



Department of
Building and Housing
Te Tari Kaupapa Whare

Technical Review Summary Report

**of the performance of Hastings District Council's
Compliance Schedule and Building Warrant of
Fitness functions**

November 2009



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Important notice to readers of this review report

This report is to be used only by building consent authorities or territorial authorities for the purpose of improving their building control operations.

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

- of the compliance or non-compliance of a particular building with the Building Code
- that the building consent authorities or territorial authorities under review have failed to exercise reasonable care when carrying out their functions.

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

The purpose of technical reviews

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

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

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

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

1 Overview

Purpose and scope

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

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

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

At the same time the Department also reviewed three neighbouring councils, Napier City Council, Gisborne District Council and Wairoa District 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 by the Department throughout New Zealand.

The implementation of the building consent authority accreditation scheme had also identified a need for councils, industry professionals, and building owners to better understand their responsibilities under the Building Act 2004¹. For example, around three quarters of building consent authorities needed to improve their policies and procedures for issuing (or refusing to issue) code compliance certificates, compliance schedules, and/or notices to fix.²

Another common problem was a lack of systems for compliance schedules to define who had authority to issue these documents, and ensure compliance schedules were attached to the code compliance certificates and met the requirements of the Building Act 2004.

Key findings from the review

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

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

¹ This scheme is one of a number of reforms introduced by the Building Act 2004 to help improve the control of, and encourage better practice and performance in, building design, regulatory building control and building construction. Information about the scheme is available at: www.building.dbh.govt.nz

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

- accurately collected and reported the building control statistics considered in the review
- proactively informed building owners of their obligation to renew building warrants of fitness that were nearing expiry and provided guidance to building owners/occupiers about the need for regular maintenance, inspection and reporting of the specified systems as part of the building consent process (although this could be expanded to cover amendments to compliance schedules)
- had developed a sound commercial technical assessment check-sheet that adequately covered off most compliance schedule issues (some improvements could still be made as noted under terms of reference 4.4)
- had an appropriate procedure for amending compliance schedules (although some enhancements could be made as noted in terms of reference 4.5)
- had recently made compliance schedule and building warrant of fitness regulatory matters a higher priority, which had improved their knowledge of the district's building stock and public awareness of building warrant of fitness issues
- generally had a sound understanding of building warrants of fitness and compliance schedules (however, these technical skills needed to be better integrated into the competency assessment system)
- had good systems in place for issuing certificates of public use

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

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

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

Knowledge, understanding and application of statutory responsibilities

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

- Certificates and documents issued by the Council needed to consistently include all the relevant information, correctly identify the specified systems rather than using generic descriptions, and consistently include performance standards for such specified systems.
- Ensure details are consistently supplied on plan with the issued compliance schedules showing means of escape, signage, passive fire protection, backflow prevention or other systems that may not be readily identifiable on-site.

Documentation of building control decision-making

The review found there was a need to strengthen how key regulatory decisions were being recorded by Council staff. In some cases there was only limited evidence on file to show:

- how the Council's documented procedures were followed
- the reasons for decisions and the supporting evidence
- the actual decisions that were made or whether any follow-up action was required or had occurred.

Effective systems, policies, and procedures

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

- Place appropriate conditions on certificates for public use (eg, including an expiry date and requirements that specified systems are adequately maintained and inspected).
- 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.
- Include specific information on amending a compliance schedule in public information; and consider providing information for applicants before they lodge an application for a compliance schedule.
- Formalise arrangements with other councils in the Eastern regional cluster group regarding the independent qualified person (IQP) register, including agreeing on a process for dealing with non-compliant IQPs and how IQPs are added or removed from the register.

Capacity and capability

The following issues relating to the Council's capacity and technical building control capability (competency) were identified (see parts 4.9 and 4.10 of the Review's terms of reference). The Council needed to expand its competency assessment system to include specified systems and amending compliance schedules.

Recent initiatives

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

- adopted new procedures to ensure the applicant or agent provided a proposed inspection and maintenance procedure for each specified system with the building consent application
- amended their processing check-lists to capture all specified systems required by regulation
- increased the percentage of buildings inspected/audited with specified systems, building warrant of fitness and compliance schedules
- incorporated expiry dates on all certificates for public use issued
- developed public information regarding amendments to compliance schedules
- developed a fact sheet regarding building warrant of fitness that is available to the public
- entered into discussions with other regional cluster group members to formalise its independent qualified persons register

- implemented a new computer software package in order to simplify and reduce the work associated with the building warrant of fitness administration.

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

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

The Department's role

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

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

Role of the Consent Authority Capability and Performance Group

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

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

Role of territorial authorities

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

- issuing project information memoranda
- granting building consents where the consent is subject to a waiver or modification of the Building Code
- issuing certificates of acceptance
- issuing compliance schedule statements
- amending and issuing amended compliance schedules

- granting waivers and modifications (with or without conditions) of building consents
- issuing notices to fix
- administering annual building warrants of fitness
- enforcing the provisions relating to annual building warrants of fitness
- deciding the extent to which certain buildings must comply with the Building Code when they are altered, their use is changed, or their specified intended life changes
- performing functions relating to dangerous, earthquake-prone or insanitary buildings
- determining whether building work is exempt from requiring a building consent under Schedule 1(k) of the Building Act 2004
- carrying out any other functions and duties specified in the Building Act 2004.

Role of building consent authorities (that are territorial authorities)

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

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

Hastings District Council

The city of Hastings, Flaxmere and Havelock North are the three main centres of the Hastings District. These main centres are surrounded by 38 rural settlements including Clive, Bridge Pa and Waimarama. Hastings District covers an area of 5,229 square kilometres and has 1.7 percent of New Zealand's population. According to the 2006 census, Hastings District had a population totaling 70,842 which ranked it 14th out of the 74 territorial authorities in New Zealand. Since the amalgamation of the surrounding and satellite settlements, Hastings has grown to become the largest urban area in Hawke's Bay.

The Hastings District has an agricultural focus as evidenced by the many orchards, farms and vineyards. The district is commonly referred to as the 'Fruit Bowl of New Zealand'. The main industries are largely agriculturally based, with food processing plants and canneries being major local employers. Many of the buildings associated with these businesses contain specified systems which require compliance schedules and building warrants of fitness.

The Hastings District Council offices are located in the central business district of Hastings city.

3 Process

Purpose of technical reviews

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

- enhance the performance of their building control activities
- implement appropriate systems, processes, and resources so they can carry out their building control operations
- effectively fulfil their obligations under the Building Act 2004 and Building Regulations.

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

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

Legislative basis

This review was initiated under sections 204 and 276 of the Building Act 2004. It is a function of the Chief Executive to monitor and review the performance of territorial authorities and building consent authorities to determine whether they have properly exercised their powers and performed their functions.³

Scope of the review

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

Figure 1: The terms of reference for the technical review

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

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

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

Method

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

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

For this review, four case studies of processed commercial/industrial building consents were undertaken to assess compliance with the Building Act 2004 and its associated Regulations, with particular focus on specified systems, compliance schedules and building warrant of fitness requirements.

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

4 Technical review findings and operational building control recommendations

4.1 Organisational and management structure

Purpose

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

Background

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

Findings

A diagram of the Council's organisational chart is provided on the following page.

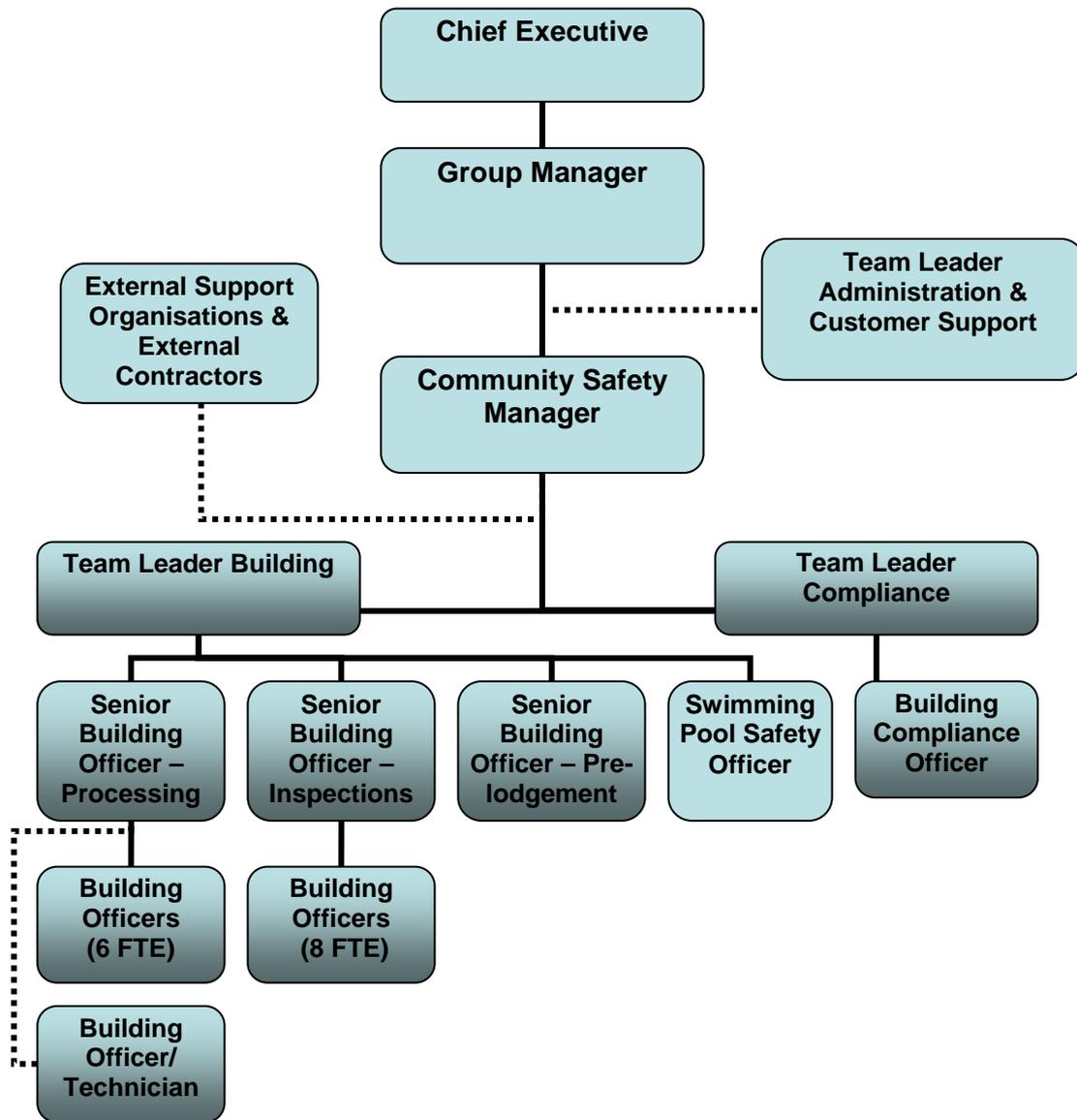
The Council staff involved in the compliance schedule and building warrant of fitness system had delegated authority under section 232 of the Building Act 2004. Building control staff that enter land and carry out inspections are currently authorised under section 222 of the Building Act 2004.

The Council officers are yet to be delegated authority under section 372 to issue infringement notices. Council was in the process of adopting a policy and procedure for issuing infringement notices at the time of the Department's review visit.

Conclusion

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

Hastings District Council Building Consent Authority Structure⁴



4

 Denotes building control staff with some level of involvement in building warrant of fitness and compliance schedule functions. (FTE) full-time employee.

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 December 2008
1684 building consents issued
Total value of consented construction work was \$185,141,702
2078 code compliance certificates issued
1684 live building consents
45 compliance schedules issued
617 buildings had a compliance schedule
592 current building warrants of fitness
60 audits of building warrants of fitness carried out
185 compliance schedules did not have a current compliance schedule statement or current building warrant of fitness

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

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

Conclusion

The Council was recording statistics appropriately.

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

Purpose

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

Background

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

Section 104 of the Building Act 2004 requires a building consent authority to provide a copy of the compliance schedule to the territorial authority within five working days of 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))⁵.

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

Findings

The case studies generally related to processes that were in place in 2006 – 2008. It was found that compliance schedules were sometimes issued before or after the code compliance certificate, which was contrary to the requirements of section 102(1). In one case study, the compliance schedule was issued with the certificate of public use and 16 months later the code compliance certificate still had not been issued.

At the time of the review it was found that the Council had largely addressed this issue as part of the building consent authority accreditation scheme (under the Building (Accreditation of Building Consent Authorities) Regulations 2006). Generally the compliance schedule and compliance schedule statement are now issued with the code compliance certificate.

As noted in section 4.2, there were 185 buildings where the building owner had not provided the building warrant of fitness at the anniversary date of the issue of the compliance schedule or the building had no current compliance schedule statement. The Council should develop a strategy for reducing and ultimately eliminating the number of building owners that are not meeting their statutory requirement to obtain and publicly display a compliance schedule statement or building warrant of fitness in their buildings.

⁵ This five working-day requirement was only from 15 March 2008. Previously it was implicit that the statement be issued with the compliance schedule.

At the time of the review team's visit, the Council's building warrant of fitness procedure did not provide for any enforcement action outside the issuing of a notice to fix, even though such non-compliance by a building owner is an offence under section 108(5) of the Building Act 2004.

The Council had not adopted a formal infringement policy, which would enable them to issue infringement notices for this type of offence under the Building Act 2004.

Conclusion

The Council was meeting the statutory timeframes for issuing compliance schedules and compliance schedule statements. But further work was required to reduce the high number of buildings that did not have a current compliance schedule statement or building warrant of fitness.

Recommendation 1	
The Department recommended that the Council:	Response from the Council:
Give greater priority to reducing the number of buildings that are not complying with the statutory requirement to publicly display a current compliance schedule statement or building warrant of fitness. The Council's ultimate goal should be 100 percent compliance in this area.	The Council advised it had recently increased its internal key performance indicators for building warrant of fitness audits from 10 to 15 percent per annum. Any further increase would place too great a demand on the Council's overall building control resources.
Issue infringement notices to those building owners who continue to commit an offence under section 108(5) of the Building Act 2004.	The Council advised they had adopted an infringement policy following their initial assessment. An infringement notice can be issued for non-compliance; however, the Council takes a precautionary view on Infringements.

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

Policies and procedures

The Council's written compliance schedule policies and procedures were found to be generally sound. However, its procedure for compliance schedules for new and existing buildings and amended compliance schedules did not cover the vetting of an application in relation to compliance schedule matters. The procedure discussed the necessary information requirements under the header 'All information provided'. It quoted the use of the application form for compliance schedule which was one of the Council's in-house forms used to identify specified systems contained in a building consent application.

The process could be clearer in its intent, especially in satisfying the contents of a compliance schedule as required by section 103 of the Building Act 2004. For example, there was no mention of the requirement to provide information on the proposed performance standards and procedures for inspection and routine maintenance of the specified systems (see section 103(1)(b) and (c)). It was unclear when such information was to be checked and/or obtained during the Council's building consent process.

Public information

The Council was found to be proactive in providing building owners with compliance schedule, building warrant of fitness and independent qualified person information, including owner/tenant responsibilities. Each building owner who was issued with a new compliance schedule and compliance schedule statement received an accompanying letter which outlined their legislative obligations with respect to these forms. The letter also provided a brief overview of the wider Building Act 2004 requirements for the compliance schedule, compliance schedule statement and the building warrant of fitness scheme. The information contained was generally appropriate, but there was little comment on compliance schedule amendments.

Building consent application

The application form for project information memorandum/ building consent was generally in accordance with the prescribed Form 2 under the Building (Forms) Regulations 2004.

The Council's check-list for assessing building consent applications for completeness did not provide for the vetting of specified systems.

Building consent processing

The Council's processing check-list did not provide for a detailed evaluation of specified systems. It identified some specified systems such as backflow prevention devices, lifts and hearing loops, but did not acknowledge or provide for the assessment of all specified systems listed in regulation.

Building consent issuing

The Department found that the building consent (Form 5) of the Building (Forms) Regulations 2004 did not fully satisfy the requirements of section 51(1)(c) of the Building Act 2004. The building consent advised that a compliance schedule was required for the building and listed the specified systems but did not state the performance standards for each of the specified systems. For example, NZS 4512:2003 may be specified as a performance standard for fire detection and alarm systems.

The Form 5 did not list specified systems information in the same order as it appears on the prescribed form. For example, the listed specified systems did not follow the declaration 'a compliance schedule is required for the building'. Instead this information was found tucked in behind some of the Council's advisory notes. Though the form was not considered to be misleading it did not strictly meet the requirements of Regulation 6(2)(b) of the Building (Forms) Regulations 2004, which requires the information to be in the same order as it appears on the prescribed form.

The Council had chosen to impose a specific condition on the building consent under section 90(1) of the Building Act 2004. This condition related to inspections by agents authorised by that building consent authority. Section 90 of the Building Act 2004 provides a means for the building consent authority to request third-party certification that building work complies with plans and specifications. For example, an ISO/IEC 17020 accredited inspection body is required to certify the installation of an alarm system designed and installed to NZS 4512:2003. Although the Council had chosen to highlight their own list of inspections under this condition, they had not requested any other third-party verification, such as that noted above. If the Council did not have the specific expertise in-house to verify that the installed building systems and/or building elements met the requirements specified in the building consent, they should have sought third-party verification. A condition under section 90 of the Building Act 2004 is the best means of achieving this.

Inspections of building work

The Council's final inspection check-list acknowledged all specified systems, as identified in the Regulations and requires the inspecting officer to record a pass, fail or not applicable statement against each system.

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

The Council's code compliance certificate (Form 7) did not satisfy the requirements of the prescribed form, as set by the Building (Forms) Regulations 2004. In particular, the statement 'the specified systems in the building are capable of performing to the performance standards set out in the building consent' was omitted and the compliance schedule was not attached. In fact, there was commonly no mention of specified systems in the form at all. The Building (Forms) Regulations 2004 require certain documents to be attached to prescribed forms (see Regulation 7). When a Form 7 (code compliance certificate) is issued for a building that contains specified systems that are having building work undertaken on them then a compliance schedule must be attached to this form.

Certificate for public use

It was found that the Council often issued certificates for public use for buildings that were being occupied and used by the public before the issue of the code compliance certificate.

The issued certificates for public use sighted by the review team were found to be in accordance with the prescribed Form 16. However, it was noted that expiry dates were not entered as a condition of the certificate. It is recommended they include an expiry date, so that the Council and the applicant have a clear understanding of when a code compliance certificate should be applied for (or an extension sought). Where buildings require a certificate for public use for a long period the certificate for public use should include a requirement for the owner to inspect and maintain the specified systems within the building for that period. Alternatively, the Council may choose to issue a draft compliance covering the building's specified systems that are operational prior to issuing the code compliance certificate (note: if this pertains to a public building, a certificate for public use may also have to be considered).

It was noted that the Council did not have systems in place to adequately record and track issued certificates of public use.

Compliance schedule statement

Some compliance schedule statements were issued an extended period after the code compliance certificate and not in accordance with the timeframe requirements stipulated in 104 and 104A of the Building Act 2004.

Issuing the compliance schedule statement with the code compliance certificate has been addressed and rectified by the building consent authority accreditation process. Recent documentation revealed that Council issues the compliance schedule and compliance schedule statement simultaneously (and with the code compliance certificate). Although not a requirement of the Building Act 2004, the Department believes this to be good practice. By issuing all three documents together the Council was effectively fulfilling its legislative requirements under sections 102, 103, 104 and 104A of the Building Act 2004.

The compliance schedule statements sighted were found to be issued in accordance with prescribed Form 10 of the Building (Forms) Regulations 2004 and had the prescribed information entered on them.

Compliance schedule

The case studies revealed that the Council had implemented a separate application form for a compliance schedule. Two separate versions of this form were found to be in use. The form was completed by the applicant when applying for a building consent and was supplementary to the Form 2 (building consent application). The Council had shown initiative by implementing a form specifically requesting compliance schedule information, but the form used at the time of the review visit could be improved somewhat. The form requested little information outside that already required in the prescribed Form 2. To add value, the form could request items such as schematic service drawings to show the location of specified systems, including final exits and fire separations associated with the building's means of escape (this guidance is in line with the Department's *Compliance Schedule Handbook*⁶).

If this type of information is not captured at the vetting stage of the consent application, then the Council will have to satisfy itself that the compliance schedule provisions have been met after the application has been accepted. This could delay the issuing of the consent. Ideally this information should be included in the building consent application, as it falls within the definition of 'plans and specifications' under section 7 of the Building Act 2004.

As identified in the previous section of this report, it was found that compliance schedules were sometimes issued before or after the code compliance certificate, which was contrary to the requirements of section 102 of the Building Act 2004.

The compliance schedule documentation reviewed was generally found to be compliant and meeting most of the section 103 requirements in the Building Act 2004. However, the following improvements could be made:

- Specified systems' descriptions should be more site-specific. For example, automatic or manual emergency warning systems designed to NZS4512:2003 should specify which of the seven alarm types have been installed in the building.
- It was noted that where standards were referred to in the compliance schedule under the maintenance requirements, the approval year of the standard was omitted (eg, NZS 4512:2003). This is important, as independent qualified persons or licensed building practitioners could in the future consider compliance with new revised standards that were not applicable at the date of design or installation. It was also found that several options for standards for the maintenance of the specified systems were included (eg, 'in accordance with NZS 4512 or AS 2220 and AS 1851.10' for an emergency warning system). Designers need to nominate what standard the specified system was designed to so that compliance with the Building Code can be assessed.
- Although not an explicit requirement of the Building Act 2004, best practice would see a copy of the building services floor plan included with the compliance schedule. This provides the independent qualified person, Council and/or any

⁶ Link to *Compliance Schedule Handbook*: <http://www.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/Compliance-Schedule-Handbook.pdf>

technician working in the building with a schematic plan and layout of the specified systems installed in the building. This will assist in locating specified systems which are very often difficult to find and identify (eg, backflow prevention devices, dampers, fire and smoke separations).

As noted previously, when issuing the compliance schedule and compliance schedule statement, the Council provided the building owner with written guidance material which outlined the legislative requirements surrounding these documents. The guidance also covered building warrant of fitness requirements and identified that the Council had the right to inspect buildings under section 111 of the Building Act 2004. The guidance was informative, written in plain English and in accordance with the Building Act 2004. The Department supports the Council's initiative in producing quality guidance such as this.

Conclusion

Case studies provide a snapshot at any given point in time. They are historical and, in this particular technical review, the three case studies highlighted a number of concerns. Since the case study projects were completed, and within the last 12 months, the Council has addressed many of the concerns by implementing new compliance schedule and building warrant of fitness procedures. However, inconsistencies are still occurring, such as not including site-specific information in the compliance schedule and not accurately reflecting all of the installed specified systems in the building. The Council needs to improve its processes and consistently apply the requirements of the Building Act 2004.

Recommendation 2	
The Department recommended that the Council:	Response from the Council:
Ensure the consent applicant or their agent provides a proposed inspection and maintenance procedure for each specified system with the building consent application. The Council's vetting form should be further developed to include and check such requirements.	The Council advised it has communicated this requirement to some in the industry. A newsletter and/or fact sheet is also being considered for distribution throughout the building sector.
Review and update its processing check-list to include the assessment of all specified systems and not just a select few.	The Council advised that the building consent processing check-list has been altered to include all specified systems and performance standard information. This was considered to be the minimum information required, if a compliance schedule is required for a building.
Ensure the standards referred to in the compliance schedule include the approval year of the standard.	The Council advised this could be problematic as there may be some buildings that have had an alarm system installed some years ago that have never had a compliance

	<p>schedule. This would make it difficult to identify which version of a New Zealand Standard to sight in the compliance schedule.</p> <p>New compliance schedules will incorporate the year of the relevant standard.</p>
<p>Ensure the code compliance certificate is issued in accordance with the Building Act 2004 and has the compliance schedule attached to it, when applicable.</p>	<p>The Council advised they issue the compliance schedule before the code compliance certificate⁷. Separate documentation is sent out including the invoice, which may go to a different address to the code compliance certificate documentation.</p>
<p>Ensure compliance schedules accurately reflect the installed specified systems and contain site-specific information on what the specified systems are, and their particular inspection and maintenance requirements.</p>	<p>The Councils advised they consider this recommendation is requiring more restrictive action than the legislative requirements of Section 103 (1)(a).⁸</p>
<p>Include in the issued building consent, details of documentation to be provided to verify installed specified systems before a code compliance certificate will be issued. Such documentation would include commissioning results, test reports and third-party certification from mutually agreed parties.</p>	<p>The Council advised they currently require producer statements for all specified systems. Commissioning certificates are also required for certain specified systems (eg, lifts, air-conditioning, backflow etc)</p>
<p>Ensure the issued building consent complies with the prescribed Form 5 of the Building (Forms) Regulations 2004 and does not contain conditions that are not appropriate.</p>	<p>The Council advised this document was reviewed during their assessment and accreditation as a building consent authority. Consequently, some of their historic building consent conditions have been changed to advisory notes to the applicant.</p>
<p>Review and update the application for a compliance schedule form. If this form is to remain in use it should be improved to obtain all the information required to satisfy section 103 of the Building Act 2004.</p>	<p>The Council advised their application form is not a prescribed form and therefore does not have to comply with the Building Act 2004 (the Act). They further stated the features mentioned in Section 103 of the Act</p>

⁷ Department comment: Section 102 of the Building Act 2004 (the Act) requires that a building consent authority must issue a compliance schedule with a code compliance certificate if a compliance schedule, or an amended compliance schedule, is required as a result of building work. This matter is discussed in sections 4.3 and 4.4 of this report.

⁸ Department comment: Section 103 of the Act clearly states the content requirements for compliance schedules, which describes the inspection, maintenance and reporting procedures in respect to specified systems. For further guidance refer to the Departments Compliance Schedule Handbook (part 1). Link at: <http://www.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/Compliance-Schedule-Handbook.pdf>

	relate to specified systems and that these features are listed in their application form for building consent ⁹ .
Place conditions on certificates for public use in relation to an expiry date and the requirement for the owner to inspect and maintain the specified systems in the building. Also improve the recording of certificates for public use so the Council can monitor them.	The Council advised this has been completed. Expiry dates are now inserted on the form. Additionally, a certificate for public use monitoring report has been created in order to effectively track certificates for public use.
Attach a floor plan to the compliance schedule showing means of escape, signage, passive fire protection, backflow prevention or other systems that may not be readily identifiable on-site.	The Council advised this could be achieved if the designers supply the information and/or if it is requested during the application stage of the consent process.

⁹ Department comment: Form2 of the (Building Forms) Regulations 2004 provides for details of specified systems and compliance schedule information. It was unclear to the review team why an additional form had been introduced when regulatory forms already were in place to capture the information that was being requested.

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 application to amend a compliance schedule was available on the Council's website and was found to comply with the prescribed Form 11 of the Building (Forms) Regulations 2004. However, there was no detailed commentary on how to go about amending the compliance schedule.

The Council's in-house procedure for amending a compliance schedule was considered to be adequate as it captured the key requirements outlined in sections 106-109 of the Building Act 2004. The procedure also identified the triggers for an on-site inspection (eg, when the assessing officer considered there was a conflict with the supplied documentation and those specified systems contained in the building).

In practice, the Council was able to illustrate a good system for amending a compliance schedule.

It was noted that the Council had elected to retain items such as safety barriers, fire hose reels, accessible facilities for persons with disabilities and the like on new and historic compliance schedules, even though some of these features were no longer considered a specified system in their own right under the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005. The case studies revealed that the Council had included non-specified systems such as those previously mentioned. However, these systems were separately listed on the compliance schedule and clearly identified as such. This practice was deemed to be acceptable and was viewed as a common sense approach to dealing with non-specified systems.

Conclusion

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

Recommendation 3	
The Department recommended that the Council:	Response from the Council:
Review and update their public information to specifically address the amending of a compliance schedule.	The Council advised a fact sheet was soon to be generated regarding these matters.
When amending compliance schedules that include systems/features that are not specified systems under the Building Act 2004 (eg, safety barriers, fire hose reels and the like), these should be clearly identified on the compliance schedule as being non-specified systems or, alternatively, removed from the compliance schedule.	The Council advised they now identify non-specified systems/features as “Non-Specified Systems” on all new compliance schedule and on any amendments to existing compliance schedules.

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's in-house procedure for managing and administering building warrants of fitness was well-detailed and provided a step-by-step process for Council staff to follow. It included checking the building warrant of fitness documentation for adequacy and compliance. It also detailed timeframes and the actions to be taken when a building warrant of fitness was not provided following a Council's reminder notice, including the final reminder notice. Failure to comply with the final reminder notice will result in the Council issuing a notice to fix under section 164 of the Building Act 2004. The Council had not adopted an infringement notice policy at the time of the technical review, so were unable to issue infringement notices for offences under the Building (Infringement Offences, Fees, and Forms) Regulations 2007.

Records of building warrant of fitness documentation were held both electronically and in hard copy. An electronic database was used to list all buildings that have had either a compliance schedule statement or a building warrant of fitness.

When a building warrant of fitness is received it is entered into the Council's 'regular cycle audit' as detailed in its procedures. The Council's target is to audit 10 percent of all building stock containing specified systems per annum. Building selection is generally undertaken on a random basis; but non-complying building owners are more likely to have their buildings inspected if there are ongoing non-compliance issues.

The Council used an in-house form to record building audits. The form was found to be well-compiled and identified the following information on the subject building - building warrant of fitness ID number, whether a building warrant of fitness was displayed and current, the building name, address, lawfully established use and the specified systems contained in the building. A section was also provided for the inspecting officer's observations and comments.

The forms sighted generally showed clear outcomes, including either a pass or fail result and the reason for the decision. However, one audit sheet reviewed revealed that even though an inspection had failed, the sections stating whether a re-inspection (follow up action) was required or whether a site instruction/notice to fix had been issued had not been completed.

All prospective building owners are notified of the pending audit by mail prior to the Council officer's visit.

All data relating to building warrants of fitness was managed, accessed and stored electronically on the Council's database.

The Department's site visits often found that owners were not always aware of their compliance schedule and building warrant of fitness obligations. These included regularly checking egress routes to final exits, having and publicly displaying a building warrant of fitness, keeping compliance schedules in their recorded location, and keeping complete inspection records.

The Department acknowledges that many of the case study findings are a result of previous practices, and notes that the Council had recently undertaken a more proactive role in providing written information and making personal visits to sites.

There was some concern at the percentage of buildings that did not have a current building warrant of fitness or compliance schedule statement (section 4.2 refers). The Building Act 2004 and its associated Regulations provide for enforcement action such as infringement notices and prosecutions. The Council had not pursued either of these actions at the time of the review.

The Council should place a greater degree of importance on ensuring all buildings within their district have a current compliance schedule statement or building warrant of fitness.

Conclusion

Council had an appropriate procedure for receiving, assessing, accepting and inspecting building warrants of fitness, but further improvements could be made in areas such as enforcement.

Recommendation 4	
The Department recommended that the Council:	Response from the Council:
Fully performs its role under section 12(2)(h) of the Building Act 2004 to enforce the provisions relating to annual building warrants of fitness.	<p>The Council considers they are performing their duties under the Building Act 2004 (the Act) in relation to building warrants of fitness, although they acknowledged they are not issuing infringement notices for offences under the Act.</p> <p>The Council have elected to take an educational role and are guiding their customers through the process. They anticipate they will use infringement notices for constant and blatant repeat offenders, where discussions do not lead to any amicable resolution¹⁰.</p>
Adopt an infringement notice policy in order to issue infringement notices for offences under the Building Act 2004.	The Council advised an infringement policy has been adopted. The policy will be administered in accordance with criteria identified above.
<p>Implement the following best practice suggestions:</p> <ul style="list-style-type: none"> • develop a prompt/check-list for the assessing of building warrants of fitness for correctness and compliance with the Building Act 2004 and associated Regulations • enhance existing information to include owner inspection responsibilities and ensure this information is supplied to these people. 	The Council advised a fact sheet covering building warrant of fitness matters has been developed and is now available to the public.

¹⁰ Department comment: Should the Council decide to adopt and implement policies and procedures for enforcing the Building (Infringement Offences, Fees, and Forms) Regulations 2007. The Department has developed a guidance booklet to assist councils in the development of an infringement system. This information can be accessed at the following web-link: www.dbh.govt.nz/building-infringement-scheme-guidelines-1

4.7 Private cable cars (section 100)

Purpose

To assess Council's system to ensure that domestic cable cars within its district have 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 was not aware of any cable cars in their district, but the Council had forms that included cable cars as a specified system.

Conclusion

No cable cars had been identified in the Hastings District. The Council's forms relating to specified systems have included cable cars as a specified system.

The Council had the appropriate alerts in place at the time of the review visit to capture and assess cable cars as a specified system, should it become necessary.

4.8 Independent qualified person register

Purpose

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

Background

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

Findings

The Council administered the East Coast Region's register for approved independent qualified persons. The Department was informed that the register was originally administered by Napier City Council who had undertaken this role since the register's inception in 1991. Napier City Council transferred its administration to Hastings District Council in 2006. The five Councils in the region's register are Central Hawke's Bay District Council, Gisborne District Council, Hastings District Council, Napier City Council and Wairoa District Council. Correspondence from 2006 indicated Napier City Council was to continue taking an active role in vetting independent qualified person applicants and assist Hastings in this regard. It was unknown if this arrangement had been maintained.

The Department found no formally documented agreement to support the Council's cluster group arrangement. It was not known how the member Councils communicated with each other, for example, if one of the cluster Councils was dissatisfied with a particular independent qualified person's performance, how this would be communicated to the administrator and thereafter to the other member Councils. Such matters should be covered in an agreement between member Councils.

Applicants who wish to become independent qualified persons must complete an application for acceptance as an independent qualified person. The form was found to be comprehensive and required that the applicant provide extensive competency-related material to support their application. If successful, the applicant was listed on the independent qualified person register. Inclusion as an approved independent qualified person was limited to a period of three calendar years. After that the independent qualified person must reapply and be reassessed as competent to remain on the register.

Conclusion

Hastings District Council are responsible for administering the East Coast Region's register of approved independent qualified persons. Member Councils of the cluster group did not have a collective agreement of understanding to support and ratify this arrangement. This matter should be dealt with as soon as possible.

Recommendation 5	
The Department recommended that the Council:	Response from the Council:
Formally agree other with member Councils in the regional group on the process used to assess independent qualified persons and the use of the regional register.	The Council advised this was under consideration and they were actively working with other regional group members to formalise an agreement.
Have an agreed formal process with all member Councils on how to deal with non-compliant independent qualified person practices.	The Council advised a formalised process was under consideration, but also commented they were conscious a national register for independent qualified person was currently being considered.
Builds on current relationships between cluster group member Councils and shares best-practice advice.	The Council advised they operate a policy of open communication with other eastern region cluster group councils.

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

Identification and assessment of specified systems was carried out by building control officers during the processing and inspecting stages of a building consent. Random audits of buildings with specified systems were also undertaken by council officers in accordance with the Council's procedure for audits/inspections.

Compliance schedule and building warrant of fitness administrative functions and duties were undertaken by the administrative support officer. The duties included sending reminder letters to building owners informing them of expiring or expired building warrants of fitness. This officer held responsibility for updating other information relating to compliance schedule, compliance schedule statement and building warrant of fitness documentation. It should be noted that these duties are only part of the administrative support officer's job description.

Significant resource will be required for enforcement actions due to the large number of buildings that did not have a current building warrant of fitness or compliance schedule statement at the time of the review visit (sections 4.3 and 4.6 refer).

Conclusion

At the time of the review visit the Council was meeting its statutory times and would appear to have adequate resources available for its building warrant of fitness and compliance schedule building control functions. This performance is likely to be adversely affected when the Council undertakes follow-up enforcement action on non-complying building owners.

Recommendation 6	
The Department recommended that the Council:	Response from the Council:
Ensure adequate technical and administrative support resources are made available to ensure the Council fulfils their responsibilities, particularly the functions and duties	The Council advised administration staff currently carry out the administration functions relating to building warrant of fitness processes.

relating to compliance schedules, building warrants of fitness and any required enforcement action.

The Council also noted they are in the process of introducing a new computer system and software package, which will have the ability to carry out overnight processing of reminder letters to building owners. This was viewed as an effective way to free up time for the administration team.

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

As a result of building consent authority accreditation, the Council had developed a competency assessment process that covered all building consent authority functions. The assessment also allowed for several territorial authority functions which included auditing and managing building warrants of fitness.

Amending a compliance schedule and issuing a compliance schedule statement were not included in the competency assessment as they are not building consent authority functions and fall outside the accreditation requirements. The Department believes the assessment could be improved by adding a section to include these two items even though these are territorial authority functions. Processing and inspection of specified systems could also be included in the overall competency assessment process, as these items do not appear to have been considered to date.

The Council was able to provide information on in-house compliance schedule and building warrant of fitness training. However no external training on specified systems and compliance schedule/ building warrant of fitness functions had been provided. The Council indicated at the time of the review visit that further staff training in this regard was to occur in the third and fourth quarters of the 2008/09 financial year.

In-house peer reviews of building consent processing were carried out and recorded on the Council's form. This form was generally well compiled, with an observation section for the peer reviewer to include commentary on the building officer's overall decision making. But there was no indication in the Council records that specified systems or the compliance schedule had been considered as part of the peer review. The Council's form could be improved by including the peer reviewer's observations on these compliance schedule and specified system matters.

This was particularly relevant as the Department identified some specified systems that were not adequately assessed and/or identified during the processing and inspection stages of the building consent process. The assessment and ongoing inspection of carbon monoxide early warning devices, audio loops and other assistive listening systems were of particular concern, as these specified systems were often not satisfactorily described and/or identified in the compliance schedule.

The Council was yet to appoint external contractors to support them in the assessment of specified systems which were complex and outside the Council's technical expertise.

Conclusion

The Council has implemented a competency assessment system, but it could be improved to include specific consideration of specified systems.

The Council's in-house peer review process was found to be functioning well, but could be improved by providing specific comment on specified systems and compliance schedule matters.

Recommendation 7	
The Department recommended that the Council:	Response from the Council:
<p>Continue to train and develop staff skills in the areas of compliance schedules, building warrants of fitness and specified systems.</p>	<p>The Council informed the Department that its building consent authority (BCA) officers are trained in two specific areas; processing and inspections.</p> <ul style="list-style-type: none"> • processing officers are trained to identify what specified systems are required and to request the appropriate performance standard and maintenance procedures for the specified system. • inspection officers are trained to identify the specified system on site, the location and any particular combination of systems, ie, fire alarm call points adjacent to exit ways, final exits combined with exit signage or emergency lighting. <p>The Council noted that territorial authority officers are responsible for carry out any further inspection/auditing of specified systems and resulting enforcement action. .</p>
<p>Consider developing links with contractors or other Councils who are available to assist them with the assessment of specified systems.</p>	<p>The Council stated they maintain open communication lines with the other councils in their cluster group and encourage independent qualified persons (IQP) to attend IQP forums run by an approved industry training providers.</p>

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

At the time of the review visit all building warrant of fitness and compliance schedule records were stored electronically and were available to the public via the computer terminals at the Council's reception area. Duplicate hard-copies of all files were also stored off-site in a secure records management facility. Photocopies of files were available from the Council for a nominal fee.

Council confirmed they had successfully scanned and electronically stored all building consent information dating back to 1994. This meant files were easily accessed without having to pre-order documents from storage.

Conclusion

The Council was complying with its statutory requirements in relation to sections 216 and 217 of the Building Act 2004 and were able to show a good in-house system for records storage and management.

5 Feedback from the Council

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

The Council's feedback has been included throughout this report in the 'response from the Council' section of each terms of reference. In addition, the Council expressed disappointment over the time made available for them to respond to the Department's initial findings, relative to the time taken to furnish them with the draft initial *Technical Review Report* to provide comment on.

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