



Department of
Building and Housing | Building
Controls
Te Tari Kaupapa Whare

Frequently Asked Questions for IQPs (Independent Qualified Persons)

Building Act 2004



Introduction

Life of this document

This document is likely to be updated. For this reason it will be published in electronic format only. This is **Version 1**, dated August 2005.

The content of this document is based on:

- Building Act 2004
- Building Amendment Act 2005
- Building (Forms) Regulations 2004
- Building (Forms) Amendment Regulations 2005
- Building (Forms) Amendment Regulations (No 2) 2005
- Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005
- Building (Fee for Determinations) Regulations 2005
- Building Levy Order 2005.

Guidance

This document has been prepared for building officials and IQPs. It is intended to provide additional guidance on particular aspects of the consents and inspection processes under the Building Act 2004. It is not intended to replace the Act.

It intends to provide responses to some of the more common questions asked on the 0800 242 243 helpline number, the Department website link info@building.govt.nz, and questions asked at industry group presentations.

While the Department of Building and Housing has taken every care in preparing this 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 as the source document, and be aware that for specific situations or problems it may be necessary to seek independent legal advice. The full details can be found in the Building Act 2004. A copy of the Act is located at www.building.govt.nz.

Information covered in this document

Currently this document covers:

- Compliance schedules
 - Forms
 - Issuing the compliance schedule
 - Cable cars
 - Compliance schedule statements
- Building Warrant of Fitness
 - Administration
 - Form 12
 - Form 12A
 - IQPs/LBPs

Compliance schedules

Forms

Q. Why is there is no form for a compliance schedule in the Regulations?

- A. The Building Act 2004 does not require a compliance schedule to be on a 'prescribed form'. As a result, there is no authority in legislation that allows this form to be created in Regulations.

The Department recognises that it is important to achieve national consistency in the format, layout and content of compliance schedules, and has provided a model form that complies with the requirements of the Building Act 2004. This was publicised in the Department's newsletter *Newsline* in February 2005.

The Department has also published on its website some examples of what a compliance schedule might contain. The form and the examples can be found on the Department's website for the Building Act, www.building.govt.nz

Q. The application for amendment to a compliance schedule (Form 11) and the warrant of fitness (Form 12) contain a requirement to state the 'current lawfully established use'. If 'current lawfully established use' is filled in, does this have to be one of the uses listed in Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-Prone Buildings) Regulations 2005?

- A. There is no requirement in the Building Act 2004 for the lawfully established use to be one of the uses in Schedule 2 of the Building (Specified Systems, Change the Use, and Earthquake-Prone Buildings) Regulations 2005, although Schedule 2 can be referred to for guidance. Regardless of the approach adopted, the description should be clear. For example, an office building containing shops on the ground floor should be called 'office and retail', and not simply 'commercial'.

Issuing the compliance schedule

Q. It appears from section 103 that a compliance schedule for a building must also incorporate the features listed in section 103(1)(d) – safety barriers, means of escape, etc. However section 103(1)(c) requires only that the inspection, maintenance and reporting requirements must be listed for specified systems. What does a compliance schedule need to contain for the features in s103(1)(d)?

- A. The importance of having adequate means of escape from fire in buildings is highlighted by a specific reference in the Building Act 2004 (section 3). The Department of Building and Housing has a clear interest in ensuring that means of escape are maintained. Issues have been raised with the Department concerning the need for all means of escape to be included in compliance schedules. The Department has considered the practical implementation of the regulations that define specified systems, taking into account enforcement practice under other legislation and previous practice of including means of escape in compliance schedules.

As a result, the Department has recommended to the Minister for Building Issues that he should consider seeking an amendment to the regulations to require mandatory inspection, maintenance and reporting of the relevant systems and features that make up 'means of escape from fire'.

There are approximately 30,000 existing compliance schedules in New Zealand, most of which include 'means of escape from fire'. Given the recommendation to the Minister, the Department is advising territorial authorities that the references to 'means of escape from fire' on existing compliance schedules should not be removed.

Since 31 March 2005, territorial authorities will have issued new compliance schedules under the Building Act 2004 that do not include means of escape from fire as a specified system. The Department is advising territorial authorities that these compliance schedules may need to be amended to include references to the systems and features that contribute to means of escape once the regulations are amended.

Further details on compliance schedules and 'means of escape from fire' will be provided shortly by the Department.

Q. When is the compliance schedule issued if there are staged building consents?

- A. The Building Act 2004 requires that a compliance schedule be issued with a code compliance certificate. Where there are staged consents, this means that the compliance schedule will be issued with the first code compliance certificate that is issued for the project. Subsequently, amendments to the compliance schedule can be made if future consents add new specified systems or alter the existing systems.

Q. When a building already has a compliance schedule, how should staged building consents be managed?

- A. The Building Act 2004 requires that an amended compliance schedule be issued if the alterations have somehow affected the specified systems in the building. The amended compliance schedule should be issued with the code compliance certificate. This means that for an existing building that has staged consents, amendments to the compliance schedule will be issued with each code compliance certificate that is issued for the project, if appropriate.

Q. Where a building consent application is made for work on an existing building and that work involves changes to specified systems, does a building consent authority also amend the compliance schedule or is this done by the territorial authority?

- A. Where a building consent application triggers the requirement for a compliance schedule to be issued or amended, that work is done by the building consent authority.

Changes or amendments to the compliance schedule that are not associated with work done under a building consent are managed by the territorial authority.

Q. When an existing compliance schedule is reissued, should it refer to the 1991 or 2004 Act?

- A. A compliance schedule issued under the Building Act 1991 has effect as if issued under the Building Act 2004. While there is no express requirement in the 2004 Act that an existing compliance schedule be updated, it is the Department's view that territorial authorities should put a process in place to update existing compliance schedules to reflect the changes to the systems and features that constitute specified systems (and the advisory issued on dealing with means of escape from fire).

There is no particular requirement to include the Act and section reference in a compliance schedule form. However, it would be sensible to have a reference to section 103 of the 2004 Act in the form.

Q. Section 103(1)(b) states that a compliance schedule must state the 'performance standards for the specified systems'. What are these 'performance standards'?

- A. At a high level, the performance standard is the Building Code that applied at the time the building work was done. In practice, though, this is normally achieved by referring to a compliance document or a relevant Standard. An example would be NZS 4541 for sprinkler systems. Although the term 'performance standards' may be unfamiliar, this is no change from the existing practice.

Q. Section 44(1)(j) of the Building Act 1991 covered 'Any other mechanical, electrical, hydraulic, or electronic system whose proper operation is necessary for compliance with the building code'. This section of the Building Act 1991 was listed in Form 12 of the Building Regulations 1992, and corresponded to CS10 in the *New Zealand Building Code Handbook*.

Where an existing compliance schedule lists a building system (for example, a sanitary pump) under this category, what requirements are there in regard to that system now that this category has been removed from the list of specified systems in Schedule 1 of the Building (Specified Systems, Change the Use, and Earthquake-Prone Buildings) Regulations 2005?

- A. Section 44(1)(j) (like CS10) was a catch-all clause. The *New Zealand Building Code Handbook* notes that section 44(1)(j) provided flexibility to include specialist building elements and new systems (developed after the 1991 Act came into force) in compliance schedules. Following submissions on the Building Bill, a decision was made to provide for flexibility by listing specified systems in regulations, which can be amended or added to.

The Department of Building and Housing is responsible for advising the government on the development of the regulations. Building officials and IQPs should advise the Department if they believe any new specified systems need to be added to Schedule 1 of the Building (Specified Systems, Change the Use, and Earthquake-Prone Buildings) Regulations 2005.

Q. The Building Amendment Act 2005 introduced certificates for public use. If a certificate for public use is issued, does a compliance schedule need to be issued as well?

- A. There is no requirement to issue a compliance schedule with a certificate for public use – the Building Act 2004 requires that this takes place with the issue of the code compliance certificate. However, before a territorial authority can issue a certificate for public use, it must be satisfied that members of the public can use the building premises safely. Where building work involves specified systems, this would include gathering evidence that the specified system(s) in the building or premises are performing as intended. A territorial authority may choose to insert conditions on a certificate for public use to address any concerns it may have about specified systems in a particular case.

CABLE CARS

7 Interpretation

In this Act, unless the context otherwise requires,—
cable car—

- (a) means a vehicle—
- (i) that carries people or goods on or along an inclined plane or a suspended cable; and
 - (ii) that operates wholly or partly outside of a building; and
 - (iii) the traction for which is supplied by a cable or any other means; but
- (b) does not include a lift that carries people or goods between the floors of a building

Q. Given the definition of cable car in the Building Act 2004, are any of the following devices a cable car?

- **A flying fox.**
- **A ski chair lift.**
- **A ski tow.**
- **A cage used to pull a boat out of the water and onto a property. In some cases, a person remains in the boat during the operation.**
- **A stair climber (for elderly and disabled people).**

- A. Section 7 of the Building Act 2004 contains a definition for 'cable car' (set out above). Section 100 provides that a compliance schedule is required in relation to a cable car where it is attached to or servicing a building. Therefore, a compliance schedule will be required for a cable car only where it meets the definition of 'cable car' in section 7 and also where it is attached to or servicing a building.

A flying fox does not involve carrying people in a 'vehicle', so will not meet the definition of 'cable car'. In any event, flying foxes are not attached to or servicing a building. The Department's view is that flying foxes will not require compliance schedules.

A ski chair lift will probably fit within the definition of 'cable car' in section 7, where it involves carrying people in a 'vehicle' such as a chair structure. In such cases, provided that the ski lift is attached to or servicing a building, the lift will require a compliance schedule.

The Department's view is that a rope or pommel tow does not involve a 'vehicle', so will not be a cable car. Accordingly, a compliance schedule will not be required.

A boat cage probably does fall within the definition of 'cable car'. However, boat cages are not attached to or servicing a building, meaning that they do not fit within the scope of section 100 and so do not require compliance schedules.

In some cases a stair climber could be a cable car, if it operates wholly or partly outside of a building. Stair climbers are normally installed on internal stairs catering for people with disabilities, and this kind of installation does not trigger the requirement for a compliance schedule. However, occasionally stair climbers are installed on external stairs that service, for example, a front entrance to a residential dwelling. Such a case falls within the definition of 'cable car' in section 7 and within the scope of section 100, and would trigger the requirement for a compliance schedule.

Q. Where a compliance schedule is issued for a cable car attached to a residential dwelling if other specified systems are also contained in the residential dwelling, for example, a lift or a sprinkler system, are they required to be listed in the compliance schedule?

A. No. The question has been clarified by the new section 100 of the Building Act 2004, introduced in the Building Amendment Act 2005. Where a compliance schedule is required because a residential building (single household unit) has a cable car attached to it, there is no requirement that the compliance schedule cover any other systems or features that may be installed in the residential building.

Q. Where a cable car services more than one property, and is able to stop at several houses along its journey, does each residential dwelling need a compliance schedule?

A. No. A compliance schedule is normally issued for a single building, but can be issued for a building complex where that building complex has shared specified systems.

A cable car that services a number of residential dwellings can be seen as a shared system, and could be covered by a single compliance schedule. In this case, the compliance schedule would need to list each property serviced by the cable car, as it would pertain to more than one property title. This approach may not be appropriate if any of the buildings involved are not residential dwellings, as compliance schedules for such buildings may have to list other specified systems in addition to cable cars.

Q. Is a territorial authority required to proactively issue a compliance schedule for a cable car from 31 March 2005?

A. No. There is no requirement in the Building Act 2004 for a compliance schedule to be issued for a cable car before 31 March 2008. A transition period was included in the in Building Amendment Act 2005 to allow building owners with cable cars attached to or servicing their buildings 3 years to apply for a compliance schedule.

Q. Should territorial authorities take enforcement action against owners of cable cars after 31 March 2008, where the owner fails to apply for a compliance schedule?

A. The Building Act 2004 places the onus on the property owner to make an application for a compliance schedule. This is a change from the Building Act 1991, which placed the obligation on territorial authorities to proactively issue a compliance schedule.

In the interim, territorial authorities should begin to include information about this requirement in their publications or with rates notices, and perhaps begin to note addresses in their district that contain a cable car. Eventually, where property owners fail to make an application for a compliance schedule, enforcement action may be required.

Q. What should a compliance schedule for a cable car contain?

A. At present there is no standard that a cable car can be inspected or maintained against. The Department of Building and Housing is working with Standards New Zealand to create a Standard covering this work. This Standard is expected to be complete in 2006.

Q. There are currently no approved IQPs for cable cars. Can a territorial authority approve an IQP after 31 March 2008?

A. Yes. Territorial authorities can approve IQPs until the licensing regime for licensed building practitioners comes into force, and should continue to use existing processes to approve IQPs. These questions have been clarified by the new section 438 of the Building Act 2004 that was included in the Building Amendment Act 2005.

COMPLIANCE SCHEDULE STATEMENTS

Q. Does a territorial authority or a building consent authority issue the compliance schedule statement?

- A. A compliance schedule statement is issued by the territorial authority – refer to section 105(e).

Q. Does a compliance schedule statement need to be issued each time there is an amendment to the compliance schedule?

- A. No. A compliance schedule statement is issued only once – when a compliance schedule is issued for the first time. This is no different from the practice under the Building Act 1991 with statements of fitness.

Q. It is likely that there will be more situations where staged building consents will be issued for multistorey buildings, in order to manage sections 363 and 364 of the Building Act 2004.

A compliance schedule must be issued with the first code compliance certificate that is issued.

Section 105(e) requires that a compliance schedule statement be displayed in the building for the first 12 months of the period of the compliance schedule, which means that it must also be issued with the first code compliance certificate that is issued.

Will there be a problem if the building work is not all completed when the compliance schedule statement is issued?

- A. Where a project involves staged building consents, the compliance schedule must be issued with the first code compliance certificate that is issued. This means that the compliance schedule statement must also be issued at that time. The building work covered by this consent must be finished in order to issue the code compliance certificate, even though building work on other consents is not complete.

It is important to note that the compliance schedule statement is not a statement about the performance of the specified systems that are listed. The compliance schedule statement simply lists the specified systems contained in the building work to which the code compliance certificate relates and notes where the compliance schedule is kept. This means there is nothing to prevent this statement being issued before all stages of the project have been completed.

If further stages of the project include new specified systems or alter existing specified systems, then an amended compliance schedule should be issued with the code compliance certificate at the completion of each of the relevant stages of the project. Any such new or amended specified systems do not need to be included on the compliance schedule statement.

Building warrant of fitness

Building warrant of fitness administration

Q. If the building owner changes the lawfully established use when filling in Form 12, does this constitute notice to the territorial authority under section 114 that a change of use has occurred?

A. The Department's view is that simply slipping a change of use into a building warrant of fitness does not constitute written notice to the territorial authority of a proposed change of use in terms of section 114. However, it would be good practice for territorial authorities to check the information provided in a building warrant of fitness, as well as checking any certificates attached to the building warrant of fitness. In some cases, this will involve some research to verify that the stated 'lawfully established use' is correct.

Q. How does the territorial authority know what the 'lawfully established use' is?

A. 'Lawfully established use' is not defined by the Building Act. In the absence of a definition, a territorial authority should adopt a sensible approach when considering what lawfully established use is. In most cases the existing compliance schedule will state the use of the building. If doubt exists after checking the compliance schedule, the next step could be to establish whether a building consent has been issued that includes a change of use. Further information can be gained by comparing the 'intended use' description of work in past building consents and code compliance certificates.

Q. Can a territorial authority charge a fee for checking the building warrant of fitness and IQP/LBP certificates?

A. Yes. Section 219 of the Building Act 2004 provides for a territorial authority to charge for any function or service performed under the Act.

Q. Can a territorial authority insist that the owner notes the relevant IQP registration number(s) on a building warrant of fitness?

A. Some territorial authorities have followed this practice in the past, and may wish to continue doing so. However, this practice is not a requirement of the Building Act 2004. This means that while a territorial authority may encourage this approach, it cannot lawfully insist upon it.

Form 12

Q. Form 12 only refers to the 'Signature of the owner', where the old Form 14 stated 'Signed by or for and on behalf of the Owner'. Can a building warrant of fitness now be signed by an agent?

A. Form 12 has been amended by the Building (Forms) Amendment Regulations (No.2) 2005 and can now be signed by the owner or their agent.

Q. Where a compliance schedule has been amended so that new specified systems have been added, what date is the building warrant of fitness issued on?

A. Amending a compliance schedule will not affect the timing of the subsequent issue of the building warrant of fitness. Section 108(3)(a) provides that the building warrant of fitness is issued on the anniversary of the issue of the compliance schedule (meaning the original compliance schedule, not any amended compliance schedules).

However, in such a situation, a building warrant of fitness will not be able to cover all specified systems for the full 12-month period. For example, if a compliance schedule is issued at the completion of the first stage of a project, and a new specified system is completed 9 months later in the second stage of the project and an amended compliance schedule is issued, then the building warrant of fitness should be provided on the anniversary of the issue of the original compliance schedule. It will relate to the original specified systems for the full 12-month period, but will relate to the new specified system for the first 3 months of its life only.

Q. Sometimes a building belongs to a building complex (for example, a tertiary institution) where there are a number of buildings that share specified systems and therefore share a compliance schedule. Form 12 seems to address single buildings. How should Form 12 be filled in where the building warrant of fitness relates to multiple buildings?

A. Although Form 12 only refers to a single building, this does not mean that a building complex cannot be listed, provided that the complex is a 'building' that shares specified systems. A clear description of the building complex should be entered in the appropriate place on the Form. It may also be helpful if the owner keeps a copy of the compliance schedule in multiple locations throughout the complex.

Form 12A

Q. When a new specified system has been added to a building with an existing compliance schedule, it is possible for the anniversary of the building warrant of fitness to fall due in less than 12 months. For example, an automatic or manual emergency warning system for fire or other dangers could have been installed in a building 3 months prior to the due date of the building warrant of fitness. How is Form 12A managed in this situation?

A. If a specified system has been installed part-way through a building warrant of fitness period, an IQP/LBP could add further information to Form 12A to reflect that the particular specified system has been operating for less than 12 months. For example, the usual statement for the specified systems that have been in the building for the full 12 months could be followed by a statement like:

The inspection, maintenance, and reporting procedures of the compliance schedule have been fully complied with during the 3 months prior to the date stated below in relation to the following specified system(s):

- Automatic or manual emergency warning system for fire or other dangers.

In the Department's view, an addition to Form 12A of the kind shown above would not change the effect of the prescribed form and would not be misleading. The purpose of the prescribed form is to certify that all procedures have been carried out for the specified systems in the building during the time those specified systems have been in the building.

Q. Can an IQP/LBP add notes or make other changes to Form 12A if a specified system has been in the building for 12 months, but not all procedures have been complied with? For example, can Form 12A be changed to note that a particular inspection was not undertaken, but later inspections indicate that the specified system is safe and functioning?

A. No. An IQP/LBP cannot amend Form 12A to provide for exceptions where the inspection, maintenance and reporting procedures have not been fully complied with. Regulation 6 in the Building (Forms) Regulations 2004 states that using a form that has minor

differences from a prescribed form will not make the form invalid, as long as the form:

- has the same effect as the prescribed form
- is not misleading
- contains all the information required by the prescribed form
- presents the information in the same order as it appears on the prescribed form.

In the Department's view, an IQP/LBP cannot comply with regulation 6 if he or she amends Form 12A to provide for exceptions where the inspection, maintenance and reporting procedures have not been fully complied with. This is because adding an exception of this kind will give the form a different effect from the prescribed form. The effect of the prescribed form is to certify that all procedures have been carried out during the previous 12 months. To amend the certification statement to state that some inspection procedures have been complied with, but others have not, changes the substantive effect of the form. It becomes a lesser standard of certification.

While it is desirable that Form 12A be signed for all specified systems, the Department is aware that there may be situations where an IQP will not be able to issue Form 12A for a specified system. This could occur, for example, where a particular inspection was not undertaken, or where maintenance work has not been undertaken. The IQP will need to explain to the building owner why he or she cannot issue Form 12A certificate for the specified system.

In such a case, an IQP could choose to provide a written report to the building owner, setting out the procedures that have been complied with, the procedures that have not been complied with and the reasons for and effect of the non-compliance. The building owner can provide the report to the territorial authority with the building warrant of fitness (even though the report will not constitute a Form 12A certificate). The territorial authority should then consider the degree of non-compliance with the procedures and decide what action, if any, it will take.

IQPs (Independent Qualified Persons)

Q. Is an IQP an LBP?

- A. Yes. An IQP can do the work of an LBP until 30 November 2009, or until a territorial authority considers that the IQP is no longer a suitable person to be on its IQP register.

Q. Can IQPs be approved after 31 March 2005?

- A. Yes. Territorial authorities can approve IQPs until the licensing regime for licensed building practitioners comes into force. This will apply until 30 November 2009. Until that date, IQPs should issue Form 12A.