



Department of
Building and Housing
Te Tari Kaupapa Whare

Technical Review

**of the Compliance Schedule and Building
Warrant of Fitness systems of**

Wairoa District Council

Summary Report

October 2009



Contents

1 OVERVIEW	4
2 ROLES OF THE DEPARTMENT OF BUILDING AND HOUSING AND THE COUNCIL.....	9
3 PROCESS.....	11
4 TECHNICAL REVIEW FINDINGS AND OPERATIONAL BUILDING CONTROL RECOMMENDATIONS.....	13
4.1 ORGANISATIONAL AND MANAGEMENT STRUCTURE.....	13
4.2 STATISTICS.....	15
4.3 STATUTORY TIMEFRAMES – SECTIONS 102, 104, 104A AND 108(3)	16
4.4 BUILDING ACT REQUIREMENTS – COMPLIANCE SCHEDULES	17
4.5 BUILDING ACT REQUIREMENTS – AMENDING A COMPLIANCE SCHEDULE	23
4.6 BUILDING ACT REQUIREMENTS – ANNUAL BUILDING WARRANT OF FITNESS	24
4.7 PRIVATE CABLE CARS (SECTION 100).....	28
4.8 INDEPENDENT QUALIFIED PERSON REGISTER.....	29
4.9 HUMAN RESOURCES.....	31
4.10 TECHNICAL KNOWLEDGE AND ABILITY OF STAFF	32
4.11 ACCESS TO AND STORAGE OF COMPLIANCE SCHEDULE AND BUILDING WARRANT OF FITNESS DOCUMENTATION	34
5 FEEDBACK FROM THE COUNCIL	35

Important notice to people reading this technical review report

This report is only to be used by the building consent authorities or territorial authorities that are the subject of this review, for the purpose of improving their building control operations.

The report may not be used by any other person for any purpose. In particular, 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 carries out technical reviews as part of its function to monitor and review the performance by building consent authorities, territorial authorities, and regional authorities of their functions under the Building Act 2004.

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

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

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

1 Overview

Purpose and scope

This report sets out the key findings and recommendations from a technical review of Wairoa 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 undertook a review of three of Wairoa's neighbouring councils, Napier City Council, Gisborne District Council and Hastings 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 undertaken by the Department throughout New Zealand.

The implementation of the building consent authority (BCA) accreditation scheme had also identified a need for councils, industry professionals, and building owners to better understand their responsibilities under the Building Act 2004¹. For example, around three quarters of 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
- accurately collected and reported the building control statistics considered

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

- was meeting the statutory time frames for compliance schedules and compliance schedule statements. Recent implementation of new processes has assisted the Council in achieving compliance with statutory timeframes
- proactively informed building owners of their obligation to renew building warrants of fitness that were nearing expiry
- had developed sound policies and procedures for compliance schedules
- proactively 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
- provided guidance to building owners/applicants with each compliance schedule it issued (although this could be expanded to cover amendments to compliance schedules)
- had recently changed the building consent application form to better capture compliance schedule and specified systems information in a more accurate and timely manner
- was generally issuing compliance schedule statements appropriately
- had an appropriate procedure for amending compliance schedules (although some enhancements could be made as noted in technical review findings section 4.5)
- had a sound system for receiving, assessing, and inspecting building warrants of fitness (although some suggestions to improve this are made under technical review findings section 4.6)
- had systems in place for assessing independent qualified persons (although some suggestions for change are made under technical review findings section 4.8 of the report)
- generally had adequate staff available to cover the volume of compliance schedules and building warrants of fitness they dealt with
- had made compliance schedule and building warrant of fitness regulatory matters a high priority, which had improved their knowledge of the district's building stock and public awareness of building warrant of fitness issues
- had a generally 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 for document control, access and storage, and as a consequence were complying with sections 216 and 217 of the Building Act 2004.

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

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

Some of the key findings for Wairoa District Council are summarised as follows.

Understanding and application of statutory responsibilities

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

- The Council should ensure that regulatory functions are carried out in accordance with the Building Act 2004 and relevant Regulations. For example:
 - issue compliance schedules with code compliance certificates and not prior or after this
 - ensure compliance schedules consistently list the actual specified systems that are contained in the building
 - ensure maintenance and inspection requirements for existing specified systems are identified
 - ensure building owners or their agents have a copy of the compliance schedule at the designated location as specified on the building warrant of fitness or compliance schedule statement
 - ensure the annual building warrant of fitness provisions are enforced.
- 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 all details are consistently supplied in plan form with 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 improve 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
- whether any follow-up action was required or occurred
- final outcomes achieved.

In particular, there was a need to ensure:

- all forms are up to date and complete, and comply with the Building Act 2004 and Building (Forms) Regulations 2004
- inspection notes are sufficiently comprehensive (see technical review findings section 4.4)
- the reason for compliance is consistently recorded for each specified system
- all compliance schedules contain site-specific information on what the specified systems are and their particular inspection and maintenance requirements
- appropriate records are maintained to show how specified systems or compliance schedules were considered.

Effective systems, policies, and procedures

Systems, policies and procedures that needed improvement and more effective implementation included:

- procedures for updating and developing forms and reviewing the processing check-sheet to ensure they all comply with the requirements under the Building Act 2004 and the Building Regulations.
- the Council's systems and processes around compliance schedules and building warrants of fitness as recommended under technical review findings sections 4.4, 4.5, and 4.6.
- placing 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.
- Adopting a policy on the use of infringement notices as an enforcement tool.
- Formalise arrangements with other councils in the East Coast regional cluster group regarding the independent qualified person register, including agreeing to a process for dealing with non-compliant independent qualified persons and how they are added or removed from the register.

Capacity and capability

The following issues were identified regarding the Council's capacity and technical building control capability (see sections 4.9 and 4.10 of the technical review findings). The Council needed to:

- expand its competency assessment system to include specified systems, compliance schedules, and building warrants of fitness and continue to train staff in these areas
- ensure all staff involved in its compliance schedule and building warrant of fitness systems receive appropriate training for their roles.

Recent initiatives

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

- adopted a policy and delegated authority for officers to issue infringement notices for offences under the Building (Infringement Offences, Fees, and Forms) Regulations 2007
- updated public information regarding compliance schedules, specified systems and building warrant of fitness
- utilised the Councils IT systems to enhance and streamline existing processes and generate reports for compliance schedule amendments, and the like
- provided further staff training to assist with compliance schedule and building warrant of fitness compliance, and is actively recording and monitoring the staff training undertaken
- employed additional administrative staff to review and implement the Building Act

- 2004 compliance schedule and building warrant of fitness requirements
- implemented procedures and check-lists to ensure code compliance certificates acknowledged that a compliance schedule was attached
 - 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
 - placed 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 within the building
 - liaised with the regional cluster group of councils to progress joint initiatives; such as reaching a formal agreement with member councils about how to deal with non-compliant independent qualified person practices

The Department would like to thank Wairoa 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 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, should be granted or refused
- ensure compliance with the Building Code and Building Regulations.

Wairoa District Council

The Wairoa District is located in the northern Hawke's Bay and extends from the eastern beaches of Mahia Peninsula to the Te Urewera National Park and Lake Waikaremoana in the north western reaches of the district. According to the 2006 census the district's population was 8,481 and 0.2 percent of New Zealand's population; 66th largest of the 73 districts in New Zealand.

The economy of the Wairoa District is based on the rural sector. Approximately 60 percent of the district's total land is in productive use, of which 48 percent is in pasture and forestry is becoming of increasing importance.

The Wairoa District Council is based in the riverside town of Wairoa, which is the district's commercial, administration and main population centre. Given the district's relatively low population and reliance on agriculture, the Council's building control team administers and monitors fewer than 100 buildings that have specified systems and compliance schedules.

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)
4.8	Independent qualified person register

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

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

Method

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

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

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

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

4 Technical review findings and operational building control recommendations

4.1 Organisational and management structure

Purpose

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

Background

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

Findings

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

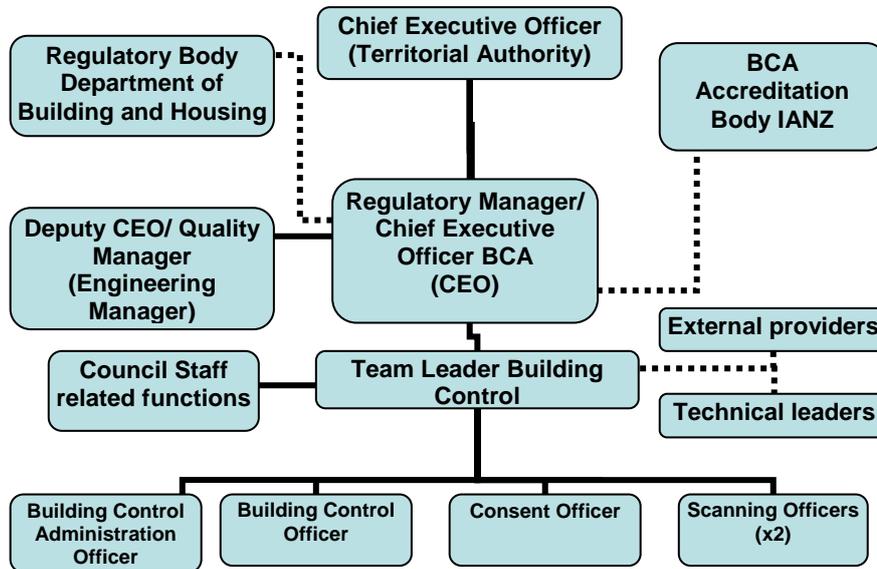
The Council's staff involved in its compliance schedule and building warrant of fitness system had delegated authority under section 232 of the Building Act 2004. Building control staff that enter land and carry out inspections are currently authorised to exercise powers and perform functions under section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

The Council's procedures manual recognised that infringement notices can be issued for specified building warrant of fitness non-compliances. However, at the time of the review staff had not been formally delegated authority to issue infringement notices under section 372 of the Building Act 2004. Copies of staff warrants did not reference section 372 of the Building Act 2004 or the Building (Infringement Offences, Fees, and Forms) Regulations 2007.

Conclusion

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

Wairoa District Council Building Consent Authority Structure



Recommendation 1

The Department recommended that the Council:

Response from the Council:

Ensure that staff are properly delegated authority to exercise powers and perform functions under section 372 of the Building Act 2004, and warranted, to issue infringement notices under the Building (Infringement Offences, Fees, and Forms) Regulations 2007.

The Council advised that this has been corrected. Staff had recently been delegated authority under section 372 of the Building Act 2004, and were now warranted to issue infringement notices under the Building (Infringement Offences, Fees, and Forms) Regulations 2007.

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.

Background

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

Findings

12 month period ending 30 November 2008
215 building consents issued
Total value of consented construction work was \$10,006,685
260 code compliance certificates issued
227 live building consents
4 compliance schedules issued
97 buildings had a compliance schedule
97 current building warrants of fitness
3 certificates of acceptance issued
3 certificates for public use issued
0 audits of building warrants of fitness carried out
0 compliance schedules did not have a current compliance schedule statement or current building warrant of fitness

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. Compared to other councils it only has a comparatively small number of buildings with specified systems.

The Council has less than 100 compliance schedules and in many cases these relate to relatively simple systems (eg, emergency lighting).

Conclusion

The Council was collecting and 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 time frames for issuing compliance schedules and monitoring the timeliness of owners providing building warrants of fitness.

Background

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

Section 104 of the Building Act 2004 requires a building consent authority to provide a copy of the compliance schedule to the territorial authority within five working days of issuing the compliance schedule. Section 104A requires a territorial authority that receives a copy under section 104 to, provide the owner with a compliance schedule statement within five working days after receiving it (as described in section 105(e))⁴.

A building warrant of fitness must be supplied by the owner to the territorial authority 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

Prior to the review the Council had undertaken a process to ensure compliance schedules were all current. This process found a number of buildings that had been issued with code compliance certificates, without the attached compliance schedule as required under the Act. The Council advised that its process now requires annual auditing of building warrants of fitness. For new code compliance certificates, the Council was now attaching a compliance schedule statement and compliance schedule to the code compliance certificate.

Conclusion

The Council had recently improved its system for ensuring compliance under the Building Act 2004 regarding the time frames for issuing compliance schedule statements and compliance schedules.

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

Recommendation 2	
The Department recommended that the Council:	Response from the Council:
Ensure it follows its new system and processes and consistently complies with the statutory timeframes for issuing compliance schedule statements and compliance schedules.	<p>At 8 September 2009 the Council advised that a new system had been operational for 6 months and statutory timeframes had been complied with for this period.</p> <p>This process includes internal auditing.</p>

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 so 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 had documented policies and procedures for compliance schedules for new and existing buildings. These were generally appropriate but could be improved by:

- including the statutory requirements for cable cars
- ensuring the requirements of the Building Act 2004 (especially sections 51 and 103 around listing specified systems and their performance standards on building consents and compliance schedules) are well understood and applied in conjunction with the detail contained in the forms prescribed in the Building (Forms) Regulations 2004
- recognising that some specified systems may not actually be “within” a building (eg, backflow prevention devices)
- recognising that compliance schedules do not necessarily have to be retained within the building (eg, they could be kept by an independent qualified person off-site)

- clarifying the process for identifying whether or not the Council has the technical capability to undertake these functions in-house (or requires external contract support).

Public information

The Council had generic information about compliance schedules available at its front counter in the form of the Department's leaflet: *The Building Act 2004 - Information for Building Owners and Managers*. However, this material is now out of date and the Council should develop its own public information about compliance schedules and ensure this is consistent with the Council's updated policies and procedures. Council could make this information available in hard copy and electronic format.

Building consent applications

The Council's *Application for a Building Consent (Form 2)* contained general descriptions of specified systems as prescribed in the Building (Specified Systems, Change of Use and Earthquake-prone Buildings) Regulations 2005. The form also provided for the inclusion of specified systems being altered or removed, but it did not request the applicant to detail the performance standards required for such specified systems (eg, when inspections, maintenance, and reports are required).

The review team found evidence that front counter vetting of consent applications needs to be improved to ensure there is adequate information for the compliance schedule. For example, the Council made repeated requests to applicants for further information due to a lack of detail around compliance schedule matters on the application form.

The Council has recently implemented a process to check the content relating to compliance schedules. This is the responsibility of a senior member of the Building Control team.

Where the specified systems were outside the competency level of the Council staff, the Council had arrangements with two external specialist consultants to process or peer review these building consents. One specialist processes commercial building consent applications, which include specified systems. The other consultant peer reviews consent applications for compliance with fire reports relating to specified systems. The review team could not find any formal agreements between the Council and the specialist consultants.

Building consent issuing

Section 51 of the Building Act 2004 requires that building consents must contain certain information, including the specified systems that must be covered by a compliance schedule and the performance standards for those specified systems as required by the Building Code. The review team found that the Council was not consistently noting on its building consents whether or not a compliance schedule was required for the building. Consequently, the Council was not consistently listing the specified systems on the building consent, or the performance standards for these systems that are required by the Building Code. These are specific requirements of section 51(1)(c)(i) and (ii) of the Building Act 2004. Form 5 of the Building (Forms) Regulations 2004 needs to be read in conjunction with this section.

The review team considers it good practice to also include an alert in the building consent to advise what documentation is to be provided by the applicant or their agent in relation to specified systems, before a code compliance certificate is issued. Such documentation would include commissioning results, test reports and third party certification from mutually agreed parties.

Inspections of building work

The review team found that the building inspectors did not include any reasons on how compliance of specified systems had been achieved during construction on their handwritten field inspection sheets.

Case studies undertaken by the review team found that the Council was collecting some evidence that producer statements, commissioning documents and the like were received for specified systems before code compliance certificates were issued. However, the review team also found that some buildings had installed systems, such as heat pumps, that were not required to be listed on a compliance schedule.

The Council was not consistently noting on its code compliance certificates whether or not a compliance schedule was attached. It was also not consistently stating on its code compliance certificates whether the specified systems in the building were capable of performing to the performance standards set out in the building consent. Form 7 of the Building (Forms) Regulations 2004 requires this information to be stated on code compliance certificates.

Certificate for public use

One of the case studies revealed that the Council had an obligation to consider issuing a certificate for public use for a building that was to be occupied by the public before the issue of the code compliance certificate. However, there was no evidence that the Council gave any consideration of section 363 of the Building Act 2004 and whether a certificate for public use was required. It was therefore unclear how the Council was satisfied on reasonable grounds that the building could be used safely by its occupants.

The Council needs to review and update its certificate for public use practices to ensure certificates of public use are used appropriately. The review team also notes that it is important to:

- ensure all of the information required by Form 15 of the Building (Forms) Regulations 2004 is provided by certificate of public use applicants
- audit the certificate of public use process until the expiry date of the certificate for public use
- include expiry dates on all certificate of public use so that the Council has a clear expectation of when a code compliance certificate can be issued (or an extension considered)
- include on the certificate of public use a requirement for the owner to inspect and maintain the specified systems within the building for a certain period, where buildings require a certificate of public use for a long period of time.

Compliance schedule statement

Case studies undertaken by the review team found that the Council was being proactive and including purpose groups, the number of occupants, and fire hazard

categorisations on their compliance schedule statements. The review team fully supports this good practice approach as it relates to the fire safety calculations for the building.

The specified systems listed on compliance schedule statements were described too generically and need to be more specific. For example, the terminology ‘*electro-magnetic or automatic doors or windows*’ was sometimes used without specifically identifying what system was actually installed.

There were varying delays between the issuing of a code compliance certificate and compliance schedule statement, which was not in accordance with the Building Act 2004 requirements.

Compliance schedule (CS)

The Council had its own application form for a compliance schedule. In general terms, if there are any specified systems in the building these are normally captured on the Form 2 (Application for project information memorandum and/or building consent), and not on a separate application form for a compliance schedule . Although this separate application for a new compliance schedule is not the norm, it is quite acceptable if the application relates only to a new compliance schedule. Prescribed Form 11 is the appropriate form to use when there is an amendment to an existing compliance schedule.

Section 103 of the Building Act 2004 specifies the content required for compliance schedules. The Council was providing some site-specific information regarding specified systems on its compliance schedules but this could be further expanded. The performance standards the specified systems had been designed to were not being adequately described. If a compliance schedule is required as a result of building work, then the building consent must state what the specified systems are, and the performance standards those specified systems are designed to, (eg, the relevant New Zealand or international standard, where applicable, and the date of that standard, such as, NZS 4512:2003). It was therefore sometimes unclear how the Council could be satisfied on reasonable grounds that the specified systems complied with the Building Code and conformed to a specific performance standard.

Conclusion

The Council needs to improve its compliance schedule procedures and consistently apply the requirements of the Building Act 2004 as recommended below.

Recommendation 3	
The Department recommended that the Council:	Response from the Council:
Update its policies and procedures for compliance schedules to take into account the issues described in this report (in particular see the subheading ‘Policies and procedures’ under section 6.4).	The Council advised procedures had been updated and combined into existing processes.

<p>Develop its own public information about compliance schedules and ensure this is consistent with the Council's updated policies and procedures.</p>	<p>The Council advised that they had removed outdated Department of Building and Housing Booklets (<i>Information for Building owners & Managers</i>) and revamped their existing Information for Compliance Schedules and Building Warrant of Fitness to be consistent with their updated procedures. They also noted their revamped public information is now clearer and more easier to follow.</p>
<p>Ensure the Council's <i>Building Consent Application Form</i> requires applicants to detail the performance standards required for each specified system (eg, when inspections, maintenance, and reports are required).</p>	<p>The Council advised that the building consent application form had been amended to include the performance standards required for each specified system (eg, when inspections, maintenance, and reports are required).</p>
<p>Improve front counter vetting procedures for building consent applications involving compliance schedule issues.</p>	<p>The council advised their vetting checklist had been amended, as had their Building Consent Application form. This was undertaken in order to strengthen front counter vetting procedures.</p> <p>The new processes will be monitored and reviewed though their audit system to ensure applications are consistently completed in full.</p>
<p>Ensure all specified systems are listed on building consents and compliance schedules, with appropriate detail, and include their performance standards as required by sections 51(1)(c) and 103(1)(b).</p>	<p>The Council advised they had updated existing forms and had advised their IT personnel to include specified systems details on building consents and compliance schedules automatically.</p>
<p>Ensure field inspectors understand the requirements for specified systems during their inspections and clearly record their decisions and reasons for them – particularly around how compliance has been achieved during construction.</p>	<p>The Council advised they had updated inspection sheets and undertaken staff training on the inspection of specified systems, including the need to clearly recording all decisions.</p> <p>External and internal auditing will further identify any issues in this area.</p>
<p>Ensure that prior to issuing a code compliance certificate staff have appropriately considered all relevant requirements regarding specified</p>	<p>The Council advised they had implemented a code compliance certificate checklist, ensuring all relevant requirements had been</p>

<p>systems and clearly record their decisions and reasons for such decisions.</p>	<p>considered regarding specified systems during this assessment.</p> <p>In addition to this, the building consent and code compliance certificates forms now have specified systems itemised.</p>
<p>Consistently state on code compliance certificates whether or not a compliance schedule is attached and whether there are specified systems in the building.</p>	<p>The Council advised their code compliance certificate (Form 7) had been updated with its IT system to ensure code compliance certificates state whether or not a compliance schedule is attached to the form, and whether there are specified systems in the building.</p>
<p>Review and update its practices around the use of certificates of public use to ensure they are being used appropriately.</p>	<p>The Council advised they had reviewed and altered their existing procedure, which included:</p> <ul style="list-style-type: none"> - further staff training - all certificates of public use are issued with expiry dates and are logged into task calendar to ensure they are followed up. <p>The Council stated that the certificate of public use would be included in their audit schedule, which typically only covered building consent authority functions. Even though this was a territorial authority function.</p>

4.5 Building Act requirements – amending a compliance schedule

Purpose

To examine the Council's process for amending compliance schedules.

Background

Section 45(1) (g) (ii) of the Building Act 2004 requires that if an amendment to an existing compliance schedule is required as a result of the building work, then the building consent must list the specified systems that are being added, altered, or removed.

Section 106 allows the owner of a building to apply for an amendment to a compliance schedule for the building. Section 107 allows a territorial authority to amend a compliance schedule on its own initiative with strict consultative requirements with the owner.

Findings

The Council has a documented policy and procedure for amending compliance schedules. This had only recently been developed at the time of the review and had not been used in practice.

The Council was aware that prescribed Form 11 (application for amendment to compliance schedule) of the Building (Forms) Regulations 2004 was the appropriate document to use when amending existing compliance schedules.

The Council had copies of the Department's guidance document *Information for building owners and managers* available for the public at its front counter. This guidance material included information on amendments to compliance schedules. But this material needs to be updated to cover the Council's processes.

Conclusion

The Council had an appropriate procedure for amending compliance schedules, which now needs to be consistently used and adhered to by staff.

Recommendation 4	
The Department recommended that the Council:	Response from the Council:
Monitor the implementation of its new policy and procedures on amendments to compliance schedules to ensure they are being appropriately used by staff	The Council advised it had included compliance schedule amendments in its audit schedule. At 8 September 2009 the Council advised that they had requested IT staff to generate electronic reports for compliance schedule amendments.

<p>Update its public information to contain material on amendments to compliance schedules (including examples of when amendments are needed).</p>	<p>The Council advised it had revamped its existing information sheet for compliance schedules and building warrant of fitness to be consistent with their updated procedures, and to include amendments to compliance schedules. It also provided examples of when this may be relevant.</p>
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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 so that building warrants of fitness are assessed appropriately and the requirements of the Building Act 2004 are being complied with.

Background

Sections 108 to 111 of the Building Act 2004 set out the relevant responsibilities for building owners and for territorial authorities. In summary, the owner must ensure continued effective operation of the specified systems that are listed on the compliance schedule and demonstrate compliance by displaying a current warrant of fitness in their building.

Findings

The Council had a documented policy and procedure for building warrant of fitness audits and inspections. This had only recently been developed and was in the process of being fully implemented during the review.

Sections of this policy need to be expanded to clarify that a reference to a building warrant of fitness must also be included on the property file (this issue is discussed further under the technical review findings section 4.11).

The Council's policy referred to infringement notices for non-compliant issues found on site. However, as discussed under the technical review findings section 4.1; Council staff had not been officially delegated and warranted to issue such notices at the time of the review team's visit.

To support its staff, the Council had developed a building warrant of fitness/ independent qualified persons audit check-list. This covered:

- building warrant of fitness details
- compliance schedule details
- records kept on site
- owners/occupiers knowledge around building warrants of fitness and compliance schedules
- list of specified systems.

The Council has developed public information around building warrants of fitness.

The Council also had a register to track all compliance schedules, which details when they were issued and when the building warrants of fitness are due. This enables it to identify overdue building warrants of fitness. In summary, the Council's process for monitoring overdue building warrants of fitness is as follows.

- A weekly review of its tracking spreadsheet is undertaken.
- A reminder letter is sent one month prior to the building warrant of fitness due date.
- A chase-up letter is sent one week after the building warrant of fitness has expired (if no response has been received).
- Another letter is sent one month after the building warrant of fitness has expired (if no response has been received).
- A notice to fix and/or an infringement notice may be issued at this stage (although at the time of the review the Council had not issued any).

The Council's policy regarding building warrant of fitness inspections notes that '*a random percentage of building warrant of fitness and compliance schedules will be audited on a 12 monthly basis as time and resources permit*'. However, the policy also notes that this will only be done once all compliance schedules are updated. The review team consider that it would be best practice to start the auditing immediately, rather than waiting for all compliance schedules to be updated.

The Council undertook its first building warrant of fitness audit when the review team was on-site. The review team considered the findings from the Council's audit and noted the following.

- The officer used the Council's new building warrant of fitness/ independent qualified person audit and inspection checklist.
- A building warrant of fitness/inspection report was completed by the officer and covered the sections of the checklist summarised above.
- The content of the report was discussed with the building manager, and the building owner was also telephoned after the audit.
- The Council advised the review team it would be writing a letter detailing the areas of non-compliance that needed to be remedied.

However, the review team also noted the following areas for improvement.

- Some systems were audited as indicated on the compliance schedule, but the review team found that they were not actually specified systems. In two case studies, mechanical ventilation was listed as a specified system on the compliance schedule, when this was not required.
- The Council's policy stated it would issue notices to fix and infringement notices if non-compliance was found on site. At the time of the review the Council had not used a notices to fix and had not properly authorised its officers to issue infringement notices.

The case studies indicated that the building warrants of fitness accepted by the Council did not consistently include the numbers of occupants per level and per use if more than one level (as required by Building (Forms) Regulations 2004). The review team acknowledges that the Council was including this information on some of its compliance schedules.

The site visits undertaken by the review team found that owners were not always fully aware of their compliance schedule and building warrant of fitness obligations. Such

obligations included the need to regularly check 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.

Conclusion

The Council's building warrant of fitness system needs to be strengthened, as recommended below.

Recommendation 5	
The Department recommended that the Council:	Response from the Council:
Review and update its procedure for building warrant of fitness audits (Audits and Inspections), so that random audits/inspections of building warrant of fitness and compliance schedules commence immediately.	The Council advised their existing procedure had been reviewed and updated. However, they were unable to implement it immediately as they did not have the resources available. At 8 September 2009 the Council advised they had completed arrangements for an external contractor to commence audits, however this was dependent on that contractors availability. A commencement date of 14 September 2009 was anticipated.
Continue the building warrant of fitness inspections that were implemented during the review team's visit, to ensure the accuracy of compliance schedules and to assess the performance of independent qualified persons.	At 8 September 2009 the Council advised that they could not commence this immediately as it did not have the resources available internally. Arrangements had been made for external contractor to commence audits on 14 September 2009, which was dependent on their availability.
Ensure prompt follow-up for overdue/non-compliant building warrants of fitness.	The Council advised further staff training had been undertaken to ensure follow-up procedures are adhered to.
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.	The Council advised further training had been undertaken to ensure they perform their role under section 12(2)(h) of the Building Act 2004, which is to enforce the provisions relating to annual building warrants of fitness.
Ensure that all relevant details pertaining to occupancy numbers and	The Council advised that if this information was absent from the

<p>levels of the building are included on the building warrants of fitness it accepts.</p>	<p>building warrant of fitness submitted, it would be requested from the independent qualified person at the time of submission.</p> <p>The building warrant of fitness checklist now includes a prompt for this information.</p>
<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 Building Regulations - enhance existing information to include owner inspection responsibilities and ensure this information is supplied to them. 	<p>The Council advised that the following best practices were already in place during the Department of Building and Housing's site assessment:</p> <ul style="list-style-type: none"> - a prompt/check-list for the assessing of building warrants of fitness for correctness and compliance with the Building Act 2004 and Building Regulations. - a letter is issued with all building warrants of fitness. The letter details the owner's responsibilities and includes compliance schedules and building warrant of fitness information. <p>The Council also noted that they had revised their existing information on compliance schedules and building warrant of fitness to be consistent with their updated procedures.</p>

4.7 Private cable cars (section 100)

Purpose

To assess the Council's system to ensure that domestic cable cars within its district have compliance schedules. The Department also considered how the Council has advised the general public of the requirement that all cable cars must have a compliance schedule.

Background

Sections 100 to 107 of the Building Act 2004 set out the particular responsibilities for building owners who have cable cars attached to household units or are serviced by them. Requirements on territorial authorities and building consent authorities are also included in the Building Act 2004.

In summary, household units with cable cars, or serviced by cable cars, require a compliance schedule. The owner must also ensure continued effective operation of the cable car and display a current building warrant of fitness in their building.

Findings

The Council advised that there were no cable cars in its district that are covered by these statutory requirements. However, the Council was aware of its obligations under the Building Act 2004 and had a procedure to deal with any cable cars that are found or installed in the future.

Conclusion

The Council's system was appropriate.

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 relies on the East Coast region's register of approved independent qualified persons. The other councils using this register are, Central Hawkes Bay District Council, Gisborne District Council, Hastings District Council and Napier City Council.

Hastings District Council is responsible for maintaining this regional register, including assessing and approving independent qualified persons for inclusion. Applicants are required to complete a standard application form for acceptance as an independent qualified person and their application is referred to the Hawkes Bay/East Coast independent qualified person Registration Committee for determination. The application form requires applicants to provide their CV, qualifications, references, insurance details and other information for the assessment process. The Council refers any independent qualified person's application made to it directly to the Hastings District Council.

There was no formal agreement or memorandum of understanding between the Council and Hastings District Council to govern this collective arrangement.

Any complaints made about independent qualified persons are also referred to the Hastings District Council.

Conclusion

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

Recommendation 6	
The Department recommended that the Council:	Response from the Council:
Formalise its arrangements with member councils regarding the maintenance and use of the regional register, including:	At 8 September 2009 the Council advised they had already contacted Hastings District Council and other council cluster group members to

<ul style="list-style-type: none"> - ensuring all councils clearly understand the process for managing complaints against independent qualified persons - ensuring regular updates on the status of the register are provided to all members (eg, any new independent qualified persons approved or any independent qualified persons who have been removed from the register) - clear communication channels are maintained. 	<p>formalise arrangements regarding the maintenance and use of the regional register. A draft memorandum of understanding had been drawn up by Hastings District Council to:</p> <ul style="list-style-type: none"> - ensure all councils clearly understand the process for managing complaints against independent qualified persons - ensuring regular updates on the status of the register are provided to all members (eg, any new independent qualified persons approved or any independent qualified persons who have been removed from the register) - include a provision that clear communication channels are to be maintained.
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4.9 Human resources

Purpose

To assess the strength and depth of the Council's building control resources, and how effectively they are being used.

Background

Although current activity in the building sector has decreased compared with the levels of two or three years ago, the Council needs to be prepared for recovery and the consequent increase in workload for its building control staff. The Council is able to address this by increasing staff and by using existing staff more effectively, although opportunities to increase staff are limited in the short term because of the short supply of appropriately qualified people.

Findings

The identification and assessment of specified systems was carried out by building control officers during the processing and inspecting stages of a building consent. At the time of the review visit the Council had 3.5 FTE⁵ technical staff and one administrative staff member in its building control unit. There were no current in-house staff vacancies.

All of these staff have some input in performing the functions relating to compliance schedules and building warrants of fitness.

As noted in this report, there are a number of areas where the review team identified non-compliant issues relating to compliance schedules and building warrants of fitness. Therefore, there is need for ongoing remedial work to make improvements to the Council's systems to reduce the cases where the requirements of the Building Act 2004 are not consistently being met, despite recent procedural changes actioned under the Building Consent Authority Accreditation Scheme.

The Council had just started undertaking inspections of building warrants of fitness at the time of the review visit and had just rolled out a number of new processes. Staff will need time and training to come up to speed with these changes.

Sometimes the Council calls upon external technical input for specialist issues.

Conclusion

It is likely that additional human resources will be needed to effectively implement the review team's recommendations, bed in the Council's new processes, and continue the Council's business as usual activities.

⁵ FTE: full-time staff member or part thereof

Recommendation 7	
The Department recommended that the Council:	Response from the Council:
<p>Ensures adequate technical and administrative support resources are made available to ensure it can fulfil its responsibilities relating to compliance schedules, building warrants of fitness, and any required enforcement action.</p>	<p>The Council advised that sufficient human resources had not historically been available for them to fulfil their responsibilities relating to compliance schedules, building warrants of fitness, and any resulting enforcement action.</p> <p>They also noted they had recently employed administration staff to review and implement the Building Act 2004 requirements.</p> <p>Training had also been undertaken for technical and administration staff and this would be ongoing.</p>

4.10 Technical knowledge and ability of staff

Purpose

To examine the technical knowledge and capabilities of building control staff and the provisions for staff training and upskilling.

Background

The specified systems for the safety of building users are often complex and require a sound understanding of technical issues and relevant building legislation. Councils need to ensure their building control staff have the correct level of technical knowledge, understanding and skills in specified systems and building law.

Findings

The Council had a competency assessment system that was developed as part of the building consent authority accreditation scheme. However, this system did not specifically cover specified systems, amending compliance schedules or compliance schedule statements. Building warrants of fitness were also not included.

Staff training records showed that only one current staff member had received formal external training on compliance schedule writing, and compliance schedule and building warrant of fitness processes.

The review team was advised that informal in-house peer review was regularly carried out regarding compliance schedule and building warrant of fitness matters. Peer review, however, was not formally recorded for training or auditing purposes.

At the time of the review visit, the Council had just begun to conduct inspections on historical compliance schedules and current building warrants of fitness.

Where the specified systems were outside the competency level of the Council staff, the Council had arrangements with two external specialist consultants to peer review these systems. One of these specialists processed commercial building consent applications which included specified systems, and the other peer reviewed compliance with fire reports relating to specified systems.

Despite such initiatives and recent efforts to up-skill staff, the case studies found some inconsistencies and errors regarding compliance schedule/building warrants of fitness matters. For example, heat pumps were incorrectly considered as part of specified system 9 for mechanical ventilation or air conditioning systems.

Conclusion

The Council needs to improve the collective technical knowledge and ability of its staff to meet its current needs, as recommended below.

Recommendation 8	
The Department recommended that the Council:	Response from the Council:
Reviews and updates the competency assessment process to include specified systems and other compliance schedule and building warrant of fitness matters.	At 8 September 2009 the Council advised specified systems would be included in the next round of staff competency assessments. The intent being, to better identify and manage gaps in competency, particularly in relation to their technical knowledge of specified systems.
Ensures all staff involved in its compliance schedule and building warrant of fitness systems receive appropriate training for their roles.	At 8 September 2009 the Council advised it was committed to ensuring staff involved in compliance schedule and building warrant of fitness systems receive appropriate training. This was to be an on-going process.
Monitors and records training around the writing and auditing of compliance schedules/building warrants of fitness.	The Council advised that all training is being recorded and monitored through their audit schedule.

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

Building warrants of fitness and compliance schedule records are currently securely stored in hardcopy and are readily available to the public on request at the public counter.

Technical staff are available, as and when required, to provide technical interpretation and advice.

The Department noted that information on compliance schedules and building warrants of fitness was stored separately from the property files in question. None of these documents were copied onto the property files. Therefore, people reviewing the property files might miss the information on compliance schedules and building warrants of fitness.

Conclusion

The Council was complying with its statutory requirements in relation to sections 216 and 217 of the Building Act 2004. However, improvements could be made in this area by considering the following recommendation.

Recommendation 9	
The Department recommended that the Council:	Response from the Council:
Ensure there are appropriate tags or cross-references between its files to minimise any chance that information about compliance schedules and building warrants of fitness is missed if a person only looks at the property file.	The Council advised that if a person wishes to look at a property file the applicant is directed to the Council's front counter to obtain a Land Information Memorandum. This was to ensure the applicant receives all relevant information for that property. The Council also stated: - compliance schedule information is always identified on a Land Information Memorandum

	<p>– the Council’s IT system clearly shows when there is compliance schedule for that property.</p>
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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 comment has been included throughout the report. Additionally, the Council provided the following feedback on the Departments technical review process.

Response from the Council

Prior to Department of Building and Housings technical Review site visit, Wairoa District Council was aware of its short comings in this area and had already commenced on a programme of improving its outdated compliance schedule and building warrant of fitness procedures and recording practices. The Review only substantiated what we already knew i.e. the need to strengthen our compliance schedule procedures and consistently apply the requirements of the Building Act 2004.

As Wairoa District Council is continuously looking for ways to improve its existing building control functions you will note that Wairoa District Council has taken the Departments recommendations on board and where appropriate has already acted on these recommendations. Where necessary the relevant procedures have been improved and training given to staff to ensure amended procedures are fully understood. These newly implemented procedures will be monitored through our internal audit schedule.

In November 2008 Wairoa District Council placed two staff members on building warrant of fitness and compliance schedule training to ensure our programme of improving our outdated compliance schedule and building warrant of fitness procedures and recording practices was on the correct path. These staff members are continuing to work through improving our procedures, updating records and educating the public.

Many of these responses to this review involve recently amended procedures, checklists, information sheets etc and the IT people still need to update website etc. This will be completed in time but is in hand.

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