

**BUILDING  
PERFORMANCE**



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# Ministry of Business, Innovation & Employment's Summary of the 2014-2015 Technical Review Programme

**December 2015**

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**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
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New Zealand Government

## Contents

1. Overview.....	3
2. Executive summary .....	6
3. Technical review process .....	9
4. Legislative background .....	11
5. Findings – positives.....	13
6. Findings – opportunities for improvement.....	14
7. Good practice tips .....	19
8. 2015-16 technical review programme .....	21
9. Acknowledgements .....	22
10. Information and guidance .....	23

### Abbreviations used in this guide:

**BCA** - building consent authority

**BWoF** - building warrant of fitness

**CPU** - certificate for public use

**IMR** - inspection, maintenance and reporting

**IQP** - independent qualified person

**NTF** - notice to fix

**TA** - territorial authority

### Use of this guide

This guide by the Ministry of Business, Innovation and Employment (the Ministry) has been written in accordance with section 175 of the *Building Act 2004*, which relates to guidance published by the Ministry's Chief Executive. While the Ministry has taken every care in preparing the document, it should not be relied upon as establishing all the requirements of the *Building Act 2004*. Readers should always refer to the *Building Act 2004* and associated regulations as the source document and be aware that for specific situations or problems it may be necessary to seek independent legal advice. Note that all references to the Building Code in this guide are to the Building Code (Schedule 1, *Building Regulations 1992*) in force at the time of writing.

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# 1. Overview

## 1.1 Purpose

This document provides a summary of the findings and recommendations of the Technical Review Programme conducted by the Ministry of Business, Innovation and Employment (the Ministry) during the 2014-2015 financial year (1 July 2014 to 30 June 2015).

The technical reviews primarily focused on how the councils (in the main, district and city councils) were undertaking some of their statutory territorial authority (TA) responsibilities under the *Building Act 2004*. These were in relation to:

- amending compliance schedules (not captured by the building consent process)
- enforcing the building warrant of fitness (BWoF) system<sup>1</sup> via on-site audits, notices to fix (NTFs) and infringement notices.

While undertaking joint Ministry/council on-site BWoF audits as part of the review process, the opportunity was taken to observe and assess the quality of installed passive fire systems (eg smoke/fire separations), which has received some media attention in recent times.

It is acknowledged that whilst the technical reviews had a focus on the above-mentioned TA functions, there are some findings and recommendations in this report which relate to building consent authority (BCA) functions (eg compiling and issuing compliance schedules) which are an integral part of the overall compliance schedule/BWoF system.

Through the review process and any subsequent follow-up, the Ministry works collaboratively with councils to help improve building control performance locally and nationally. Accordingly, the reviews acknowledge strengths, but the recommendations primarily focus on the opportunities for improvement that have been identified during the course of the reviews.

This report provides information of value to all councils and other stakeholders, such as independent qualified persons (IQPs) and building owners, about the performance issues faced by councils in their TA regulatory responsibilities relating to compliance schedules and BWoFs.

All councils are encouraged to examine the findings and recommendations outlined in this summary report and to consider improvements that may also be made to their own building control operations.

## 1.2 Reasons for the reviews

The Ministry undertook the reviews as part of its on-going performance monitoring function. The aim is to help councils across the country strengthen and improve how they are undertaking several of their core TA building control functions under the *Building Act 2004*, which relate to the life safety of building occupants. One of the main drivers for these reviews was the passing of the *Building Amendment Act 2012* (which came into force on 13 March 2012) which made a number of changes to the compliance schedule and BWoF processes. Subsequently owners, where necessary, were required to apply to councils and have their compliance schedules amended to align with the

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<sup>1</sup>**Building warrants of fitness** are certificates supplied to the council, by the owner of a building, verifying the inspection, maintenance and reporting procedures of the compliance schedule have been carried out. **Specified systems** are systems or features within a building that contribute to the proper functioning of the building (eg an automatic sprinkler system). **Compliance schedules** state the specified systems contained in a building and include the performance standards, maintenance, inspection and reporting procedures to be followed.

*Building Act 2004* and associated regulations before the anniversary of the issue of the building's compliance schedule, that is, when the BWoF was due and before 12 March 2013.

The reviews provided another opportunity for the Ministry to gauge, over a larger sample group (13 councils, rather than the three reviewed in 2012-13<sup>2</sup>), the quantity and quality of compliance schedules being amended, including the specificity of the amended compliance schedules.

### **1.3 The councils**

A total of 13 councils were reviewed in the following order:

- 1 Kapiti Coast District Council
- 2 Upper Hutt City Council
- 3 Tasman District Council
- 4 Palmerston North City Council
- 5 Ashburton District Council
- 6 Timaru District Council
- 7 Whakatane District Council
- 8 Western Bay of Plenty District Council
- 9 Christchurch City Council
- 10 Queenstown Lakes District Council
- 11 Thames Coromandel District Council
- 12 Dunedin City Council
- 13 Auckland Council.

These 13 councils were selected as being a representative sample of councils, based on size and/or popular tourist destinations and/or have not been previously reviewed by the Ministry or the former Department of Building and Housing.

### **1.4 Statistical information provided by the councils**

Councils were asked to provide certain information in relation to compliance schedules and BWoFs before the commencement of each technical review. The following table (Table 1 overleaf) summarises the statistical information provided.

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<sup>2</sup> The technical review reports for Marlborough District Council, Hutt City Council and Hamilton City Council, which include case studies, are available on the Ministry's website at <http://www.building.govt.nz/technical-reviews> and can be freely downloaded.

	KCDC	UHCC	TDC	PNCC	ADC	TiDC	WDC	WBoPDC	CCC	QLDC	TCDC	DCC	AC
Buildings with CSs at various dates in '14-15 financial year	420	301	425	1708	477	768	353	309	4037	604	332	1634	16098
Amended CSs issued 13 Mar '12 to various dates in '14-15 financial year	185	*	342	270	*	38	223	162	*	277	223	797	*
On-site BWoF audits carried out 13 Mar '12 to various dates in '14-15 financial year	330	0	0	14	106	8	0	0	331	0	142	0	1834
NTFs for CS & BWoF matters issued 31 Mar '05 to 12 Mar '12	35	0	0	9	2	2	0	23	0	0	33	230	2297
NTFs for CS & BWoF matters issued 13 Mar '12 to various dates in '14-15 financial year	46	0	0	13	*	4	0	12	4	0	129	147	591
Infringement notices for CS & BWoF matters issued 1 Jul '08 to 12 Mar '12	0	0	0	1	2	1	0	5	1	2	15	30	61
Infringement notices for CS & BWoF matters issued 13 Mar '12 to various dates in '14-15 financial year	1	0	0	5	0	2	0	1	0	0	15	7	0

**Table 1: Statistical information provided by TAs about compliance schedules (CSs), BWoF audits, NTFs and infringement notices**

(**KCDC** - Kapiti Coast District Council, **UHCC** - Upper Hutt City Council, **TDC** - Tasman District Council, **PNCC** - Palmerston North City Council, **ADC** - Ashburton District Council, **TiDC** - Timaru District Council, **WDC** - Whakatane District Council, **WBoPDC** - Western Bay of Plenty District Council, **CCC** - Christchurch City Council, **QLDC** - Queenstown Lakes District Council, **TCDC** - Thames Coromandel District Council, **DCC** - Dunedin City Council, **AC** - Auckland Council)

\* Information unable to be provided

## 2. Executive summary

### 2.1 Technical review objectives

Technical reviews monitor and assist the BCA, TA or regional authority (the council) under review to improve their building control operations.

This report summarises 13 councils' performance of some of their core TA functions which deal with the safety of building occupants. Specifically, these TA functions relate to amending compliance schedules not captured by the building consent process (as consequence of the passing of the *Building Amendment Act 2012*) and the enforcement of the BWoF system, which includes on-site audits, NTFs and infringement notices. The opportunity was also taken to observe and assess the quality of installed passive fire systems (eg smoke/fire separations).

### 2.2 Key review findings and recommendations

Technical reviews undertaken during July 2014 to June 2015 found the following areas where councils need to improve their building control performance.

Performance issue	Recommendation
<p>Generally, councils focus on their BCA functions, at the expense of their TA functions. Consequently, these TA functions are often under-resourced and under-funded. All 13 councils had backlogs of existing compliance schedules (between 15-100 per cent) that were yet to be amended in order to comply with the requirements of the <i>Building Amendment Act 2012</i>. The legislation required these amendments to be completed by 12 March 2013.</p>	<p>Assess and confirm the scope of the backlogs and resource as necessary with adequate technical and administrative support to clear the backlogs as early as possible. Councils need to actively seek specified system descriptions and specific inspection, maintenance and reporting (IMR) procedures information from building owners. As more than 30 months have elapsed since the deadline of 12 March 2013, more than ample time for owners to comply, it is time for councils to use some of their enforcement tools to get compliance. If owners, or their IQP agents, do not provide the required information in a timely manner, councils should consider issuing NTFs, and if these NTFs are ignored, proceed to issue infringement notices.</p>
<p>The performance of 10 of 13 councils in relation to section 12(2)(g) and (h) was such that the Ministry decided that some form of follow-up action was necessary to monitor progress with implementing the review recommendations.</p>	<p>Attend, as early as is reasonably practicable, to implementing the report recommendations about administering and enforcing the compliance schedule/BWoF system. It is the Ministry's preference to gain willing cooperation from the councils that have been notified that some follow-up is required, but if it is found to be necessary, the Ministry's concerns will be escalated within the Ministry and the council concerned.</p>

<p>Generic and insufficient information provided about specified systems and the IMR procedures was being provided by the applicant/ designer at the time of lodging the building consent application.</p>	<p>Ensure building consent applicants provide detailed specified system descriptions, and the proposed IMR procedures for these systems as part of the building consent application (including interfacing systems). Refuse to accept the application for processing if this information is not provided. The quality of the compliance schedule is dependent on the quality of specified system information supplied at building consent application time. (Refer to the definition of 'plans and specifications' under section 7 of the <i>Building Act 2004</i>).</p>
<p>Most councils, either had no documented policies and procedures for BWoFs and amending compliance schedules, or if they had them, they were in need of an update (eg removing the reference to 'licensed building practitioners'), including to reflect what the council actually do.</p>	<p>Document policies and procedures for BWoFs and amending compliance schedules (and preferably all TA functions). Such documentation is a useful resource for new staff and for experienced staff who do not carry out these TA functions on a regular basis. Ensure the documented policies and procedures are communicated to all relevant staff and provide targeted training wherever necessary.</p>
<p>Of the 13 councils, six did not undertake on-site audits, which is a critical aspect of the enforcement of the BWoF system, and a further two councils limited the audits to an on-site paper-based check only. Some other councils that did undertake regular on-site BWoF audits, had, in the Ministry's view, unacceptably long time periods between audits. Joint council/Ministry on-site audits were carried out with all 13 councils, and in almost all instances the audits revealed issues which required the council concerned to carry out some form of follow-up action. For example, specified systems needed to be added and/or deleted from the existing compliance schedule, expired BWoF displayed and inappropriately sealed penetrations had compromised an existing fire/smoke separation.</p>	<p>Undertake regular on-site BWoF audits, including a rapid 'walk-through' of the building to visually confirm that all installed specified systems are on the compliance schedule. The Ministry believes it is good practice to have a three to five year audit cycle (20-33 per cent per annum) and the audit frequency of a given building should reflect the perceived risk for the use of that building. Therefore, for instance, it might be appropriate to have annual audits for budget accommodation (eg backpackers' hostel) and five-yearly audits for low-occupancy industrial buildings.</p>
<p>Some of the councils were overly 'customer-friendly' and did not use NTFs or infringement notices as a building control tool to achieve compliance for compliance schedule and BWoF matters. five of 13 councils had not issued any NTFs since their introduction in March 2005 and seven had not issued any</p>	<p>Where appropriate, use NTFs and infringement notices as 'business-as-usual' enforcement tools to address non-compliances in relation to compliance schedule and BWoF matters (eg overdue BWoFs). If compliance is achieved promptly via an infringement notice, the council can</p>

infringement notices in the 42 months since the <i>Building Amendment Act 2012</i> came into force on 13 March 2012.	elect to waive the payment of the infringement fee. (Refer to the Wellington City Council technical review report of 2012 which highlights the benefits of infringement notices as a building control tool) <sup>3</sup> .
Building Code clause G5.3.5 requires enhanced listening systems to be provided in certain types of buildings <sup>4</sup> . The Ministry visited quite a number of buildings where this Building Code clause applied (including several, recently built, council-owned events centres) and yet these facilities for the hearing impaired had not been installed.	Ensure compliance with Building Code clause G5.3.5 when processing building consents for new-builds for the types of buildings nominated in the 'Limits on application'. Consider the requirements of clause G5.3.5, as nearly as is reasonably practicable, when making a decision about 'access and facilities for persons with disabilities' under alterations to an existing building (section 112), a change of use (section 115) or subdivision of a building (section 116A).

### 2.3 Overall conclusion

Of the 13 councils reviewed, all were undertaking their roles and responsibilities in amending compliance schedules and enforcing the BWoF system differently. Due to this, there were varying levels of good practice, non-compliance, legislative understanding and performance. Overall, the Ministry has come to the conclusion that councils are not administering and enforcing the compliance schedule and BWoF system to an acceptable level and more resources need to be engaged.

From the representative sample of councils reviewed, it is assumed that many of the issues identified could, and probably do exist at other councils around New Zealand. All councils are encouraged to examine the findings outlined in this report and to consider whether improvements may also be required to their own building control operations.

<sup>3</sup> The technical review report of Wellington City Council, which includes case studies, is available on the Ministry's website at <http://www.building.govt.nz/building-officials/technical-reviews/> and can be freely downloaded.

<sup>4</sup> G5.3.5 states that 'Buildings shall be provided with listening systems which enable enhanced hearing by people with hearing aids'. Performance G5.3.5 applies only to 1) Communal Non-Residential assembly spaces occupied by more than 250 people 2) any theatre, cinema, or public hall 3) assembly spaces in old people's homes occupied by more than 20 people.



## **3. Technical review process**

### **3.1 Who conducts technical reviews**

Technical reviews are conducted by the Consent System team within the Ministry's Building System Performance branch. Team members involved in assessing a council's performance of their TA roles have extensive backgrounds in regulatory building control and building compliance.

### **3.2 Technical review process – two phases**

With respect to the council that is being reviewed, the technical review now consists of two phases (rather than three previously), taking around two weeks to complete from start to finish.

In phase one, following receipt of requested information from the council, the Ministry visits the council and observes the council's building control operations (typically over three days, but can vary between two and a half to five days dependent on the size of the council). The Ministry verbally advises its findings and recommendations to the council at the exit meeting. Phase one remains unchanged from previous years.

In phase two, the Ministry now provides to the council, as soon as possible after the visit (typically within a week of the exit meeting), a brief bullet-point report which confirms the findings and recommendations as presented at the phase one exit meeting. Unlike previous detailed Ministry technical review reports (ie review visits prior to July 2014), the new bullet-point reports are not published on the Ministry's website, but would be subject to the *Official Information Act 1982*.

### **3.3 Why the change to the reporting model for technical reviews**

From previous years of technical reviews, the Ministry have observed that the key 'take home' messages of the published summary report did not differ greatly from the verbal feedback provided to the council at the exit meeting. Consequently, it was decided rather than spending a great deal of time and effort in writing lengthy reports, the Ministry would prefer to focus its resources on providing 'face-to-face' advice and guidance to council staff.

The new reporting model allows for a quicker 'end-to-end' process (two weeks, as opposed to 8-12 months) and is far less intensive in terms of required resources. This has allowed the Ministry to engage with 13 councils in the 2014-15 financial year, as compared with three for previous years.

### **3.4 Summary report will be published on the Ministry's website**

Although reports of the individual councils will not be published on the Ministry's website, this summary of the 2014-15 technical review programme will be posted on the website. This document summarises the Ministry's key findings, trends and good practice tips that will allow all councils to benefit.

### **3.5 Investigative method for the technical reviews**

The Ministry collects information via three main ways:

- reviewing relevant documentation relating to compliance schedules and the enforcement of the BWoF system, plus other key documentation including the council's procedures and policies
- interviewing building control, management and administration staff
- accompanying council staff when undertaking on-site BWoF audits/inspections (six minimum for a range of building types/uses, including a council-owned building).

## 4. Legislative background

### 4.1 Role of territorial authority

Section 12(2)(g) and (h) of the *Building Act 2004* requires a territorial authority to administer and enforce the annual BWoF system.

### 4.2 Amending compliance schedules

Sections 100-111 of the *Building Act 2004* set out the responsibilities for building owners, BCAs and TAs under the compliance schedule and BWoF systems. All buildings (except single household units that do not have a cable car) containing specified systems, such as fire alarms and lifts, are required to have these systems listed on a compliance schedule. The owner must ensure continued effective operation of the specified systems and confirm on-going inspection and maintenance by publicly displaying a current annual BWoF in their building and providing a copy of the BWoF to the TA.

The amendments to the *Building Act 2004*, which came into effect on 13 March 2012, have resulted in two main changes. The two changes directly relate to each other.

- a) The *Building Act 2004* has been amended to make it clear that compliance schedules must be updated to remain consistent with the *Building Act 2004* and regulations when they change. More specifically, an owner (or owner's agent) must apply for an amendment to their compliance schedule:
  - as a result of an amendment to the *Building Act 2004* or any regulation made under it, where the compliance schedule no longer complies with the requirement of the *Building Act 2004* or any regulation made under it; or
  - where it contains information that is no longer required under the *Building Act 2004* or any regulations made under it (section 106(2)(b) of the *Building Act 2004*).
- b) The *Building Amendment Act 2012* made two changes to compliance schedule content which all compliance schedules will need to align with as per the above new requirement, these are:
  - compliance schedules must have a description of each specified system in the building, including the type and (if known) make of each specified system (section 103(1)(a) of the *Building Act 2004*).
  - section 103(1)(d) has been removed making it clear that 'passive features' are not required to be listed on the compliance schedule and do not require on-going inspection and maintenance under the compliance schedule regime (except where specifically listed as a specified system in regulations). Passive features include means of escape from fire, safety barriers, handheld hose reels, signs required by the Building Code and means of access and facilities for use by persons with disabilities. If passive features were listed on a compliance schedule, owners (or owner's agents) should apply to have these removed for clarity.

### 4.3 Issuing notices to fix (NTFs)

An NTF (sections 163-168 refer) is a statutory notice requiring a person to remedy a breach of the *Building Act 2004* or regulations made under the *Building Act 2004*. It can be issued for all

breaches of the *Building Act 2004* (not just for building work). Some important points about notices to fix are:

- A BCA or TA (responsible authority) must issue an NTF if it believes on reasonable grounds that there has been any contravention of the *Building Act 2004* or the building regulations. Common examples could include failing to obtain a building consent, not having obtained an appropriate BWoF, or failing to meet the necessary IMR procedures for a compliance schedule issued by the council.
- An NTF may instruct the owner to apply for a building consent or for an amendment to an existing building consent.
- If an NTF relates to building work carried out without a building consent, it can require the owner to apply for a certificate of acceptance.
- If a TA is not satisfied that the requirements of an NTF have been complied with (where building work is required), for example, after a follow-up inspection, it must provide written notice of its reasons for refusing to confirm the notice has been complied with and issue a further NTF to the specified person.

#### **4.4 Issuing infringement notices**

Sections 370-374 of the *Building Act 2004* deal with the procedure for infringement offences, including the issue and content of infringement notices and the payment of infringement fees.

The infringement offences and fees are set under Schedule 1 of the *Building (Infringement Offences, Fees, and Forms) Regulations 2007*. Schedule 2 of the Regulations sets out the prescribed form of infringement notice and Schedule 3 sets out the prescribed form for the infringement reminder notice.

There are 5 infringement offences in relation to compliance schedules and BWoFs.

- Failing to comply with the requirement to obtain a compliance schedule (section 101 refers);
- Failing to supply TA with a BWoF (section 108(5)(aa) refers);
- Failing to display a BWoF required to be displayed (section 108(5)(a) refers);
- Displaying a false or misleading BWoF (section 108(5)(b) refers);
- Displaying a BWoF other than in accordance with section 108 (section 108(5)(c) refers).

Whilst four of the five above-mentioned offences have existed since the inception of building infringement notices in July 2008, the offence of failing to supply the TA with a BWoF has only been in force since 1 January 2015.

## 5. Findings – positives

### Regional building control forums

- All councils (generally at Building Control Manager/Team Leader level) were regularly attending regional BCA cluster group meetings (eg Lakes-Coast cluster for the Bay of Plenty, Rotorua and Taupo areas) to discuss a wide range of building control activities, including BWoF and compliance schedule functions.
- The majority of councils were regularly sending their compliance schedule/BWoF officer(s) to attend regional meetings (eg South Island IQP Registration Panel held at Timaru) to specifically discuss matters relating to IQPs, compliance schedules and BWoFs. The Ministry supports staff attending such forums as it allows for shared learning and the development of regionally consistent interpretation of policy and procedures.

### Forms

- Most councils provided on their websites an application form to amend a compliance schedule (Form 11).

### Public information

- Most councils provided compliance schedule and BWoF public information on their websites, which often included links to the Ministry's guidance documents *Owners' responsibilities to ensure their buildings are safe to use* and the *Compliance Schedule Handbook*. Some provided hard copy information at front of house or on request.

### Building Amendment Act 2012

- The majority of councils had removed all 'non-specified systems', otherwise known as the 'old passives' (eg access/facilities for persons with disabilities, fire hose reels, safety barriers) from existing compliance schedules.
- Existence of evidence, albeit very limited in some instances, of detailed specified system descriptions and detailed IMR procedures included in recently issued compliance schedules (new or amended), which were a marked improvement on previous generic versions.

## 6. Findings – opportunities for improvement

### Over-arching comments

- Generally, councils focus on their BCA functions, at the expense of their TA functions. Consequently, TA functions, particularly in regards to amending compliance schedules and the enforcement of the BWoF system, are often under-resourced (in terms of staff), under-funded and do not figure as an organisational priority. Virtually all councils reviewed had staffing issues, and in many instances, it was just one of several roles undertaken by the council officer responsible for compliance schedule and BWoF matters. Furthermore, 12 of 13 councils had backlogs of existing generic compliance schedules (in the range of 15-100 per cent) that were yet to be amended in order to comply with the building-specific requirements of the *Building Amendment Act 2012*. The legislation required these amendments to be completed by **12 March 2013**. Councils need to assess and confirm the extent of their backlogs and then resource as necessary to clear the backlogs as early as possible. The additional or redeployed staff resource should be such that regular on-site BWoF audits can be undertaken. (Note - more details about compliance schedules are provided in the next section).

### Compliance schedules

- The most significant issue, in relation to compliance schedules, is implementing the requirements introduced by the *Building Amendment Act 2012*, specifically the requirement that a compliance schedule must:
  - list the specified systems
  - have a detailed description of each specified system
  - list the performance standards for each specified system
  - list the IMR procedures for each specified system.
- Councils need to be more proactive and seek this information from building owners or their agents (eg by contacting/visiting them and advising them of their obligations, or undertake on-site audits and get the information itself). If owners (or their agents) do not provide the required information in a timely manner, councils should consider issuing NTFs, and if these NTFs are ignored, proceed to adopt a policy, if one is not already in place, which will allow for the issue of infringement notices for building offences. An infringement fee of \$1000, for ignoring the NTF, may provide an incentive for non-compliant owners to comply, and if compliance is achieved promptly, the TA may elect to waive the payment of the infringement fee.
- Although not a prescribed form, it is suggested that the following be considered when compiling (or amending) a compliance schedule.
  - Delete the word 'amended' from the compliance schedule heading (where applicable);
  - Ensure there is no mention of an expiry date, because a compliance schedule is valid for the life of the building;
  - Include the original compliance schedule issue date (including the year);
  - Include the date, if and when, the compliance schedule is amended (perhaps with a brief description of the amendment, eg 'SS14.2 added, SS15.5 deleted' or refer to the relevant building consent number) so the history of the building can be traced;
  - 'Highest fire hazard category for building use' should only be used where a building was designed based on a document using that term, that is, the 'old' pre-2012 C/AS1.

- (For a 'new-build' compliance schedule, use 'risk group' if appropriate, that is, if designed to one of the Acceptable Solutions C/AS1-7);
- For 'Current, lawfully established use', populate with 'Classified use(s)' from Building Code clause A1 (eg 'Commercial') plus a lay-person's building-type description (eg two level restaurant and bar);
  - 'Purpose group' is now a redundant term, unless the fire design was to the 'old' pre-2012 C/AS1. (For a 'new-build' compliance schedule, consider 'Activity group(s)' from the *Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005*);
  - Include occupant numbers for each level, if known;
  - Make building-specific (eg more detail about specified system/ type/ brand/ model/ serial number/ location/ performance standard (including year));
  - Generally, it is inappropriate to nominate a Building Code clause as a performance standard for most specified systems. However, there may be on the odd occasion, in the absence of any NZ/international standard or acceptable/alternative solution or verification method or specific design, where it may be appropriate to nominate a particular Building Code clause;
  - Delete any reference to 'licensed building practitioner';
  - Provide cross-references as necessary, to clarify the responsible party. For example, where a fire sprinkler system (SS1) has an automatic back-flow preventer (SS7), the Ministry recommends that this back-flow preventer is noted on the compliance schedule under both SS1 and SS7. Under SS7, it should be made clear that this particular back-flow preventer will be inspected and maintained by the sprinkler IQP, and he/she will be responsible for providing a Form 12A under the compliance schedule requirements of SS1. On a few occasions, the Ministry found sprinkler systems with a back-flow preventer, where it was assumed that it was being inspected and maintained by the sprinkler IQP, however, there was no specific mention of this back-flow preventer in the compliance schedule under SS1 or SS7.
  - No compliance schedule should contain directly copied information from the Ministry's *Compliance Schedule Handbook*. The handbook has several warnings about not copying the information and it makes no sense to have a multiple-choice list of possible inspection and maintenance standards for a given specified system. Virtually in all situations, it should be edited and nominate only one inspection and maintenance standard. However, there may be instances for an older existing building, which has had several fire system upgrades during the course of its life, where it could be appropriate to have more than one inspection and maintenance standard, and this needs to be reflected in the compliance schedule.
  - Allow for the attachment of plans, specified system data sheets, fire reports, photos of alarm panel schematics etc, to assist in locating the systems, particularly for those who are not familiar with the building (eg a new or replacement IQP);
  - Treat the compliance schedule as a 'living' document and amend as necessary, in consultation with the building owner, when useful detailed information comes to hand or as a result of an on-site audit finding. As the compliance schedule is valid for the life of the building, the more building-specific information (relating to the building's installed specified systems) that can be incorporated in the compliance schedule, the easier and better it will make it for future owners and IQPs to do what is necessary to keep the specified systems functioning as designed and installed.

## **Building consent information gathering**

- Ensure building consent applicants provide detailed specified system descriptions, and the proposed IMR procedures for these systems as part of the building consent application (including interfacing systems). Refuse to accept the application for processing if this information is not provided. The quality of the compliance schedule is dependent on the quality of specified system information supplied at building consent application time. (Refer to the definition of ‘plans and specifications’ under section 7 of the *Building Act 2004*).

### **Policies and procedures**

- Consider documenting policies and procedures for BWoFs and amending compliance schedules not captured by the building consent process (and preferably all TA functions). Such documentation would be a useful resource for new staff and for experienced staff who do not carry out these TA functions on a regular basis. Ensure that the documented policies and procedures are communicated to all relevant staff and provide targeted training wherever necessary.

### **Forms**

- Ensure all prescribed forms, for example, Form 10 (compliance schedule statement) and 11 (application for amendment to compliance schedule) comply fully with the *Building (Forms) Regulations 2004*.

### **Public information**

- Consider enhancing the public information relating to compliance schedules and BWoFs on council websites by including links to the Ministry’s guidance documents *Compliance Schedule Handbook*<sup>5</sup> and *Owners’ responsibilities to ensure their buildings are safe to use*<sup>6</sup>. Suggest hard copies of these Ministry guidance documents be made available at the front of house and perhaps send reduced A5-size copies to new owners of buildings with compliance schedules and/or with BWoF reminder letters.
- Delete any reference to ‘licensed building practitioner’ (as a result of an amendment to the *Building Act 2004* which came into force on 13 March 2012).

### **BWoFs**

- Consider sending BWoF reminder letters to owners (or their agents) before the BWoF expiry date, in order to reduce the volume of follow-up work for overdue BWoFs.

### **On-site BWoF audits**

- Of the 13 councils reviewed, six did not undertake on-site BWoF audits, and a further two councils limited the audits to an on-site paper-based check only. Some other councils that did undertake regular on-site BWoF audits, had, in the Ministry’s view, unacceptably long time periods between audits (refer to Table 1 on page 5).
- It is strongly recommended that all councils undertake regular on-site BWoF audits, including a rapid ‘walk-through’ of the building to visually confirm that all installed specified

<sup>5</sup> <http://www.building.govt.nz/building-code-compliance/building-code-and-handbooks/compliance-schedule-handbook/>

<sup>6</sup> <http://www.building.govt.nz/managing-buildings/managing-your-bwof/owner-responsibilities-about-bwofs-and-compliance-schedules/>



systems are on the compliance schedule. These audits also allow the authenticity of IQPs' paperwork to be assessed. Without undertaking on-site audits, the council is presuming that the IQP is doing what he/she is supposed to be doing. The Ministry believes that undertaking on-site audits is a fundamental activity of the BWoF enforcement system. Some councils are currently not undertaking on-site BWoF audits because they are under the misconception that its staff need to have the equivalent technical skills of an IQP. The Ministry do not expect council staff undertaking such audits to physically carry out tests on systems or have detailed knowledge of the various performance standards that relate to specified systems.

- The Ministry's view is that it is good practice to have a three to five year audit cycle (20-33 per cent per annum) and the audit frequency of a given building should reflect the perceived risk for the use of that building. Therefore, for instance, it might be appropriate to have annual audits for budget accommodation (eg backpackers' hostel) and five-yearly audits for low-occupancy industrial buildings.
- Councils are entitled to charge for on-site BWoF audits, or any other services relating to compliance schedules and BWoFs.
- The majority of buildings that were audited need to have more building-specific compliance schedules, and most required the addition and/or deletion of specified systems and/or identifying different types of a given specified system. For instance, at one secondary school, the on-site audit revealed:
  - interfaced fire/smoke doors (SS3.3), three back-flow preventers (SS7), mechanical ventilation (SS9), signs for SS1-13 (SS14.2), final exits (SS15.2), fire separations (SS15.3), exit signs (SS15.4) and smoke separations (SS15.5) were omitted from the compliance schedule;
  - the 'old passives' of means of escape, safety barriers, access/facilities for persons with disabilities, fire hose reels and signs required by the Building Code needed to be removed from the compliance schedule;
  - lack of any site-specific information in the compliance schedule, including various types of a given specified system (eg emergency warning systems);
  - the compliance schedule did not reflect a campus site with multiple buildings;
  - the publicly displayed BWoF did not align whatsoever with the compliance schedule.
- Inspect penetrations through fire/smoke separations whenever possible (although difficult, particularly for existing buildings, as passive fire protection is a specialist area) and difficult to identify without drawings/fire reports attached to the compliance schedule. The Ministry would not expect council staff to be able to identify that the appropriate fire-rated sealant has been applied, but the Ministry would expect that obvious issues of inadequate sealing (eg seeing natural or artificial light through a wall/floor penetration) would be highlighted and rectified as appropriate.
- It was apparent from some of the buildings visited, that building owners were unaware, or confused, about their statutory obligations under the *Building Act 2004*. The Ministry found instances of:
  - the certificate for public use (CPU) or compliance schedule being publicly displayed, rather than the compliance schedule statement or BWoF;
  - expired compliance schedule statement or BWoF publicly displayed;
  - current compliance schedule statement or BWoF not displayed in a publicly accessible area;
  - no current (or expired) BWoF on display.

This suggests that building owners require more guidance from their councils and on-site audits create an ideal opportunity to provide some 'face-to-face' education to building owners about compliance schedules and the BWoF system.

- It was noticed that there was a correlation between council on-site BWoF audits and the quality of on-site IQP inspection and maintenance records/paperwork. The Ministry noted that Councils that had elected to not carry out on-site BWoF audits tended to encounter poorer quality on-site records and paperwork. There was a noticeable improvement where IQPs were aware that councils were carrying out enforcement via regular random audits.
- Building Code clause G5.3.5 requires enhanced listening systems to be provided in certain types of buildings. The Ministry visited quite a number of buildings where this Building Code clause applied (including several, recently built, council-owned events centres) and yet these facilities for the hearing-impaired had not been installed. Building officers need to ensure they consider the requirements of this Building Code clause when they are processing plans for such buildings (eg public halls, cinemas, aged-care facilities), and where appropriate, include this specified system (SS12) in the compliance schedule.
- There were a few instances of non-compliant council-owned buildings (eg compliance schedules not aligning with the installed specified systems, expired or non-compliant BWoFs, compromised fire separations). It is important that councils are seen to be 'walking the talk' by being good role models for their respective local building sectors.

### **NTFs and Infringement notices**

- Some of the councils were overly 'customer-friendly' and did not use NTFs or infringement notices as a building control tool to achieve compliance for compliance schedule and BWoF matters. Five of 13 councils had not issued any NTFs since their introduction in March 2005 and seven had not issued any infringement notices in the 42 months since the *Building Amendment Act 2012* came into force on 13 March 2012 (refer to Table 1 on page 5).
- Where appropriate, use NTFs and infringement notices as 'business-as-usual' enforcement tools to address non-compliances in relation to compliance schedule and BWoF matters (eg overdue BWoFs)<sup>7</sup>. (Note that the TA must issue an NTF under section 164(2)(b) and (c) of the *Building Act 2004*.)
- Councils who have not adopted a policy to issue infringement notices for building offences or have elected to issue infringement notices for building offences other than for compliance schedule/BWoF offences, may wish to reconsider. Many councils have advised that infringement notices have proved to be an effective building control tool, particularly for the five compliance schedule/BWoF offences, as stated in Schedule 1 of the *Building (Infringement Offences, Fees, and Forms) Regulations 2007*. These offences include failure to supply a BWoF to the TA (council), which was introduced on 1 January 2015. If prompt compliance is achieved, the council has the option to waive the payment of the infringement fee.

### **Staff training**

- Provide targeted compliance schedule/BWoF training to all relevant staff, for example, code compliance certificate assessors, commercial building inspectors, technical BWoF officers and those providing administrative support.

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<sup>7</sup> Many councils have advised that infringement notices have proved to be an effective building control tool. For example, see the Wellington City Council technical review report at: <http://www.building.govt.nz/building-officials/technical-reviews/>

## 7. Good practice tips

### Unoccupied buildings

- For unoccupied or vacant buildings with compliance schedules, rather than putting the compliance schedule 'on hold', the Ministry is of the view that there are 2 options available 1) decommission and remove the specified systems (which is generally impractical) or 2) amend the compliance schedule to reflect an agreed reduced IMR procedures (between the council and owner). If the second option is not put in place, any BWoF issued, is technically invalid, because the IMR procedures of the specified systems have not been carried out in accordance with the compliance schedule.

### Draft (or interim) compliance schedules

- A draft (or interim) compliance schedule is particularly useful when a CPU is issued (refer to the last paragraph under 1.2 on page 7 of the Ministry's *Compliance Schedule Handbook*). The CPU can be conditioned to require the specified systems to be inspected, maintained and records kept, in the interim, in accordance with the draft compliance schedule until such time that the final compliance schedule can be issued with the code compliance certificate. It is strongly recommended that an expiry date is placed on the CPU.
- Consider issuing a draft compliance schedule (preferably water-marked) appended to the building consent (Form 5). The building consent is required to state if a compliance schedule is or is not required for the building, list the specified systems and provide their performance standards. If appropriately cross-referenced in the building consent, it is acceptable for the draft compliance schedule to be attached to the building consent. The Ministry is of the view that this procedure satisfies the requirements of the *Building Act 2004* and prescribed Form 5.
- The Ministry believes that the best time to compile a draft compliance schedule is during the processing of the building consent, as the processing officer is familiar with the plans and specifications, including the details of the proposed or altered specified systems).
- The draft compliance schedule is also a useful checklist/reference document which will assist the building inspector when undertaking the final inspection. (If possible, the Ministry would suggest that a staff member with expertise in specified systems and the compliance schedule/BWoF system accompany the inspector on the final inspection).

### On-site BWoF audits

- When undertaking an on-site BWoF audit it is recommended that the council officer should take the council copy of the compliance schedule to refer to during the audit. This is because the IQP has often created their version of the compliance schedule and this is sometimes the one that is held on-site. The BWoF is issued against the council's compliance schedule and not the IQP's version. Copies of the plans held by the council may prove to be useful during the audit, which could be 'marked-up' to indicate the location of specified systems.
- Where an IQP agent is acting on behalf of the owner, it is recommended that any correspondence related to the audit (including council's completed audit check-sheet) is drop-copied to the building owner in order to keep them fully informed. The Ministry

believe this is good practice for all council correspondence pertaining to compliance schedule and BWoF matters.

### **Notices to fix (NTFs)**

- When issuing NTFs, consider inserting the actual *Building Act 2004* text to which the non-compliance refers. Paraphrasing can lead to a change of interpretation and could possibly result in the NTF being technically challenged.

### **Infringement notices**

- Councils should make a reasonable attempt at finding the date of birth for the person who has committed the building offence and include this date on the infringement notice. By not including the date of birth on the infringement notice there is a possibility that the notice could be legally challenged.

## **8. 2015-16 technical review programme**

For the 2015-16 technical review programme, which commenced on 1 July 2015, the Ministry has decided to continue with the same terms of reference as the 2014-15 programme.

At the conclusion of the 2015-16 round of technical reviews (13 councils scheduled), the Ministry will write and publish a report on its website which will summarise the review team's findings and any trends that have emerged so that councils can check, adopt or modify their existing practises.

At the time of writing this report (December 2015), the Ministry had completed technical reviews of seven councils:

- 1 Hurunui District Council
- 2 Waimakariri District Council
- 3 Selwyn District Council
- 4 Porirua City Council
- 5 Gore District Council
- 6 Clutha District Council
- 7 Horowhenua District Council.

To date, the technical reviews are revealing similar findings and trends as in the 2014-15 programme.

## **9. Acknowledgements**

The Ministry would like to thank all the councils involved in the 2014-15 technical review programme for their cooperation, time and input. One aim of these technical reviews is to work collaboratively with councils to improve their performance. This has been achieved and awareness in relation to compliance schedules and the enforcement of the BWoF system has been lifted. The findings and recommendations will benefit other councils and the building sector generally.

## 10. Information and guidance

- The Ministry's publication *Compliance Schedule Handbook* is freely available at:

<http://www.building.govt.nz/building-code-compliance/building-code-and-handbooks/compliance-schedule-handbook/>

It includes a guide to developing a compliance schedule for a specified system or systems in a building, including guidance on the associated inspection, maintenance and reporting procedures.

- The Ministry's publication *Owners' responsibilities to ensure their buildings are safe to use* is freely available at: <http://www.building.govt.nz/managing-buildings/managing-your-bwof/owner-responsibilities-about-bwofs-and-compliance-schedules/>. This document provides guidance to building owners (and their agents) on how to meet the requirements of the *Building Act 2004* relating to BWoFs, compliance schedules and related matters.
- The technical review reports for Marlborough District Council, Hutt City Council and Hamilton City Council, which include case studies, are available on the Ministry's website at <http://www.building.govt.nz/technical-reviews> and can be freely downloaded. These reports deal specifically with the amending of compliance schedules (not captured by the building consent process) and the enforcement of the BWoF system. There are also several other published technical review reports (from 2009 onwards) that include compliance schedule and BWoF matters, but case studies have not been included.
- Building Research Association of New Zealand (BRANZ) Bulletins dealing with passive fire protection - 512 (roles and responsibilities), 514 (on-site installation) and 517 (maintenance and on-going compliance). All can be purchased at: [http://www.branz.co.nz/bulletins%3Fa%3D1%26cat\\_name%3DBulletins%26cat\\_id%3D1&rp=3](http://www.branz.co.nz/bulletins%3Fa%3D1%26cat_name%3DBulletins%26cat_id%3D1&rp=3)
- Building Networks document *100 Hot Tips for IQPs* (also called 101 Building Rules) is freely available at: <http://www.buildingnetworks.co.nz/free-stuff.html>

Its focus is to help IQPs work better with councils to ensure maximum outcomes for building owners with minimum problems for everyone involved.