



Department of
Building and Housing
Te Tari Kaupapa Whare

Technical Review
of the Compliance Schedule and Building
Warrant of Fitness systems of
Tauranga City 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 Tauranga City 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
- South Waikato District Council
- Taupo 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 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 (BCA) 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 BCAs 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.

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. For example it:

- had an appropriate organisational management structure and was properly delegating the relevant powers and responsibilities considered in this review
- had a sound system in place to report on and collect statistics about the responsibilities under the Building Act 2004 considered in this review
- was meeting the statutory timeframes for issuing compliance schedules; however, some changes to its compliance schedule system are needed to meet certain requirements of the Building Act 2004 and Regulations made under the Building Act 2004 (see sections 4.3 and 4.4)
- was usually ensuring that amended compliance schedules included specified systems that were in accordance with the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 (see section 4.5)
- had an appropriate process for receiving, assessing, and accepting building warrants of fitness, and inspecting buildings that have compliance schedules
- initiated a survey and found that no cable cars were servicing household units within its district
- had processes and procedures for the region's independent qualified persons (IQP) register that were largely appropriate (but could still be improved as recommended in this report)
- had a sound record keeping system.

The review identified four significant areas where the Council needed to strengthen and improve its operations. Addressing these issues will enhance the quality of service to customers, alleviate confusion for building owners and IQPs, and assist the sector to comply more consistently with the Building Act 2004. These four significant 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
- effective systems, policies, and procedures in relation to compliance schedules, specified systems, and building warrants of fitness
- capacity and capability of the Council.

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

Understanding and application of statutory responsibilities

The review highlighted that the Council's building control staff needed to more thoroughly understand and consistently apply certain areas of the Building Act 2004 and Building Regulations. Some examples are noted below, but these underlying findings also apply across the other three subheadings in this section.

- The Council's vetting procedures needed to be more robust and staff more vigilant in ensuring building consent applications are complete with all the relevant information and documentation in regard to specified systems and the proposed inspection, maintenance and recording procedures before accepting applications.
- Ensuring regulatory functions are carried out in accordance with the Building Act 2004 and relevant Regulations. For example:
 - issuing compliance schedules with code compliance certificates and not prior to this

- ensuring compliance schedules consistently list the actual specified systems that are contained in the building
- ensuring the maintenance and inspection requirements for existing specified systems are identified when a compliance schedule is amended.

Documentation around building control decision-making

The review highlighted the need for the Council to strengthen how key regulatory decisions were being recorded by Council staff. In a number of 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
- the actual decisions that were made
- 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 how compliance with the Building Code is achieved for specified systems
- the actual specified system, and the design, inspection and maintenance standards complete with the date of the standard.

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.
- Procedures for issuing certificates for public use need to cover time frames, conditions and follow up or enforcement activity. The Council should not issue compliance schedules with certificates for public use (see section 4.3).
- Develop a more formal agreement with other councils around its use of the regional IQP register; how applicants will be assessed; how non-compliance will be dealt with; and streamlining the process for already accredited signatories.
- Ensure that certificates issued by the Council are recorded and stored with the authorising signature and date.

In some cases the Council needed to ensure that its policies and procedures were actually being followed and consistently used by staff and its contractor. The Department found examples where this was not happening or where it was not clear from the consent file if key parts of the policies and procedures had been considered (eg, see section 4.4).

Capacity and capability

The following issues were identified regarding the Council's capacity and technical building control capability (competency) (see sections 4.9 and 4.10).

- The Council performed to statutory time frames for building consents, but inspections on building warrants of fitness and compliance schedules were relatively low compared to the

number of buildings with compliance schedules within the district. If the Council were to increase these inspections it would need to monitor that it has adequate staff resources to fulfil its responsibilities in administering the Building Act 2004.

- The Council also needed to enhance its competency assessment and training process to better identify and manage gaps in its technical knowledge and ability in relation to specified systems so that it can ensure consistent compliance with the Building Act 2004.

Recent initiatives

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

- reviewed the delegations it provides to its staff
- reviewed and updated its procedures for ensuring that inspection and maintenance procedures are provided with an application for a building consent
- reviewed and updated the public information about specified systems, compliance schedules and amending compliance schedules
- liaised with the regional cluster group of Councils to progress joint initiatives, such as developing a formal agreement between member councils and how to deal with non-compliant IQP practices.

The Department would like to thank Tauranga 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 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:

- 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 Building Regulations.

Tauranga City Council

Tauranga city is in the Bay of Plenty region on the eastern coast of the North Island of New Zealand. Tauranga is well served by a variety of transport links, including sea, rail, air and road. The city is the economic hub of the Bay of Plenty region, supporting a wide range of manufacturing, tourism, agriculture and horticultural industries and is the seaport for the region. Tauranga is also a recreational haven and one of New Zealand's most popular holiday destinations.

The boundaries of Tauranga city extend from the Wairoa River in the west to the Pacific coast in the east, and from the harbour inlet at Mount Maunganui in the north to the foothills of the Kaimai-Mamaku ranges in the south. Tauranga is one of the smallest of New Zealand's 73 territorial authorities in terms of land area. The city has a total land area of 12,742 hectares and has a population of around 110,000. The landscape of Tauranga is dominated by two key features, the harbour and the 232 metre high Mauao (Mount Maunganui). In the 2007–2008 year Tauranga City Council was ranked seventh of all councils in New Zealand for the number of building consents issued and the value of consented building work.

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.

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

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)
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 checklists 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, five 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

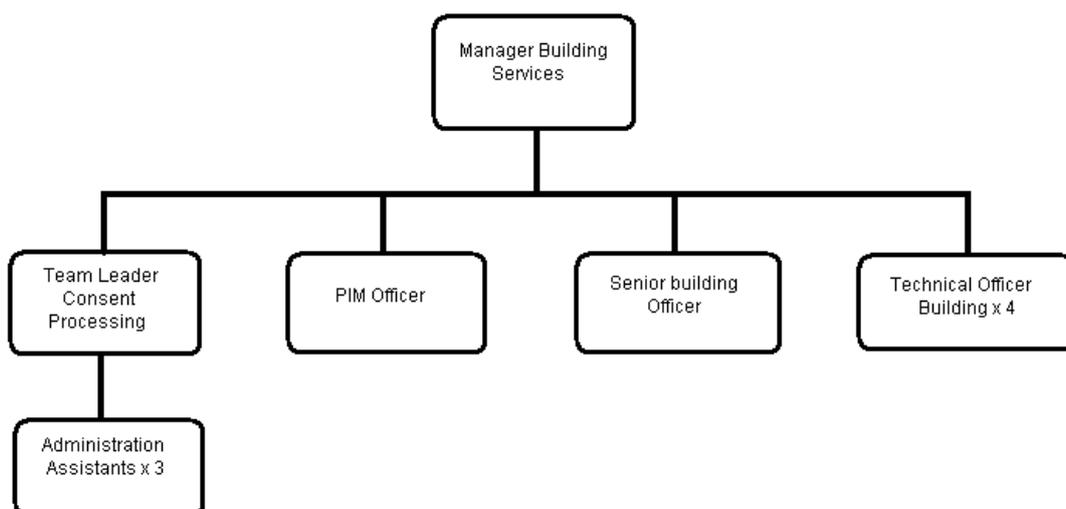
To examine the organisational and management structure of the Council's building control operations, consider how it delegates legislative powers, duties, and responsibilities, and identify any issues with its efficiency.

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

Tauranga City Council Building Consent Authority Structure



The Council had a schedule of staff delegations for its functions and duties under the Building Act 2004 that included compliance schedules and building warrants of fitness. Building control staff are warranted to enter land and carry out inspections. The warrants and delegated authorities have been provided under the Local Government Act 2002.

The Council uses a contractor to provide its technical building consent authority (BCA) responsibilities. Both the Council and its contractor are accredited BCAs. Tauranga City Council is the registered BCA.

The Department noted that the Council's listed delegations refer to the issuing of infringement notices with an incorrect reference to section 371, rather than section 372, of the Building Act 2004.

Conclusion

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

Recommendation 1	
The Department recommended that the Council:	Response from the Council:
Review and update its schedule of delegations to ensure that the correct sections of the Building Act 2004 are referenced.	The Council advised that the delegations had been reviewed and provided to the Council's legal team to be changed.

4.2 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 (unless stated otherwise)
2588 building consents issued
Total value of consented construction work was \$434,472,879
2741 code compliance certificates issued (1 November 2007 - 31 October 2008)
74 compliance schedules issued (1 October 2007 - 6 October 2008)
1017 buildings had a compliance schedule
843 current building warrants of fitness
60 certificates of acceptance issued (1 November 2007 - 31 October 2008)
55 inspections of building warrants of fitness carried out
88 compliance schedules did not have a current compliance schedule statement or current building warrant of fitness at 30 September 2008

The Department was concerned at the number of compliance schedules that did not have a current building warrant of fitness and that were no longer covered by a compliance schedule statement (section 4.6 – 'Building Act requirements - annual building warrant of fitness' refers to this in more detail).

Conclusion

The Council at the time of the review had a sound system in place to report on and to collect statistics that assisted them in performing the duties and functions of the Building Act 2004.

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 (BCA) 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 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 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 Council used a contractor to provide its technical BCA responsibilities. Both the Council and its contractor are accredited BCAs.

Although section 102(1) of the Building Act 2004 requires compliance schedules to be issued with code compliance certificates (CCCs); in practice the Council was issuing its compliance schedules and compliance schedule statements approximately one to two days before it issued a CCC. The compliance schedule and compliance schedule statements were getting processed before the CCCs were ready to be issued. Such a process can lead to problems. For example, it may be possible for a BCA to refuse to issue a CCC because of a specified system anomaly, yet a compliance schedule and compliance schedule statement have already been issued.

The Department also noted some examples where certificates for public use (CPU) had been required for public buildings, and a compliance schedule and compliance schedule statement had been issued with the certificate for public use. In some instances this was up to six months prior to issuing the CCC. This practice was inconsistent with the Building Act 2004.

The Department acknowledged that such a process provided some surety that the specified systems required to be operational for the CPU to be issued were in fact being maintained and inspected appropriately. However, there was also the potential for confusion in the ongoing maintenance and reporting procedures of the specified systems for the building warrant of fitness. Compliance schedules must be issued with CCCs. A CPU can be issued with conditions that include a defined period of time for the owner to apply for a CCC, and a requirement for the owner

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

to ensure that inspections and maintenance of the relevant specified systems are undertaken to ensure those specified systems remain operable.

As noted in the statistics, there were 88 buildings where the building owner had not provided the building warrant of fitness at the anniversary date of the issue of the compliance schedule. This issue is dealt with under section 4.6.

Conclusion

While the Council was meeting the statutory timeframes for issued compliance schedules, its system needed to be changed so that it issued compliance schedules in a manner consistent with the Building Act 2004 (ie, compliance schedules and compliance schedule statements should be issued with the issue of a CCC).

Recommendation 2	
The Department recommended that the Council:	Response from the Council:
Cease the practice of issuing compliance schedules and compliance schedule statements with certificates for public use, and initiate a process to ensure that any specified systems are maintained and inspected during the period covered by the certificate of public use.	The Council advised that since 31 July 2009 draft compliance schedules have been issued with certificates for public use.
Include an expiry date on all certificates for public use.	Council advise that it now includes an expiry date on certificates for public use.

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 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

Building consent application

The Council's application form for project information memoranda (PIMs) and/or building consents was generally consistent with Form 2 prescribed in the Buildings (Forms) Regulations 2004. The Council's form also covered the addition of a Service Connection Authorisation.

The Council had a checklist for administrative staff to use when accepting building consent applications at lodgement. The checklist included a section for compliance schedule systems or features and relevant maintenance and inspection procedures. However, the Department noted a number of applications that had been accepted which did not contain the relevant information about maintenance and inspection procedures.

Building consent processing

The Council employed a contractor to assess building consent applications for compliance with the Building Code. The contractor's processing checklist for minor works and multi-unit, commercial, and industrial buildings did not include adequate assessment requirements for specified systems. While the checklist did cover many of the technical Building Code compliance issues, it did not refer to, or identify, any specified systems. The detail being recorded on the checklist did not describe how specified systems had been assessed when Building Code compliance decisions were made.

Building consent issuing

The Council issued a building consent after receiving the consent application file and a certificate from its contractor that stated the proposed building work would comply with the Building Code if built according to the documentation assessed. The contractor also provided a list of specified systems that were to be included in a compliance schedule, although it is not clear how this list was formulated. The Council then reviewed the consent documentation for the inclusion of any specified systems and developed a draft compliance schedule. The Council reviewed the consent application documentation and, if satisfied that compliance with the Building Code was achieved, the building consent was then issued.

Under section 51 of the Building Act 2004, any building consents issued by the Council for any building work that required a compliance schedule must state the specified systems covered by the compliance schedule, and the performance standards for those specified systems that are required by the Building Code. The building consent form issued by the Council did not cover either of these requirements.

The contractor provided a sheet entitled 'steps required to obtain a code compliance certificate' that included the required inspections. There was no record of any notification of which producer statements or commissioning reports/results were required for any installed specified system.

Inspections of building work

The Council used its contractor to carry out all inspections of consented building work. The contractor had inspection checklists as part of their electronic recording system. The final inspection checklist only listed producer statements required for the installation of specified systems. In many instances this was adequate, but in others it was not. For example, fire separations⁵ (eg, a fire rated non load bearing wall) were usually inspected by the Council's contractor during construction of the building and would not necessitate a producer statement. The checklist needed to cover all specified systems, including those inspected by the Council's contractor, to ensure they were installed in accordance with the plans and specifications issued with the building consent.

There were also other documents commonly used to ensure that the installation of a specified system was correct, such as a certificate from an accredited inspection body for the installation of sprinklers and early warning systems that are designed and installed to a common New Zealand standard. These certificates were not producer statements.

Compliance schedules

The Department found cases where specified systems were being included in compliance schedules but were not actually installed in the building. Or cases where they had been installed in the building, but had not been included in the compliance schedule. Care needed to be taken during inspections and when making decisions on whether to issue a code compliance certificate (CCC). The Council needed to ensure that all compliance schedules it issued included all the relevant specified systems in the building.

In most cases the Council's descriptions of the specified systems contained in compliance schedules issued just prior to the technical review were satisfactory, and included the information required by section 103 of the Building Act 2004. Although the location and type of backflow prevention devices were adequately specified in the compliance schedule, this was not the case with other specified systems, such as fire and smoke separations on the means of escape. Including this information would be useful where such specified systems are difficult to locate or identify.

The Council provided a useful document entitled 'What now?' with each issued compliance schedule. This document clearly advised building owners of their Building Act 2004 responsibilities. However, there was little information on compliance schedules and building warrants of fitness for a person wishing to apply for a building consent.

⁵ As prescribed in 15(c) of Schedule 1 of the Building (specified Systems, Change the Use, and Earthquake Prone Buildings) Regulations 2005.

Compliance schedule statements

The Council's compliance schedule statements were not always consistent with Form 10 of the Building (Forms) Regulations 2004. Statements did not have information about the contact details of building owners as required by the Regulations.

Where building work was not completed and a certificate for public use (CPU) had been issued, the Department found cases where the Council had also issued a compliance schedule and compliance schedule statement. The Building Act 2004 requires a compliance schedule to be issued with the CCC. In contrast, a CPU can be issued with conditions, including conditions setting a defined period of time for the owner to apply for a CCC, and a requirement for the owner to ensure that inspections and maintenance of the relevant specified systems are undertaken.

Conclusion

At the time of the review, parts of the Council's compliance schedule system were consistent with the requirements of the Building Act 2004 and Regulations made under the Building Act 2004 (eg, the descriptions of the specified systems compliance schedules being issued). However, further improvements were needed to ensure that the Council and its contractor more consistently comply with all of the requirements. The key changes are noted in the Department's findings and recommendations in this report.

Recommendation 3	
The Department recommended that the Council:	Response from the Council:
Ensure the necessary information about inspection and maintenance procedures for specified systems is consistently provided in building consent applications (where this is needed).	The Council advised that it had reviewed its procedures and that this was now addressed at the lodgement of the building consent application.
Review its processing checklist and how the checklist is being completed to ensure there is a record of how each specified system has been assessed for compliance.	The Council advised that its contractor had reviewed their processes, including checklists they used to process a building consent application in relation to specified systems.
Ensure that building consents it issues include a notification as to whether a compliance schedule is required (or not) and consistently records any specified systems and the relevant performance standards for such specified systems.	At 31 July 2009 the Council advised that it was working on these issues with its document management system and expected to complete this work by the end of September 2009.
Review its inspection checklists to ensure that there is a record of how each specified system has been inspected and that all documentation supporting this has been received.	The Council advised that its contractor had reviewed and enhanced their inspection checklists to clearly identify specified systems. The Council's contractor advised this will assist the inspectors in checking if the specified system was interfaced with another system, for example automatic doors interfaced with the emergency warning system.

<p>Review and update the public information that it provides to clearly communicate people's obligations and responsibilities associated around compliance schedules, amendments to compliance schedules, and the building warrant of fitness system.</p>	<p>At 25 June 2009 the Council advised that this was being addressed by members of its building warrant of fitness team.</p>
<p>Ensure the issued building consents identify what third party certification documentation is required in relation to the installation of a specified system.</p>	<p>At 31 July 2009 the Council advised that its contractor now specified what third party certification documentation was required as an attachment to the issued building consent.</p>
<p>Continue to improve how it details the locations of specified systems in the building in the compliance schedules it issues.</p>	<p>At 31 July 2009 the Council advised that it was working towards the applicant providing a plan drawing at the time of lodging the building consent application which indicated the location of specified systems, particularly fire and smoke separations. Council advised it expected to complete this work by the end of September 2009.</p>

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

The Council did not provide any general information to building owners on the requirements for amending a compliance schedule. The Department looked at a number of compliance schedule amendments made under section 107 of the Building Act 2004. However there was no record as to whether the Council advised the owner of its intention as required by section 107(3).

Where existing compliance schedules had been amended, the amended compliance schedule included specified systems that were generally in accordance with those in the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005. This was good practice as systems or features described under previous legislation (Building Act 1991) were substantially different to specified systems described in the legislation in place at the time of the review (Building Act 2004). If the Council continued with this practice, the Department considered that, over time, greater consistency would be achieved.

Maintenance and inspection requirements were identified and included for the existing specified systems when a compliance schedule was amended. This included situations where historic maintenance and inspection requirements were required. If an existing compliance schedule was amended, it became difficult to ensure that the appropriate maintenance and inspection procedures were recorded, as many specified systems were often designed to a historic standard. In these situations the Council determined the maintenance and inspection procedures through the owner or their agent (usually a person with technical knowledge about the existing specified system).

Conclusion

At the time of the review some improvements to the Council's system for amending compliance schedules were needed to ensure consistent compliance with the requirements of the Building Act 2004. The key changes are noted in the Department's findings and recommendations in this report.

Recommendation 4	
The Department recommended that the Council:	Response from the Council:

<p>Review and update its procedures to ensure that the building owner is advised in writing of any proposal to amend a compliance schedule.</p>	<p>At 25 June 2009 the Council advised that this was now being done and that procedures were being changed.</p>
<p>Review and update the public information it provides to communicate people's obligations and responsibilities when amendments to compliance schedules and specified systems are made.</p>	<p>At 25 June 2009 the Council advised that this was being addressed by members of its building warrant of fitness team.</p>

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

The Council had a process for performing the functions and duties relating to building warrants of fitness. This process covered the receiving, checking and monitoring of building warrant of fitness and Form 12A certificates.

The Council generated weekly reports to identify which building warrants of fitness were due or had not been received. A reminder letter is sent to the owner four weeks prior to the due date. If the building warrant of fitness is not received on its anniversary date, a follow up expiry letter is sent advising it has not been received and that the Council will be considering its enforcement options if the overdue building warrant of fitness is not provided within a set timeframe. After this, the next step is to issue a notice to fix giving 14 days to provide the building warrant of fitness with its supporting documentation.

If there is no response to this notice within seven days, a letter is sent advising of potential legal action. There were three instances of the Council sending letters advising the owner of possible legal action, but no prosecutions had been taken up until the time of the review. The Council were also in the process of adopting a policy and procedure for issuing infringement notices at the time of the technical review visit.

The Council checked building warrants of fitness it received for correctness before filing them. There was no evidence of a checklist used, or any specific recording of this process. Where there was an issue with the building warrant of fitness or a Form 12A certificate the Council would perform an inspection. If not satisfied, the Council would issue a notice to fix giving 14 days for the owner to rectify the problem and to provide relevant records.

In the 12 months prior to the 30 June 2008, the Council had carried out 55 inspections of buildings that had compliance schedules. Those inspections generally resulted from concerns raised by IQPs or incorrect building warrants of fitness or associated documentation. Others were random inspections initiated by the Council.

The Council had a building warrant of fitness inspection report sheet that was completed when an inspection of a building was undertaken. This sheet recorded the inspection findings.

As at 30 September 2008, 88 buildings with compliance schedules did not have a current building warrant of fitness. About 10 percent of these were scheduled to be audited. The owner of one building was issued with a notice to fix; several owners were sent letters stating that their building

warrant of fitness had incorrect documentation; some owners were being dealt with individually; and the remainder were sent reminder or expiry letters.

Conclusion

The Council had an appropriate process for receiving, assessing, and accepting building warrants of fitness, and for inspecting buildings that have compliance schedules.

4.7 Private cable cars (section 100)

Purpose

To assess Council's system to ensure that domestic cable cars 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 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 it had undertaken an informal survey and was not aware of any cable cars serving household units within their district.

Conclusion

The Council had proactively initiated a survey and determined that there were no cable cars servicing household units within its district.

4.8 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 relied on the Bay of Plenty regional register of approved IQPs, which was used by several councils and managed by Rotorua District Council. There was no evidence, at the time of the review, of any formal agreement or memorandum of understanding between the councils who used this register.

A Council staff member worked with Rotorua District Council to approve IQPs on to the register. This involved reviewing candidates' applications and supporting evidence and discussing their appropriateness with Rotorua District Council. There was an informal understanding that the IQP register was to be updated and provided to the Councils each month. However, this did not always occur – during the November 2008 review, the latest list was issued in September 2008.

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

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 recommended that the Council:	Response from the Council:
Develop a formal agreement with member Councils in the regional group around the process used to assess IQPs and the use of the regional IQP register.	At 25 June 2009 the Council advised that these recommendations were being addressed.
Agree on a formal process with all member Councils on how to deal with non-compliant IQP practices.	
Work with the member Councils of the regional group to review the assessment process for accredited signatories.	

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 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 Council had a contract with an external contractor to assess building consent applications for compliance with the Building Code and to perform inspections of building work. The Council required the contractor to specify any systems and features requiring a compliance schedule. The contractor also provided the Council with a statement of compliance with the Building Code. The contract included a performance requirement of 10 working days for the assessment of building consent applications.

At the time of the review the Council had three staff dedicated to performing functions relating to compliance schedules and building warrants of fitness. These duties included reviewing all building consents that were not single household units to identify specified systems and issuing compliance schedules and compliance schedule statements before the code compliance certificate was issued. These staff also reminded building owners that building warrants of fitness were due; received and checked building warrants of fitness; undertook inspections of buildings with compliance schedules; and undertook any required enforcement actions.

The Department also noted the finding (sections 4.2, 4.3, and 4.6 refer) that there were 88 buildings in the district that had a compliance schedule, but did not have a current building warrant of fitness. Additional capacity would help clear this backlog.

Conclusion

The Council had reasonable capacity for its day-to-day compliance schedule and building warrant of fitness functions. However, if it were to increase the number of inspections of buildings that had compliance schedules this would impact upon its current capacity.

Recommendation 6	
The Department recommended that the Council:	Response from the Council:
Monitor its staffing resources and take the appropriate actions to ensure that it was adequately performing its responsibilities.	Council advised that it believed it was adequately resourced and in this recessionary climate all staff recruitment was on hold.

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

Findings

The Department examined staff training plans and training logs that were part of the Council's performance appraisal system. Staff had been provided some compliance schedule and building warrant of fitness training. However, this did not include specific training relating to specified systems, or their means of compliance, or appropriate performance standards for such systems. The Council had a competency appraisal process that was based on auditing of work carried out, but it was not specific to the technical aspects of specified systems. The Council's contractor provided training to its technical staff, but this was also not specific to the technical aspects of specified systems.

Evidence from the Department's case studies showed that there were some gaps in the technical knowledge of the Council and its contractor. The building consent authority accreditation scheme had required the Council and its contractor to implement processes to identify and fill these gaps. But there were still areas that needed to be further developed – particularly around Building Code compliance issues for specified systems and how to undertake some of the key regulatory processes (eg, section 102(1) of the Building Act 2004 - issuing a compliance schedule or an amended compliance schedule with the code compliance certificate).

Conclusion

The technical skills and knowledge of the Council and its contractor needed to be strengthened in the areas noted in the review.

Recommendation 7	
The Department recommended that the Council:	Response from the Council:
Undertake specific staff training in the identification, assessment and inspection of specified systems and the regulatory requirements of the Building Act 2004.	At 25 June 2009 the Council advised that its contractor was addressing this recommendation by doing internal audits on competency assessment of its staff.

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

Records were kept electronically, and an archived hardcopy was stored off-site with one working day required for retrieval. Public access was available by request at the public counter.

Electronically stored records of compliance schedules and compliance schedule statements did not have signatures.

Conclusion

The Council's record keeping system was largely compliant with sections 216 and 217, subject to the recommendation below.

Recommendation 8	
The Department recommended that the Council:	Response from the Council:
Provide a mechanism that ensures certificates issued by the Council are recorded and stored with the authorising signature and date.	At 25 June 2009 the Council advised that it recorded dates and signatures are being addressed.

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. However, the Council said that it was disappointed at the length of time it took to obtain the Department's initial report in order for them to implement its recommendations.

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