs to be prepared for the inevitable recovery and consequent increase in workload for its building control staff. The Council is able to address this by increasing staff levels and by using existing staff more effectively. Opportunities to increase staff levels are limited in the short term because of the short supply of appropriately qualified people. The Council must consider ways to use existing staff more effectively.

Findings

The identification and assessment of specified systems is carried out by building control officers during the consent processing and inspecting stages. At the time of the review, the Council had one staff member, supported by an administration officer, performing the functions relating to compliance schedules, building warrants of fitness and the regional IQP register. These functions and duties were only part of their work duties. The Department was advised that the administrative support had recently been reduced.

This raises concerns about the possible impact on the Council's performance relating to compliance schedules and compliance schedule statements being issued, and functions and duties related to building warrant of fitness. There is a significant amount of work required to undertake such functions effectively. This includes sending reminder letters; following up on expired building warrants of fitness; assessing received building warrants of fitness and Form 12As; conducting on-site inspections and enforcement action; and managing and administering the Bay of Plenty region IQP register.

The review particularly flags the need to sufficiently resource enforcement action due to the large number of buildings that do not have current building warrants of fitness (refer to terms of reference 2 and 6 of this report). In addition, the review clearly notes the need for ongoing remedial work under a number of the terms of reference to make improvements to the Council's systems. Despite recent procedural changes actioned under the BCA scheme, ongoing effort is needed to reduce the cases where the Building Act's requirements are not consistently being met.

Conclusion

The Council is currently meeting most statutory time frames, but further performance improvements are noted throughout this report. Additional human resources are likely to be needed to make such improvements and continue the Council's business as usual activities. Performance is also likely to be affected by the reduction of administrative support.

Recommendation 6	
The Department recommends that the Council:	Response from the Council
<ul style="list-style-type: none"> • ensures that adequate technical and administrative support resources are made available to ensure it can fulfil its responsibilities relating to compliance schedules, building warrants of fitness, and any required enforcement action. 	<p>Council advises that it monitors its performance and resource levels monthly.</p> <p>The pending transfer of the management of the regional IQP register (including vetting applicants) will free up additional resource.</p>

10 Technical knowledge and ability of staff

Purpose

To examine the technical knowledge and capabilities of building control staff and the provisions for staff training and upskilling.

Background

The specified systems for the safety of building users are often complex and require a sound understanding of technical issues and relevant building legislation. Councils need to ensure their building control staff has the correct level of technical knowledge, understanding and skills in specified systems and building law.

Findings

The Council, as a result of the BCA accreditation process, has a competency assessment system for its BCA functions under the Building Act 2004. However, this does not specifically cover specified systems, compliance schedules, compliance schedule statements, or building warrants of fitness.

Training records viewed included training on compliance schedule writing and compliance schedule processes. A compliance schedule questionnaire had been completed by processing and inspection staff following this training.

In-house peer reviews of building consent processing were carried out and recorded. However, the Department found no indication in such records that specified systems or compliance schedules had been considered.

The Council's compliance officer had developed a close working relationship with two large metropolitan Councils to ensure consistency and appropriateness of the processes and procedures. Where the specified systems were outside the competency level of Council staff, the Council had arrangements with external specialist consultants to peer review these systems.

Conclusion

While some staff training had occurred the Council needs to strengthen its system for ensuring its staff have the necessary technical skills and knowledge, and that these are being consistently applied when assessing specified systems and undertaking the regulatory functions covered by this review.

Recommendation 7	
The Department recommends that the Council:	Response from the Council
<ul style="list-style-type: none">review the competency assessment process to include specified systems and other compliance schedule and building warrants of fitness matters.	Council advises that it will enhance its competency assessment process and continue to provide training and mentoring to ensure correct outcomes are achieved.

11 Access to and storage of compliance schedule and building warrant of fitness documentation

Purpose

To assess the Council's record-keeping processes and facilities, including the access provided to the public.

Background

Sections 216 and 217 of the Building Act 2004 set out the broad record-keeping requirements for territorial authorities in regard to their building control functions. Territorial authorities are required to hold and make available information that is relevant to the administration of the Act, as this helps inform the public of their obligations.

Findings

Building warrants of fitness and compliance schedule records are currently securely stored in hardcopy and are readily available to the public on request at the public counter. Technical staff are available, as and when required, to provide technical interpretation and advice.

The Council has just embarked on a process to capture and store these records electronically.

Conclusion

The Council is complying with its statutory requirements in relation to sections 216 and 217 of the Building Act 2004.

5. Feedback from the Council

When carrying out technical reviews, the Department gives territorial authorities a reasonable opportunity to make a submission on the report and to provide its feedback.

The Council's feedback has been included throughout the report.

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