



Department of
Building and Housing
Te Tari Kaupapa Whare

Technical Review Summary Report

**of the performance of Napier City Council's
Compliance Schedule and Building Warrant of
Fitness functions**

November 2009



Contents

| | |
|--|-----------|
| 1 OVERVIEW | 4 |
| 2 ROLES OF THE DEPARTMENT OF BUILDING AND HOUSING AND THE COUNCIL | 7 |
| 3 PROCESS | 9 |
| 4 TECHNICAL REVIEW FINDINGS AND OPERATIONAL BUILDING CONTROL RECOMMENDATIONS | 11 |
| 4.1 ORGANISATIONAL AND MANAGEMENT STRUCTURE..... | 11 |
| 4.2 STATISTICS..... | 13 |
| 4.3 STATUTORY TIMEFRAMES – SECTIONS 102, 104, 104A AND 108(3)..... | 14 |
| 4.4 BUILDING ACT REQUIREMENTS – COMPLIANCE SCHEDULES..... | 16 |
| 4.5 BUILDING ACT REQUIREMENTS – AMENDING A COMPLIANCE SCHEDULE..... | 23 |
| 4.6 BUILDING ACT REQUIREMENTS – ANNUAL BUILDING WARRANT OF FITNESS..... | 24 |
| 4.7 PRIVATE CABLE CARS (SECTION 100)..... | 27 |
| 4.8 INDEPENDENT QUALIFIED PERSON REGISTER..... | 28 |
| 4.9 HUMAN RESOURCES..... | 30 |
| 4.10 TECHNICAL KNOWLEDGE AND ABILITY OF STAFF..... | 32 |
| 4.11 ACCESS TO, AND STORAGE OF, COMPLIANCE SCHEDULE AND BUILDING WARRANT OF FITNESS DOCUMENTATION..... | 34 |
| 5 FEEDBACK FROM THE COUNCIL | 35 |

Important notice to readers of this 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, the report may not be used as evidence:

- of the compliance or non-compliance of a particular building with the Building Code
- 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 (The Department) carries out technical reviews as part of its function to monitor, review and improve 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 in time 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 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 in the regulatory process.

1 Overview

Purpose and scope

This report sets out the key findings and recommendations from a technical review of Napier City Council's building control operations. The review was undertaken by the Department of Building and Housing (the Department) in January 2009.

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.

At the same time the Department reviewed three neighbouring councils - Gisborne District Council, Hastings District Council and Wairoa District Council.

Reasons for the review

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

The implementation of the building consent authority accreditation scheme had also identified a need for councils, industry professionals, and building owners to better understand their responsibilities under the Building Act 2004¹. For example, around three quarters of building consent authorities 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 compliance schedules were attached to the code compliance certificates and met the requirements of the Building Act 2004.

Key findings from the review

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

- had an appropriate organisational management structure and was properly delegating the relevant statutory powers and responsibilities considered in this review

¹ This scheme is one of a number of reforms introduced by the Building Act 2004 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

- proactively informed building owners of their obligations in relation to building warrants of fitness through public information and the development of guidance material
- had developed a sound commercial technical assessment check-sheet that adequately covered off most compliance schedule issues (some improvements could still be made as noted under terms of reference 4.4)
- had recently made compliance schedule and building warrant of fitness regulatory matters a higher priority, which was illustrated by the fact they had recently employed an additional staff member to provide assistance with the volume of compliance schedules and building warrants of fitness they dealt with
- had developed and implemented good systems for document control, public access and storage of building information.

The review identified four significant performance areas where the Council faced some challenges and limitations and needed to strengthen its operations. Addressing these issues will enhance the quality of service to Council customers, alleviate confusion for building owners and independent qualified persons, and assist the sector to comply more consistently with the Building Act 2004's requirements. These areas were:

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

Some of the key findings for Napier City Council under the four areas noted above are summarised as follows.

Knowledge, understanding and application of statutory responsibilities

The review highlighted that some areas of the Building Act 2004 and Building Regulations needed to be more thoroughly understood and consistently applied by Council building control staff. Some examples are noted below:

- issuing compliance schedules with code compliance certificates.
- ensuring the annual building warrants of fitness provisions are enforced in accordance with their statutory role as a territorial authority.
- ensuring that certificates and documents issued by the Council consistently include all the relevant information, correctly identify the specified systems rather than using generic descriptions, and include performance standards for such specified systems.

Documentation of building control decision-making

The review found there was a 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 the supporting evidence
- the actual decisions that were made or whether any follow-up action was required or had occurred.

Effective systems, policies, and procedures

Systems, policies and procedures that needed improvement and more effective implementation included the following.

- Monitor all functions that include specified systems to ensure compliance schedules fully comply with the provisions of the Building Act 2004. This process needs to include all the explicitly linked building consent processes of vetting, processing, inspecting and certifying.
- Adopt a policy on the use of infringement notices as an enforcement tool.
- Formalise arrangements with other councils in the Eastern regional cluster group regarding the independent qualified person register, including agreeing a process for dealing with non-compliant independent qualified persons and how independent qualified persons are added or removed from the register.

Capacity and technical capability

The following issues were identified regarding the Council's capacity and technical building control capability (technical competency) (see parts 4.9 and 4.10 of the Review's terms of reference). In particular the Council needed to expand its technical competency assessment system to include specified systems, compliance schedules, and building warrants of fitness and continue to train staff in these areas.

Recent initiatives

Since the Department's visit the Council advised it had:

- adopted new procedures to ensure the applicant or agent provided a proposed inspection and maintenance procedure for each specified system with the building consent application
- implemented a system for issuing compliance schedules with code compliance certificates
- updated the information on its website to be current and accurate, and this now included information on cable cars
- undertaken an internal audit which confirmed compliance schedules were not being issued before code compliance certificates
- employed additional staff in order to assist with compliance schedule and building warrant of fitness functions
- liaised with the regional cluster group of councils to progress joint initiatives; such as reaching a formal agreement with member councils about how to deal with non-compliant independent qualified person practices.

The Department would like to thank Napier City 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 of Building and Housing (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 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 from requiring a building consent under Schedule 1(k) of the Building Act 2004
- carrying out any other functions and duties specified in the Building Act 2004.

Role of building consent authorities (that are territorial authorities)

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

- inspect building work for which they have granted a building consent
- issue notices to fix
- issue code compliance certificates
- issue compliance schedules
- receive, consider, and make decisions on applications for building consents within set time limits
- determine 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, be granted or refused
- ensure compliance with the Building Code and Building Regulations.

Napier City Council

Napier city is the commercial seaport for the province of Hawke's Bay and is located on the east coast of the North Island, 332 kilometres (by road) north-east of Wellington and 20 kilometres north of the city of Hastings. At June 2008 Napier city had an estimated population of 57,000 in an area of 106 square kilometres.

Much of the central business district was destroyed in the earthquake of 1931 and many of the buildings were rebuilt in the art deco architectural style, which is now a very popular attraction with many of the visitors to the city. Tourism plays an important role in the city's economy, as does the wool trade, fruit growing (including apples, pears, stone fruit and grapes) and wine production. The port of Napier exports fruit, frozen meat, wool, timber pulp and timber. Many of the businesses associated with these industries have buildings that contain specified systems.

The Napier City Council is an accredited building consent authority under the Building Act 2004 and the Building (Accreditation of Building Consent Authorities) Regulations 2006.

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 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 Building Act 2004 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 was initiated under sections 204 and 276 of the Building Act 2004. 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 have properly exercised their powers and performed their functions.³

Scope of the review

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

Figure 1: The terms of reference for the technical review

| | |
|-----|--|
| 4.1 | Organisational and management structure |
| 4.2 | Consent statistics |
| 4.3 | Statutory timeframes – sections 102, 104, 104A and 108(3) |
| 4.4 | Building Act requirements – compliance schedules |
| 4.5 | Building Act requirements – amending a compliance schedule |
| 4.6 | Building Act requirements – annual building warrant of fitness |
| 4.7 | Private cable cars (section 100) |

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

| | |
|------|--|
| 4.8 | Independent qualified person register |
| 4.9 | Human resources |
| 4.10 | Technical knowledge and ability of staff |
| 4.11 | Access to and storage of compliance schedule and building warrant of fitness documentation |

Method

The Department used four broad approaches to gather information about the Council's building control activities. These were:

- observe staff undertaking work
- review written material used and produced by staff (eg, policies, procedures, processing check-lists and records, manuals and approved consent documentation)
- interview staff about their use of material and their work
- assess a random sample of building projects (case studies) that were handled by the territorial authority or building consent authority, just before or during the review visit.

For this review, four case studies of processed commercial/industrial building consents were undertaken to assess compliance with the Building Act 2004 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

4.1 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

A diagram illustrating the Council's organisational structure is provided on the following page.

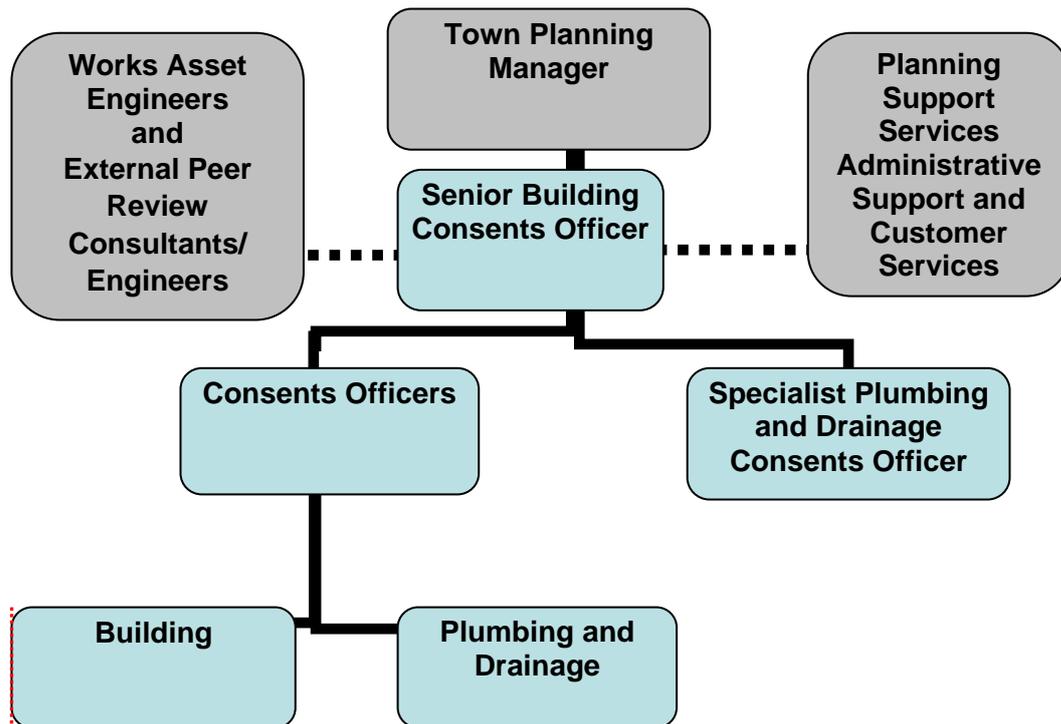
The Council staff involved in the compliance schedule and building warrant of fitness system had delegated authority under section 232 of the Building Act 2004. Enforcement officers are currently authorised under section 222 of the Building Act 2004 to enter land and carry out inspections

Building consents officers are authorised and warranted under section 372 to issue infringement notices. However, as at September 2009, the Council had not adopted a policy for officers to issue infringement notices.

Conclusion

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

Napier City Council's Building Control Structure⁴



| Recommendation 1 | |
|---|---|
| The Department recommended that the Council: | Response from the Council: |
| Consider developing an infringement notice system in order to issue infringement notices for offences under the Building Act 2004. | The Council advised it has decided not to utilise the infringement notices as an enforcement tool for the time being, but would review their position on this matter in the near future⁵. |

⁴ Council staff directly involved in building warrant of fitness and compliance schedule functions are identified in the blue sections of this chart.

⁵ Department comment: Should the Council decide to adopt and implement policies and procedures for enforcing the Building (Infringement Offences, Fees, and Forms) Regulations 2007. The Department has developed a guidance booklet to assist councils in the development of an infringement system. This information can be accessed at the following web-link: www.dbh.govt.nz/building-infringement-scheme-guidelines-1

4.2 Statistics

Purpose

To analyse a series of building control statistics in order to evaluate the volume and type of work the Council manages.

Findings

| 12 month period ending December 2008 |
|---|
| 1181 building consents issued |
| Total value of consented construction work was \$158,454,521 |
| 1200 code compliance certificates issued |
| 33 compliance schedules issued |
| 879 buildings had a compliance schedule |
| 797 current building warrants of fitness |
| 66 certificates of acceptance issued |
| 38 certificates for public use issued |
| 0 audits of building warrants of fitness carried out ⁶ |
| 49 compliance schedules did not have a current compliance schedule statement or current building warrant of fitness |

The Department was concerned at the number of compliance schedules that did not have a current building warrant of fitness and that are no longer covered by a compliance schedule statement. Refer to section 4.6 for more details.

The Council had systems in place to report on and collect statistics that assist them in performing the duties and functions of the Building Act 2004.

Conclusion

The Council were recording statistics appropriately.

⁶ Council has undertaken building warrant of fitness audits in the past; however none were undertaken for the period identified within this table.

4.3 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 Building Act 2004 requires a building consent authority to provide a copy of the compliance schedule to the territorial authority within five working days of issue. 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))⁷.

A building warrant of fitness must be supplied by the owner to the territorial authority on the prescribed form 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 generally related to processes that were in place in 2006–2008 and it was found that compliance schedules were not always issued for the building when one was required. A compliance schedule must be issued with the code compliance certificate when relevant, as required in section 102 of the Building Act 2004. The Department found that this had not occurred on a number of occasions.

The Council has been producing compliance schedule statements in lieu of compliance schedules. This is further discussed in section 4.4.

The Council were found to be issuing the compliance schedule statement (Form 10) in accordance with the statutory timeframes outlined in section 104A and 105(e) of the Building Act 2004. But as noted above, the Form 10 was issued under the assumption it covered both the compliance schedule and compliance schedule statement legislative requirements.

As noted under terms of reference 4.2 there were 49 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 matter requires the Council's urgent attention as building owners who fail to provide the Council with a current building warrant of fitness are committing an offence under the Building Act 2004.

⁷ This five working day requirement was only from 15 March 2008. Previously it was implicit that the statement be issued with the compliance schedule.

Conclusion

The Council was not consistently producing compliance schedules when they were required. A significant number of buildings with compliance schedules did not have current building warrants of fitness.

Council was not undertaking enforcement action on non-complying building owners regarding overdue building warrants of fitness .

| Recommendation 2 | |
|---|---|
| The Department recommended that the Council: | Response from the Council: |
| Develop and implement a process to ensure compliance schedules are issued when the code compliance certificate is issued. | The Council advised they considered this was already in place as it had been raised when they were accredited as a building consent authority⁸. |
| Undertake enforcement action if necessary in order to ensure building owners with compliance schedules are complying with the Building Act 2004 requirements, specifically with regard to supplying a territorial authority with a building warrant of fitness when one is required. | The Council advised that they would undertake enforcement action as a last resort. |

⁸ Department comment: The review found that the Council had not fully addressed this issue, which was raised during their assessment as an accredited building consent authority. The review revealed that the Council were issuing compliance schedule statements in lieu of compliance schedules.

4.4 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 Building Act 2004 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 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 had appropriate compliance schedule policies, procedures and flowcharts in their manual. But some of the policies did not appear to have been followed consistently, for example, compliance schedule issuing. This was due to the procedure having been introduced just before the review visit and a lack of communication between management and staff.

Public information

The Council had compiled a public information brochure which provided compliance schedule, building warrant of fitness and independent qualified person information. The Council should review this document as it referenced superseded prescribed forms such as a 'statement of fitness', which were required to be issued under the Building Act 1991 and are no longer relevant.

The Council should extend the brochure to include specified systems and reasons for why a compliance schedule is required plus provide guidance on compliance schedule amendments.

The information posted on the Council's website should be urgently reviewed and updated. The website provided some useful building warrant of fitness, compliance schedule and specified systems information, but was legislatively incorrect. For example, under the header 'building statement of fitness' the Council stated '*Issued by the Council as a temporary public notification of compliance schedule requirements and is to be replaced in 12 months by the building warrant of fitness. The owner must display the building statement of fitness in a public part of the building*'. This was not technically correct as statements of fitness were issued under the Building Act 1991. The Building Act 2004 requires that the territorial authority issue a compliance schedule statement and that, for the first 12 months of the period of the compliance schedule, the compliance schedule statement is publicly displayed in a part of the building that is accessible to all users of the building.

Furthermore, the website did not provide any guidance on amending a compliance schedule.

The information provided on the Council's website on independent qualified persons was considered quite useful, particularly the list of currently registered independent qualified persons.

The building warrant of fitness flowchart needed to be revised. The flowchart did not list all the specified systems under the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005. The flowchart indicated that a person, who owns or manages a single residence (single household unit), did not require a compliance schedule. This is not correct. The Building Act 2004 requires household units that have a cable car attached to it to have a compliance schedule.

It was identified that the Council's website was not entirely up to date and sometimes referenced legislation and links to material that was either superseded or had been repealed.

Building consent application

The application form for project information memorandum/building consent was generally as per the prescribed Form 2 under the Building (Forms) Regulations 2004. However, the Council form did not include cable cars as a specified system.

Many building consent applications submitted to the Council were not satisfactorily completed by the applicant/owner and did not clearly reflect those specified systems that were to be installed as part of the building work.

Building consent processing

The Council had a commercial consent processing check-list and the form for checking compliance schedule features included general specified system items such as backflow prevention, HVAC (heating, ventilation and air-conditioning), lifts, escalators, sprinklers and cable cars. It should be noted that this was the only Council form that provided for the assessment of cable cars.

The Department considered this document to be adequate, but best practice would be to record the actual specified systems (e.g. type 4 alarm system) and the means of compliance, or record that the compliance schedule processing check-list had been completed. The Department acknowledges that these forms have been updated and improved from those forms reviewed in the case studies. However, the more recent forms still do not have a date attached to them.

Building consent issuing

Section 51 of the Building Act 2004 requires a council to issue a building consent with certain information. The building consents reviewed were generally issued in accordance with section 51 of the Building Act 2004, but the specified systems listed were generic descriptions only and the performance standard was listed as per 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 (e.g. 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 to also include an alert in the building consent to advise what documentation is to be provided by the applicant or their agent in relation to specified systems, before the code compliance certificate is issued. Such documentation would include commissioning results, test reports and third-party certification from mutually agreed parties.

Inspections of building work

The Council's final check-list provided for the majority of specified systems as defined in the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005, but did not include for the assessment of all specified systems such as emergency lighting, riser mains, smoke control systems etc. By including some specified systems and not others there was the potential risk of overlooking or not inspecting some systems.

The building consent records provided evidence that producer statements, commissioning documents and the like were received for specified systems before the code compliance certificate was issued. But it was also found that specified systems were installed in buildings and not recorded in the final inspection notes and therefore not included in the compliance schedule or code compliance certificate.

The code compliance certificate (Form 7) issued by the Council did not follow the prescribed format within the Building (Forms) Regulations 2004. Form 7 of those Regulations provides two sections of commentary under the header 'code compliance', this commentary is as follows:

- (a) the building work complies with the building consent; and*
- (b) the specified systems in the building are capable of performing to the performance standards set out in the building consent.*

The Council had chosen to modify the wording of item (b) to read, *'the specified systems in the building are capable of performing to the performance standards set out in the building consent once test certification is received from an accredited inspection body'*.

This was not in line with the requirements of the Building Act 2004 or Building Regulations and the Council should be confident that compliance has been achieved before issuing the code compliance certificate.

The Department also found that details about specified systems that were incorporated in the building works were not always provided by the applicant on the application for code compliance certificate (Form 6).

The code compliance certificate (Form 7) often did not comply with the prescribed form as set by the Building (Forms) Regulations 2004, in not stating that the specified systems in the building were capable of performing to the performance standards set out in the building consent. The compliance schedule was often not issued with the code compliance certificate as required by section 102 of the Building Act 2004.

Certificate for public use

It was found that the Council were often issuing certificates for public use appropriately (for buildings that were being occupied and used by the public before the issue of the code compliance certificate). It was noted that the certificates for public use commonly included expiry dates as a condition of their issue. Certificates

for public use should include an expiry date, so that the Council has a clear expectation of when a code compliance certificate can be issued (or an extension sought). Where buildings require a certificate for public use for a long period of time, the certificate for public use should include a requirement for the owner to inspect and maintain the specified systems within the building for that period. The Council was considered to be doing a good job with regard to stipulating an expiry date on certificates for public use. Their general decision-making around certificates for public use appeared to be made on reasonable grounds and in accordance with the requirements of the Building Act 2004.

Compliance schedule statement

It was found that the compliance schedule statement did not comply with the prescribed Form 10 as set by the Building (Forms) Regulations 2004. It did not state where the compliance schedule was kept, but instead referred to the compliance schedule statement. This was because a compliance schedule was not always issued by Council when one was required.

Some of the compliance schedule statements reviewed had a number of attachments with them. The attachments were photocopied pages from the Department's *Compliance Schedule Handbook*. The handbook is clear in its intent and provides the following commentary, '*note: Part 2 of the compliance schedule content guidelines section does not contain model compliance schedules or examples of what a compliance schedule should look like. It provides information to assist in determining when to include a system or feature as a specified system and gives guidance relating to possible inspection and maintenance procedures*'. The risk in using the Department's guidance examples is that it might not be relevant to the systems installed on site, as was sometimes the case in this technical review. Information in relation to specified systems should be site-specific and not generic in its content.

Compliance schedule

As noted above, the Council on many occasions had neglected to issue a compliance schedule when one was required as a result of building work. In doing this the Council had failed to satisfy the requirements of sections 102 and 104 of the Building Act 2004, which states that a compliance schedule must be issued by the building consent authority with the code compliance certificate, if one is required as a result of building work, and the building consent authority must provide a territorial authority with a copy of that compliance schedule within five working days of its issue.

The Council had some confusion about the legislative requirements of sections 102 and 104 of the Building Act 2004. It was unclear how long the Council had failed to issue a compliance schedule when one was required, but more recent building consents sighted (late 2008 onwards) appear to have been issued with a compliance schedule.

The compliance schedule documentation viewed was found to be quite limited in terms of content when taking into account the range and complexity of specified systems installed within the buildings inspected. Much of this content was found to be generic and did not clearly describe or relate to the systems installed within the building. For example, the description 'SS-13 Smoke control systems' did not provide any detail on what type of smoke control system has been installed (eg, mechanical smoke control, natural smoke control, smoke control curtains or a combination of these). By not correctly identifying a specified system at this stage in

the consent process, specified systems are likely to be overlooked and/or inadequately inspected and maintained.

It should be noted that in some instances the Department identified that the design engineer had incorporated much of the required compliance schedule information within the consent documents; however this information was not included within the completed compliance schedule. Such information related to schematic diagrams (plans) indicating means of escape from the building and locations of emergency lighting. The Department's guidance publication *Compliance Schedule Handbook* outlines the requirements of sections 100-108 of the Building Act 2004 and identifies what documentation should form part of a compliance schedule. If the designer or design engineer has provided such information, this should be appended to the compliance schedule.

The Council should develop and implement a method of obtaining the information from the designer/applicant before issuing the building consent, and preferably at the time when the building consent application is lodged, so that the compliance schedule accurately reflects the proposed specified systems to be installed on site.

Providing such information as part of the compliance schedule is a requirement and will assist the independent qualified person, the Council and other building users/technicians in inspecting, maintaining and operating the specified systems within the building.

One other important aspect that the Council had neglected to implement was to acknowledge that a compliance schedule was attached to the code compliance certificate (Form 7). Section 102 of the Act and Form 7 of the Building (Forms) Regulations 2004 requires the relevant compliance schedule to be attached with the code compliance certificate when the code compliance certificate is issued.

As Council had not been issuing compliance schedules for all buildings that require one, the Department considers that the Council should identify those buildings that do not have a compliance schedule and ensure that they are issued with one. This should be undertaken as soon as is reasonably practicable.

Conclusion

Case studies provide 'a snapshot' at a given point in time. They are historical and in this particular technical review the four case studies highlighted a number of concerns. Since the completion of the case study buildings, and within the last 12 months, the Council has addressed some of the concerns raised, most notably issuing a compliance schedule with a code compliance certificate. But there are still inconsistencies occurring, such as not including the required information in the compliance schedule and code compliance certificate. The Council needs to improve its processes and consistently apply the requirements of the Building Act 2004.

| Recommendation 3 | |
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| The Department recommended that the Council: | Response from the Council: |
| Review and update their public information (published and on the website) to include compliance | At 8 September 2009 the Council advised that its website was being updated. |

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| <p>schedule amendments. Review and revise superseded and incorrect information on the Council's website.</p> | |
| <p>Ensure that those buildings that have been issued a compliance schedule statement have a compliance schedule issued also.</p> | <p>The Council advised that as of December 2008 they had implemented a system for issuing compliance schedules with code compliance certificates. The Council stated that they were unaware of the requirement to issue a compliance schedule with the code compliance certificate prior to the technical review.</p> <p>Other buildings that do not have a current compliance schedule will be updated when:</p> <ul style="list-style-type: none"> • an application for amendment to compliance schedule is made • an inspection of a building containing specified systems reveals that the compliance schedule has not been issued. |
| <p>Ensure that the Council's forms (for example, its building consent application, compliance schedule statement and code compliance certificate) are not misleading and contain all the required information in the same order as it appears on the prescribed form. All in-house check-lists and the like should have the applicable issue dates attached to them.</p> | <p>The Council advised they do not think their forms are misleading, but would continue to make improvements to their internal systems and forms.</p> |
| <p>Ensure check-lists provide for all specified systems.</p> | <p>The Council advised their check-lists have been changed to include all specified systems.</p> |
| <p>Ensure 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 Check-list be modified to include specified systems and proposed inspection and maintenance.</p> | <p>The Council advised that a duty officer checks all commercial consents during the application stage for specific documentation before acceptance. Information covering inspection and maintenance procedures is now requested in conjunction with a fire report and design calculations.</p> |
| <p>Review and update the compliance schedule processing check-list to ensure the recording of the reason for being satisfied of compliance for each</p> | <p>At 8 September 2009 the Council advised they had changed their procedure to include the requirement for producer statement to be provided</p> |

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| specified system is recorded. | for specified system installation. |
| Ensure standards referred to in the compliance schedule include the approval year of the standard. | At 8 September 2009 the Council advised this was being done. |
| Ensure compliance schedules contain site-specific information on what the specified systems are, and their particular inspection and maintenance requirements. | The Council advised they were listing the type of system on compliance schedules. |
| The issued building consent should outline what documentation is to be provided, in relation to certification of 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. | The Council advised a condition is now entered on all consents with specified systems, that producer statements are required to verify Building Code compliance. |
| Attach a plan to the compliance schedule showing means of escape, signage, passive fire protection, backflow prevention or other systems that may not be readily identifiable on-site. | The Council advised that this is provided with the approved building consent. |

4.5 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 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 previously mentioned, Council's public information brochure and the information provided on the Council's website have little guidance on amendments to compliance schedules.

The Council had a policy and procedure for amending compliance schedules. The policy was found to be satisfactory and was in accordance with the requirements of the Building Act 2004. The procedure was found to be adequate and included a flowchart that provided a linear process for staff to follow when developing or amending a compliance schedule.

Conclusion

The Council had an appropriate procedure for amending compliance schedules which could be enhanced by considering the following recommendation.

| Recommendation 4 | |
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| The Department recommended that the Council: | Response from the Council: |
| Review public information to include specific information on amending a compliance schedule. | The Council advised this information is available to the public. |

4.6 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 warrant of fitness in their building.

Findings

As mentioned before under 4.2 'Statistics', the Department was concerned at the number of buildings that do not have a current building warrant of fitness or compliance schedule statement. The Building Act 2004 and its associated Regulations provide for enforcement action such as infringement notices and prosecutions. The Council had not considered either of these options at the time of the review visit.

The Council had a non-documented policy of producing the building warrant of fitness (Form 12) in-house and on Council letterhead. Once compiled, the building warrant of fitness and a copy are sent to the owner for their signature.

Accompanying the building warrant of fitness is a Council letter, which requires the owner to sign and date the building warrant of fitness and to send the copy back to the Council along with the relevant Form 12As (certificates required under section 108(3)(c) of the Building Act 2004).

This process was viewed as highly questionable, as at the time of the review visit the Council had not provided any evidence to show that the Form 12As had been used as required by the Building Act 2004, and that compliance for the previous 12 months had been observed, and ultimately verified. In essence, by providing the building warrant of fitness the Council was taking on the owner's responsibility of producing the building warrant of fitness and ensuring the content of the form was correct. Section 108 of the Building Act 2004 clearly defines this responsibility as the owner's. The owner could arguably sign, date and display the building warrant of fitness without having fulfilled all the requirements stipulated under section 108 of the Building Act 2004.

Even though the Council's main objective might appear proactive in ensuring building warrants of fitness are produced on an annual basis, the Department generally agrees with this approach in principle. However, should the Council choose to continue to produce the building warrants of fitness in this way the Department would strongly recommend that the Council develop a documented policy that outlines its process and procedure, as this was not in place at the time of the review visit. The building warrant of fitness should not be on Council's letterhead or dated or signed by

the building owner or their agent until such time that all information required under section 108 of the Building Act 2004 has been received and accepted by the Council.

In some instances, the building warrant of fitness was also found to be lacking information that is required under the Regulations, most notably the owner's contact details and maximum number of occupants that can safely use the building. In addition, information regarding current lawfully established use, fire hazard category and year first constructed were not provided as required by the prescribed Form 12.

Some building owners and tenants were found to have limited knowledge of their compliance schedule and building warrant of fitness legislative requirements, which often resulted in building warrants of fitness not being displayed and/or the incorrect forms being displayed in their place.

The Council acknowledged that at January 2009 they were not doing building warrant of fitness inspections of buildings with specified systems, although they did undertake such inspections up until May 2007. These building warrant of fitness inspections allow the Council to assess the accuracy of the compliance schedules and also provide an opportunity to assess the performance of independent qualified persons. The Council commented that due to the preparation for accreditation (under the Building (Accreditation of Building Consent Authorities) Regulations 2006) and the high building consent activity, they elected to stop doing building warrant of fitness inspections. The Council indicated they were developing a new target of auditing 20 percent of buildings within their city per annum. With the current downturn in the building sector this was felt to be a realistic goal.

It was found that the Council did not verify that an independent qualified person was listed on the regional independent qualified person register.

Conclusion

The Department considered the Council's procedure for receiving, assessing, accepting and inspecting building warrants of fitness as not appropriate. Further improvements can also be made in the area of enforcement action, in particular enforcing owners to comply with statutory timeframes.

| Recommendation 5 | |
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| The Department recommended that the Council: | Response from the Council: |
| Fully perform its role under section 12(2)(h) of the Building Act 2004 to enforce the provisions relating to annual building warrants of fitness. In particular, against those building owners who have failed to provide a current building warrant of fitness on the anniversary of the compliance schedule issue date. | At 8 September 2009 the Council advised all outstanding building warrants of fitness were up to date and an inspector had been employed to maintain this status. |
| Develop and implement a strategy to actively manage the number of expired building warrants of fitness, particularly when building owners | At 8 September 2009 the Council advised all outstanding building warrants of fitness documents were up to date and an inspector had been |

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| have not responded to the Council's initial correspondence. | employed to maintain this status. |
| Review and modify where necessary its process of issuing building warrants of fitness on Council letterhead. In particular, sending out this document before seeing and accepting all relevant Form 12As. | At 8 September 2009 the Council advised they had removed their letterhead from the building warrant of fitness, though a building warrant of fitness will still be sent out by the Council. |
| Ensure all information required by prescribed Form 12 is entered on the building warrants of fitness. | At 8 September 2009 the Council advised checks were in place to ensure this information is included. |
| Inspect buildings with specified systems, compliance schedules and building warrants of fitness in accordance with section 111 of the Building Act 2004. | The Council advised they did not consider this to be a mandatory requirement, but their intent was to inspect 50 percent of these buildings each calendar year. |
| Implement the following best practice suggestions: <ul style="list-style-type: none"> • develop and implement a prompt/check-list for the assessing of building warrants of fitness for correctness and compliance with the Building Act 2004 and Building Regulations • enhance existing information to include owner inspection responsibilities and ensure this information is supplied to these people. | At 8 September 2009 the Council advised they were working towards implementing these best practice suggestions. |

4.7 Private cable cars (section 100)

Purpose

To assess Council's system to ensure that domestic cable cars within its district have compliance schedules. 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 household units or are serviced by them. Requirements on territorial authorities and building consent authorities are also included in the Building Act 2004.

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 Council advised that they were not aware of any cable cars attached to household units within the city.

Despite this the Council did provide for cable cars on its processing and final inspection check sheets.

Some information provided on the Council's website in regards to compliance schedule requirements was not correct. In particular, the statement that single household units do not require a compliance schedule is not in accordance with section 100 of the Building Act 2004 (refer to section 4.4 of this report under the header 'public information' for further details).

Conclusion

Considering the lack of cable cars within the city, the Department considered the Council's procedure for assessing cable cars as appropriate.

The Council's public information was not technically correct regarding cable cars.

| Recommendation 6 | |
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| The Department recommended that the Council: | Response from the Council: |
| Ensure in-house and public information is legislatively correct regarding cable cars. | At 8 September 2009 the Council advised there were no cable cars in their area, but they were now providing information on cable cars to the public. |

4.8 Independent qualified person register

Purpose

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

Background

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

Findings

The Council relied on the Eastern Cluster Groups Regional Register for a list of approved independent qualified persons which had been running since 1993.

The Hastings District Council managed the region's independent qualified person register on behalf of:

- Central Hawke's Bay District Council
- Gisborne District Council
- Hastings District Council
- Napier City Council
- Wairoa District Council.

Hastings District Council is responsible for maintaining this regional register, including assessing and approving independently qualified persons. Applicants are required to complete a standard application form for acceptance as an independently qualified person. The application form requires applicants to provide their CV, qualifications, references, insurance details as part of the assessment process. The Council refers any independently qualified person applications directly to the Hastings District Council, as well as any complaints regarding independently qualified persons.

There was no formal agreement or memorandum of understanding between the Council and Hastings District Council to govern this collective arrangement. It appeared that the Council had little oversight or ownership of the registration system servicing their area.

At the time of the review visit the Hastings District Council website provided a version of this register dated 15 January 2009. This register is updated on a regular basis. Napier City Council had access to this website via a link.

Conclusion

A regional independently qualified person arrangement is a good way for Council to achieve greater consistency and a more standardised approach. However, work should be undertaken to formalise the arrangement and clarify certain matters, as recommended below.

| Recommendation 7 | |
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| The Department recommended that the Council: | Response from the Council: |
| Have a formal agreement with the other cluster group councils around the process used to assess independent qualified persons and the use of the regional register. | At 8 September 2009 the Council advised a formal agreement had been endorsed. |
| Have an agreed formal process with all cluster group councils on how to deal with non-compliant practices by independent qualified persons. | At 8 September 2009 the Council advised a formal agreement had been endorsed. |
| Review the assessment process of approved signatories in conjunction with the regional group. | At 8 September 2009 the Council advised that they will continue to work with the other parties on the assessment process. |

4.9 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 has reduced compared with levels of two or three years ago, the Council needs to be prepared for recovery and the 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 was carried out by building control officers during the processing and inspection stages.

The Council advised it had no dedicated staff undertaking building warrant of fitness and compliance schedule functions. But the Council indicated they needed to look at this once it resumed inspections of buildings with building warrants of fitness.

The Council did not have any formal agreements in place for external experts to review specified systems. But it was identified that the Council were in discussions with one external expert and were reviewing their CV at the time of the review visit.

The lack of dedicated staff for compliance schedule and building warrant of fitness functions raised concerns over the possible impact on the Council's performance relating to compliance schedules and compliance schedule statements being issued, as well as building warrant of fitness-related functions and duties. These include sending out reminder letters, follow-up of expired building warrants of fitness, assessment of received building warrants of fitness and Form 12As, on-site inspections, enforcement action and management/administration.

Significant resource will be required for enforcement actions due to the large number of buildings that did not have a compliance schedule or a current building warrant of fitness at the time of the review visit (terms of reference 4.2 and 4.6 refer).

Conclusion

The Council has not prioritised building warrant of fitness or compliance schedule functions and has not appointed sufficient dedicated resources to ensure these functions meet all statutory obligations under the Building Act 2004. At the time of the review visit the Council was taking steps to recruit additional staff.

| Recommendation 8 | |
|--|--|
| The Department recommended that the Council: | Response from the Council: |
| Ensure adequate technical and administrative support resources are made available for the Council to fulfil their responsibilities, particularly the functions and duties relating to compliance schedules, building warrants of fitness and any required enforcement action. | At 8 September 2009 the Council advised they now had a full complement of staff available for these functions. |
| Develop and implement a means of actively managing, and ultimately eliminating, the number of expired building warrants of fitness and ensure adequate staff are in place to achieve this. | At 8 September 2009 the Council advised an inspector had been employed full-time to assist the existing resources in this area. |
| Develop relationships and form contracts with external experts to assist with peer review of specified systems (when those systems are outside the Council's technical skill-set). | The Council advised these arrangements were in place, and will continue to be used when required⁹. |

⁹ Department comment: The review found the Councils assessment and identification of specified systems was not always technically accurate. Gaps in the Councils technical knowledge and expertise were evident when assessing complex or irregular specified systems (eg SS-13 a mechanical smoke control system that was specifically designed to extract smoke from a basement car park area) further discussed in terms of reference section 4.4.

4.10 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 up-skilling.

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 have the correct level of technical knowledge, understanding and skills in specified systems and building law.

Findings

As a result of the building consent authority accreditation scheme the Council now had a competency assessment process that covered building consent authority functions. However this did not cover compliance schedule statements, amending compliance schedules and building warrants of fitness.

In-house peer reviews of building consent processing were carried out and recorded. But the review noted that there was no indication in the records viewed that specified systems or compliance schedules had been considered.

The Council openly acknowledged that it had not prioritised its building warrant of fitness regulatory role in recent years as its primary focus had been on achieving accreditation as a building consent authority.

One Council staff member had recently attended external training specific to building warrant of fitness and compliance schedule functions, though this training had not been included in that individual's competency assessment matrix/records.

In some instances Council staff had not correctly identified specified systems in buildings and in some cases these specified systems were not recorded on compliance schedules or compliance schedule statements. Complex specified systems, or those that were not commonly encountered by the Council, were not described with sufficient detail for the independent qualified persons to inspect and report on these systems.

The Council had no dedicated staff specialising in the assessment and administration of specified systems, building warrants of fitness and compliance schedules. The Council had not appointed any external contractors to support the building control team in the assessment of specified systems, which were complex and outside the Council's technical skills-set.

The Council is part of a regional cluster group and relies on the regional register of approved independent qualified persons. The cluster group arrangement did not appear to extend to inter-council sharing of best practice guidance, technical skills, expertise and resources.

Conclusion

The Council had a competency assessment system, but this should be improved to include specified systems, compliance schedule and building warrant of fitness items.

| Recommendation 9 | |
|--|--|
| The Department recommended that the Council: | Response from the Council: |
| Review and update the competency assessment process to include specified systems and other compliance schedule and building warrant of fitness matters. | At 8 September 2009 the Council advised an on-going assessment of staff was in place, and it would continue to develop the technical ability of staff in these areas. |
| Continue to train staff in specified systems, building warrants of fitness and compliance schedules. | The Council confirmed that this will be an on-going process and that training is a requirement of their accreditation as a building consent authority. |
| Appoint technical staff (internal and external) who have specific skills in assessing specified systems. | The Council advised these arrangements were already in place, and will continue to be used when required. |
| Further develop its cluster group relationships and utilise this network to enhance its existing in-house systems, skills, technical expertise and exchange best practice ideas and advice for the assessment of specified systems. | The Council advised that they did not consider this to be a mandatory requirement for cluster groups¹⁰. |

¹⁰ Department comment: Whilst cluster group activities are not mandated they do present opportunities to help improve a councils performance, cost efficiently, regional consistency, standardisation, quality of service, level of building code compliance achieved, and capitalise on the economies of scale possible by sharing collective skills, expertise, resources, business systems, processes and best-practice ideas.

4.11 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 Building Act 2004. This helps inform the public of their obligations.

Findings

All files relating to compliance schedules and building warrants of fitness were stored securely in a designated filing room. Building warrant of fitness records were kept in their own pink folder and compliance schedule information was kept on the property file.

Requests for information are made at the public counter within the Council building. Files are able to be viewed at the public counter and photocopying facilities are also available. The Council staff indicated that they were happy to fax information to members of the public if they had a specific request and were not able to visit the Council's offices.

In accordance with the Building Act 2004 requirements, a fee is charged for providing a fax or photocopy from these files.

Conclusion

The Council was 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 this report in the 'response from the Council' section of each terms of reference.

Published in November 2009 by the
Department of Building and Housing
PO Box 10-729
Wellington, New Zealand

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ISBN 978-0-478-34310-6 (website)