



Department of
Building and Housing
Te Tari Kaupapa Whare

Technical Review

**of the territorial authority functions of
Nelson City Council**

Summary Report

September 2011



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Important notice to readers of this report

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

The report should not be used by any other person for any purpose. In particular, it:

- should not be used as evidence of the compliance or non-compliance of a particular building with the Building Code
- should not be used as evidence that the building consent authority or territorial authority under review has 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 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 the performance of and assist the 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 all 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
- assessing the building compliance and regulatory outcomes achieved by the authority
- providing advice and assistance on best practice building control to help the building consent authority, territorial authority, or regional authority under review to achieve an effective building control system that is consistent with national best practice
- enabling the Department 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 the building control operations of Nelson City Council (the Council). The on-site stage of the review process was undertaken by the Department of Building and Housing (the Department) in January 2011.

The review primarily focused on how the Council was undertaking some of its statutory responsibilities under the Building Act 2004 – specifically around its territorial authority functions. The terms of reference for this review are set out in Section 4 (Figure 2) of this report.

Reasons for the review

The Department undertook the review as part of its ongoing performance monitoring function. This aims to help councils across the country to strengthen and improve how they undertake their core territorial authority building control functions under the Building Act 2004. Some aspects are very topical since the 2010/11 Canterbury earthquakes, such as their functions relating to earthquake-prone, dangerous or insanitary building policies.

The implementation of the building consent authority accreditation scheme also identified a need for councils, industry professionals, and building owners to better understand their responsibilities under the Building Act 2004¹. For example, an assessment by the Department on the progress of all building consent authorities to become accredited undertaken in 2007/2008 found that 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

The Council

The Nelson City Council area, with a population of 42,891 (at the time of the 2006 census), is in the geographical centre of New Zealand and is situated in the north-west corner of the South Island. The region extends from Stoke in the south-west to Whangamoa in the north-east and generally occupies the south-eastern coastal strip of Tasman Bay.

The region is a popular holiday destination and is only a short travel distance from three national parks – Abel Tasman, Nelson Lakes and Kahurangi.

The Nelson City Council offices are situated at Nelson which is 110 kilometres west of Picton. Nelson is New Zealand's largest fishing port and the gateway to a major forestry and horticulture industry.

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

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

Statistical information provided by the Council

In response to the Department's questions below, the Council provided the following statistical information.

Figure 1: Statistical information

#	Subject	Total for the 12 month period ending 30.06.10 (unless mentioned otherwise)
1	Building consents issued.	2,287
2	Buildings that have compliance schedules at 30.06.10.	597
3	Amended compliance schedules issued.	10
4	Value of consented building work.	\$121,412,087
5	On-site building warrant of fitness audits carried out.	0
6	Exemptions issued under Schedule 1, clause (k).	1
7	Building consents issued with project information memoranda since 31.01.10 and ending 31.07.10.	826
8	Building consents issued since 31.01.10 and ending 31.07.10.	907
9	Waivers and modifications issued.	0
10	Notices to fix issued.	33
11	Certificates for public use issued.	27
12	Certificates of acceptance issued.	35
13	Infringement notices issued.	0
14	Section 124 notices issued for dangerous, earthquake-prone or insanitary buildings.	0

2. Executive findings and recommendations

Findings

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

- documented policies and procedures for various building control functions (eg, project information memoranda, dangerous, insanitary, and earthquake-prone buildings, various notices and certificates it issued, building warrants of fitness, amending and auditing compliance schedules)
- had systems around the alterations, change of use, and subdivision provisions of the Building Act 2004
- employed dedicated staff members responsible for managing building warrants of fitness, compliance schedules, and earthquake-prone buildings
- undertook on-site audits of building warrants of fitness, and ensured its recently amended compliance schedules included site-specific information aligned with the specified systems in the current building legislation
- sought expert and/or independent advice when this was needed in areas outside its recognised competence (eg, third party reviews by structural engineers for earthquake-prone buildings)
- recognised the need to enter into agreements with external partners (eg, to assist it with notices to fix and certificates of acceptance for illegal building work)
- received appropriate verification that critical life safety specified systems were appropriately certified and functioned properly before issuing certificates for public use
- had sound systems for issuing certificates for public use and certificates of acceptance. The issued certificates of acceptance clearly defined what building work was covered and what was excluded. The Council was, at the time of the review, in the process of implementing a new infringement notice regime
- issued certificates for public use in appropriate situations and added appropriate conditions to such certificates (eg, expiry dates)
- was developing and disseminating information to the public about building control issues (eg, alterations, notices to fix, earthquake-prone buildings)
- developed tracking databases for a number of its functions (eg, issuing notices to fix and certificates for public use, monitoring overdue building warrants of fitness and identifying and tracking remedial work on earthquake-prone buildings)
- developed forms for certain regulatory functions, which are consistent with the requirements of the prescribed forms in the Building (Forms) Regulations 2004
- endeavoured to seek voluntary compliance as a first course of action, but could demonstrate a willingness to enhance its enforcement activities when this was justified (eg, seeking court orders).

Performance improvement areas

The review identified five key areas where the Council needed to strengthen and improve its building control operations. Addressing these issues would enhance the quality of its service to customers, alleviate confusion for building owners and independent qualified persons, and assist the sector to comply more consistently with the Building Act 2004. These key performance improvement areas were:

- the Council's understanding and application of certain building control functions as required under the Building Act 2004
- developing and implementing building control policies and processes
- ensuring the Council's decisions and the reasons for them, were appropriately recorded and filed
- ensuring collective technical knowledge was sufficiently spread across its building control unit
- implementing mechanisms to improve customer service.

Recommendations

Some of the key recommendations to the Council under the five key areas noted previously are summarised below.

Understanding and applying the Building Act 2004

- Ensure the Council's public information about project information memoranda was consistent and clearly explains their voluntary nature and the key value and benefits to building owners of obtaining one.
- Finalise and implement its policy around using clause (k) of Schedule 1 to the Building Act 2004 and communicate this (and the potential benefits of using clause (k)) to building control staff and external stakeholders. Staff need to have a sound understanding as to when it is appropriate to use clause (k), and understand the process they need to follow when seeking to apply it.
- Consider ways of ensuring the 20 day timeframe for processing certificates of acceptance is complied with.
- Utilise the Department's recently developed guidance produced for the sector (eg, around waivers and modifications).³

Developing and implementing building control policies and processes

- Ensure the Council provides correct examples of change of use in its public information.
- Develop written procedures for issuing compliance schedule statements.
- Ensure new compliance schedule statements only include systems that are defined as a specified system in the Building Act 2004 and Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005.
- Ensure building warrants of fitness and independent qualified persons Form 12As that the Council receives:
 - do not use Council letterhead (even if the Council has developed standardised forms for people to use)
 - contain all of the information required by prescribed Forms 12 and 12A of the Building (Forms) Regulations 2004.

³ To download the Department's waiver and modification notification form refer to the following link: <http://www.dbh.govt.nz/building-code-waiver> .

- Ensure all applications for certificates of acceptance are fully completed and contain all of the information the Council needs.
- Ensure the grounds for issuing a notice to fix are sufficient.
- Ensure its forms for applying for certificates of acceptance (and the subsequent certificates that the Council actually issues) satisfy all of the requirements of the prescribed Forms 8 and 9 of the Building (Forms) Regulations 2004.
- Strengthen the part of its system for managing earthquake-prone buildings after its initial assessment phase. For example, ensuring the Council follows its policy, each and every time, in regards to requiring a detailed structural analysis before requiring an owner to undertake a structural upgrade.

Recording the Council's decisions and their reasons

- Ensure the reasons for the Council's building control decisions are adequately recorded. Examples included:
 - alterations
 - change of use
 - granting of waivers and modifications of the Building Code.

Collective knowledge across the building control unit

- Ensure its policy on clause (k) of Schedule 1 (building consent exemptions) is clearly understood by all building control staff
- For some building control functions the Council may need to consider means of ensuring retention of knowledge and skills that are currently primarily vested in one person (eg, activities around building warrants of fitness, compliance schedules, and earthquake-prone buildings).

Simple ways to improve customer service

- Ensure its public information sufficiently covers the use of clause (k) of Schedule 1 so that applicants (or their agents) are aware of clause (k) and the Council's information expectations for using it
- Check that all project information memoranda contain the relevant site-specific information and are clear to any lay readers about any requirements or measurements they specify and why these are important
- Ensure its public information about project information memoranda is consistent and clearly explains their voluntary nature and the key value/benefits to building owners when considering project information memoranda information
- Ensure all compliance schedules accurately reflect the specified systems in the buildings. Where the Council identifies compliance schedules that contain systems that are not specified systems under the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005 they could point this out to building owners and advise that they can seek an amendment to the compliance schedule to remove such systems (eg, safety barriers, fire hose reels, accessible toilets).

3. Roles and responsibilities

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, among other functions, 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
- undertaking investigations into complaints about building consent authorities.

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, subdivided or their use is changed
- 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 is 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.

4. Process

Purpose of technical reviews

Technical reviews are undertaken to monitor the performance of, and assist building consent authorities and territorial authorities to, fulfil their obligations under the Building Act 2004. The review is a tool which helps authorities 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
- be held accountable for their performance and legislative obligations.

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 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.⁴

Scope of the review

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

Figure 2: The terms of reference for the technical review

5.1	Determining whether building work is exempt under Schedule 1, clause (k)
5.2	Producing (voluntary) project information memoranda
5.3	Considering additions and alterations, change of use, and subdivisions
5.4	Issuing building consents subject to waivers or modifications of the Building Code (including natural hazards)
5.5	Amending compliance schedules and enforcing building warrants of fitness
5.6	Issuing certificates (including notices to fix, certificates for public use, certificates of acceptance, and infringement notices)
5.7	Undertaking functions in relation to earthquake-prone, dangerous or insanitary buildings.

⁴ The Building Act 2004 is available at www.legislation.govt.nz

Method

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

- observe staff undertaking work in the Nelson office, and on site
- 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 the territorial authority has been involved with, just before or during the review visit.

For this review, six case studies were undertaken to assess compliance with the Building Act 2004 and its associated Regulations, with particular focus on the terms of reference noted in Figure 2. Council records were reviewed to assess the adequacy and effectiveness of the Council's systems.

The Council was given the Department's draft report and was given the opportunity to respond to the Department's recommendations. The Council's responses are set out in section 5 of this report. Please note that the Council's responses included in this report do not necessarily reflect the views of the Department.

Acknowledgement

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

5. Review findings and recommendations

5.1 Whether building work is exempt under Schedule 1, clause (k)

Purpose

To examine the Council's procedure for determining if building work is exempt under clause (k) of Schedule 1 to the Building Act 2004 (the Building Act).

Background

Schedule 1 of the Building Act lists the types of building work for which a building consent is not required. Clause (k) covers situations where a territorial authority considers that a building consent is not necessary because the building work:

- (i) Is unlikely to be carried out otherwise than in accordance with the Building Code; or
- (ii) If carried out otherwise than in accordance with the Building Code, is unlikely to endanger people or any building, whether on the same land or on other property.

Findings

The Council had rarely used its discretion under clause (k). Historically, it used an informal process for considering such exemptions and the Department found limited documentation regarding the reasons for its decision-making. An example was provided to the Department which related to alterations to a commercial building approved in 2010.

The Council has generally not applied a risk-based approach or sought to realise the benefits and efficiencies that clause (k) can bring to its decision-making and applicants' (or their agents') time and resources when it is used and applied appropriately. It is particularly valuable for building work where the Council's building consent processing and building inspection activities may not add value to the process if there are other more appropriate checks and balances that are being applied (eg, proposed building work that is engineer-designed and supervised).

The Council advised it is changing its approach to clause (k) and has developed draft procedures to guide staff decision-making around clause (k) of Schedule 1. These were planned to be finalised by March 2011. The Council has proposed to charge a fee for considering applications for such exemptions. As part of this work, the Council will need to update its information to the public around clause (k) to help explain its potential benefits, the circumstances where it may be appropriate to use, and the Council's information expectations for those proposing to apply for this exemption.

Conclusions

The Council is to continue its work to update its processes around the use of clause (k) of Schedule 1.

Recommendation 1	
The Department recommended that the Council:	Response from the Council:
finalise its policy around using clause (k) of Schedule 1 and communicate this (and the potential benefits of using it) to building control staff and external stakeholders.	Council advised its policy had been finalised and implemented on 04.04.11. Council's website and public info updated June 2011.⁵
ensure the policy is clearly understood by all building control staff so they can apply it, have a sound understanding about when it is appropriate to use clause (k), and understand the process they need to follow when seeking to use it (eg, discussing with a team leader or manager first).	Council advised its policy and procedure had been communicated to staff and implemented on 04.04.11. Included in the policy were changes to the staff competency matrix. Council also advised that its procedure (TAM 001) included sign-off by two building consent officers.

Note: The Department's guide to exempt building work (published December 2010) has some important information, including possible criteria for a council to consider when applying clause (k) of Schedule 1. Council should refer to this guidance when developing a policy on this topic. The document is freely available on-line at <http://www.dbh.govt.nz/bc-no-consent>

⁵ <http://www.nelsoncitycouncil.co.nz/building-work-exempt-from-consent/>

5.2 Project information memorandum processing

Purpose

To examine how the Council produces and uses (voluntary) project information memoranda as part of its building control operations.

Background

Sections 31-39 of the Building Act 2004 cover applying for, producing, and issuing project information memoranda. These sections specify the minimum information that a project information memorandum must include. Information on special features of the land which are not apparent in the district plan must be included, as well as details of authorisations required by the Council under other Acts, stormwater and wastewater utility systems, and other information likely to be relevant to the proposed building work.

In 2010 the Building Act 2004 was amended to make project information memoranda voluntary.

Findings

An appropriate Council procedure manual included a process for receiving and issuing project information memoranda. The Council had a specific project information memoranda check-sheet which covers the required planning, building control, environmental health, and other regulatory functions within the Council.

Between 31.01.10 and 31.07.10, approximately 90 percent of building consents were issued with project information memoranda. This finding was surprising given project information memoranda became voluntary from February 2010. Most councils around the country have issued considerably fewer project information memoranda with their building consents. The Department expected Nelson City Council to mirror this national trend.

The Council's public information around the building consenting process did not specifically advise the public that project information memoranda had become voluntary. The Council's building consent application form did not explicitly clarify the voluntary nature of project information memoranda.

Although project information memoranda are no longer mandatory, the Department noted the Council had considered much of the site-specific information that is included in project information memoranda when it processed building consents. The Department supports this approach as it clearly demonstrated the Council had considered and documented these often important site-specific factors when making building control decisions. As noted above however, the Council may need to better communicate to building consent applicants that, while project information memoranda provide very useful information that can impact upon building work, they are technically no longer mandatory.

Some of the project information memoranda reviewed omitted some site-specific information (eg, wind zones, corrosion zones, and climate zones) held by the Council. This is potentially very useful information for applicants and the Department suggested it should be provided on project information memoranda issued.

The Department believes the Council’s public information should emphasise the following key points about project information memoranda:

- Project information memoranda are voluntary by law – people do not have to request them.
- For some building projects, project information memoranda add value and are well worth obtaining as they give consent applicants and councils greater assurance that the correct items are considered at the preliminary design stage which may later impact on the building.
- When granting building consents project information memoranda enable councils to make better, risk-based, site-specific decisions. The information they provide includes any special features of the land or building, whether the building is earthquake-prone, any corrosion risk, whether there has historically been any hazardous material on the land (eg, whether it was previously used as a landfill), wind and snow loadings that could impact on structural and bracing design, existing storm or waste water utility systems, whether the building requires an evacuation scheme, and other legislative requirements, etc.
- As an internal policy and as a matter of good practice, councils have generally decided to continue to collate and consider project information memoranda information when they process building consents.

Conclusion

The Council’s project information memoranda system could be strengthened, as recommended below.

Recommendation 2	
The Department recommended that the Council:	Response from the Council:
ensure all relevant site-specific information is included in any project information memoranda produced.	Council advised it has reviewed its project information memorandum process and information criteria.
check that all project information memoranda contain the source of the information specified and are clear to any non-technical lay readers about any requirements or measurements they specify and why these are important.	Council advised sources of information will be acknowledged in the project information memorandum.



<p>ensure its public information about project information memoranda is consistent and clearly explains their voluntary nature and the key value and benefits to building owners when considering project information memoranda information (see discussion above).</p>	<p>Council advised its procedure, Form 2 (project information memoranda /building consent application form) and public website information had been amended accordingly in March 2011. ⁶</p> <p>Council advised its Form 2 (building consent application) allowed for building consent only, or building consent and project information memorandum. Furthermore, the building consent application form is as per Form 2 of the Building (Forms) Regulations 2004.</p>
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⁶ <http://www.nelsoncitycouncil.co.nz/pim-s-what-are-they/>

5.3 Considerations on alterations, change the use, and subdivisions

Purpose

To assess the procedures the Council uses for proposed alterations to an existing building which requires a building consent, or a proposed change of use for a building which may or may not require building consent, or a proposed subdivision of a building.

Background

The following parts of the Building Act 2004 were considered in relation to these terms of reference.

Alterations

Section 112(2) of the Building Act 2004 permits a territorial authority to allow the alteration of an existing building without complying with the provisions of the Building Code (as specified by the territorial authority) if it is satisfied that:

- (a) *If the building were required to comply... then the alteration would not take place; and*
- (b) *The alteration will result in improvements to:*
 - (i) *means of escape from fire; or*
 - (ii) *access and facilities for people with disabilities; and*
- (c) *The improvements referred to in paragraph (b) outweigh any detriment that is likely to arise as a result of the building not complying with the relevant provisions of the Building Code.*

Change of use

The Building Act 2004 and the Building (Specified Systems, Change the Use, and Earthquake-Prone Buildings) Regulations 2005 set specific objectives that need to be considered for certain building projects. Under sections 114 and 115, a 'change of use' means to change the use of all or part of a building from one use (the old use) to another (the new use), with the result that the compliance requirements of the new use are additional to, or more onerous than, the requirements for compliance in relation to the old use.

Subdivisions

Section 116A of the Building Act 2004 sets the Building Code compliance requirements for subdivisions of buildings, which is as follows.

A territorial authority must not issue a certificate under section 224(f) of the Resource Management Act 1991 for the purpose of giving effect to a subdivision affecting a building or part of a building unless satisfied, on reasonable grounds, that the building—

- (a) *will comply, as nearly as is reasonably practicable, with every provision of the building code that relates to 1 or more of the following matters:*
 - (i) *means of escape from fire:*
 - (ii) *access and facilities for persons with disabilities (if this is a requirement under section 118):*
 - (iii) *protection of other property; and*

- (b) *will continue to comply with the other provisions of the building code to at least the same extent as it did before the application for a subdivision was made.*

Findings

Alterations

The Council was aware of the requirements of section 112 and its Procedures Manual outlined a procedure for dealing with such building consent applications when they were received (as part of the section on granting building consent applications). Although section 112(2) is specifically a territorial authority function, the Council had elected to include the section 112(2) assessment under its procedure TM-15 (granting building consent applications) which is primarily a building consent authority function.

No Council records were provided which related to the territorial authority function under section 112(2). In order to gain an impression of its decision-making, albeit being a building consent authority function and strictly outside the scope of this technical review, the Department considered and assessed building consent applications in regard to section 112(1).

The Council's processing check-sheet (BAM 122) specifically referred to section 112 for alterations and the Department noted examples of this being used.

From the examples of alterations the Department examined there was potential to strengthen the Council's recording of the reasons for its decisions, although the Department noted the decisions themselves were technically sound.

The Council had published information for the public around alterations, which was technically sound.

Change of use

The Council advised, while it undertook little work in this area, it was aware of the requirements of sections 114 and 115 of the Building Act 2004. The Council's manual clearly outlined a procedure for dealing with a notification of change of use and/or building consent applications if they were received (as part of the section on granting building consent applications).

An error was noted in the Council's training manual under procedure TM-14, version 2, dated January 2011 – under 'Background', the sixth bullet point relating to section 116(1) mentioned 'change the use' when it should read 'extend the life'.

The Council's consent processing check-sheet (BAM 122 refers) also made provision for reviewing a change of use.

The Council provided public information covering changes of use on its website and in hard copy form. The Department noted one error in its change of use handout. This incorrectly referred to an example of a change of use in relation to 'adding bedrooms, bathrooms and kitchens in garages and basements'. This is an 'alteration' under the Building Act 2004 and not a 'change of use'. An example of the latter would be converting a house into a childcare centre.

Upon reviewing a case study that involved a change of use, the Department found the reasons for the Council’s decision-making about what was ‘as nearly as is reasonably practicable’ were not adequately recorded. It was suggested the Council record such matters as:

- what should be in the building to satisfy section 115(a) and (b)
- what is currently in the building
- what is proposed to bring this building toward the standard required by the first bullet point
- what is the expected useful life of the building
- how often do people visit the building
- how many people spend time in or in the vicinity of the building
- what are the reasonable practicalities of any proposed upgrades to the building
- what are the upgrade costs in relation to the project value (where a building consent is required)
- what are the benefits versus sacrifices?

Subdivisions

The Council was aware of the requirements of section 116A and its procedures manual outlined a procedure for dealing with subdivision applications if they were received.⁷

The Council advised it had not received any applications which included existing buildings affected by subdivisions.

Conclusion

On the evidence provided, the Department considered the Council’s systems around the alterations, change of use, and subdivision provisions of the Building Act 2004 to be generally adequate, but could be improved by actioning the recommendations below.

Recommendation 3	
The Department recommended that the Council:	Response from the Council:
ensure the reasons for Council’s decisions around alterations and change of use are adequately recorded on the file.	Council advised the internal assessment process had been reviewed and reasons for decisions will be better recorded.
amend Council’s public information regarding changes of use to ensure it provides a correct example of a change of use.	Council advised the brochure had been updated and older versions have been removed from the Council’s website.

⁷ Nelson City Council’s building consent authority Training Manual (internal document only) – *TM-14 (Change of use, extension of specified intended life, or subdivision)*.

amend procedure TM-14, version 2, dated January 2011 – under ‘Background’, the sixth bullet point relating to section 116(1) mentions ‘change the use’ when it should read ‘extend the life’.	Council advised it had found this error themselves and amended their procedure accordingly in March 2011 as identified in its Continuous Improvement Register.
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5.4 Building consents subject to waivers and modifications of the Building Code

Purpose

To examine how the Council considers building consent applications subject to waivers and modifications of the Building Code.

Background

Under sections 67-70 of the Building Act 2004, a building consent authority that is a territorial authority may grant a building consent application subject to a waiver or modification of the Building Code. A waiver or modification may be subject to any conditions the territorial authority considers appropriate. A territorial authority must notify the Chief Executive of the Department of Building and Housing (the Department) if it grants a waiver or modification. A territorial authority cannot grant a waiver or modification to the Building Code which relates to access and facilities for people with disabilities.

Findings

The Council had a documented policy for considering and granting waivers and modifications, which was broadly based on the Department's guidance document *Building Consent Authority Development Guide*.⁸ The Council's building consent application form complied with the requirements covering waivers and modifications as prescribed by Form 2 in the Buildings (Forms) Regulations 2004.

The Council has historically infrequently used the waiver provisions in the Building Act 2004, but had used its powers to modify the Building Code for specific building projects more frequently.

Two waivers had been granted in recent times. These related to the access and fire safety provisions of the Building Code. In both cases the decision to waive compliance with the Building Code was technically sound. The Department believed the Council's recording of its decision-making (and reasons for granting the waivers) needed to be more comprehensive. For example, in one case study the Department found the notification to the Department, under section 68 of the Building Act 2004, stated that the Council had granted both a waiver and a modification for the same project. This is an administrative error as all of the documentation points to it being a waiver of clause D1.3.3(j) of the Building Code. This lack of attention to detail was also observed in the Council's records regarding a waiver of the fire safety provisions of the Building Code.

The Council provided examples of 10 recent modifications it had allowed regarding clause B2.3.1 (Durability) of the Building Code. Of the three examples the Department considered in further detail, the technical decisions were appropriate but the reasons for such decisions were not always clearly documented.

⁸ Nelson City Council's BCA Training Manual (internal document only) – TM-22 (*Waivers and modifications*).

The Council did not make the Department aware of any waivers or modifications that were issued in relation to natural hazards.

Conclusion

The Council had an adequate system for handling waivers and modifications, but needed to strengthen how it records the technical basis and reasons underpinning its decisions to grant waivers and modifications. Its administrative attention to detail could be improved.

Recommendation 4	
The Department recommended that the Council:	Response from the Council:
<p>ensure it better records the technical reasons for granting waivers and modifications. To assist with this it should adopt the Department's Notification of Waiver or Modification Form⁹ to ensure the details of waivers or modifications sought are clearly documented and notified to the Department.</p>	<p>Council advised it would implement this form in its suite of processing check-sheets and improve its records for decisions and reasons to grant a modification or waiver.</p> <p>It also recommended to the Department that an address and/or building consent number for reference purposes only may be beneficial to the Department and territorial authority.</p>

⁹ To download the Department's waiver and modification notification form refer to the following link: <http://www.dbh.govt.nz/building-code-waiver> .

5.5 Enforcing building warrants of fitness and amending compliance schedules

Purpose

To assess the Council's performance in administering their building warrant of fitness system, including the enforcement of this system, and its process for amending compliance schedules, which are not captured by the building consent process.

Background

Sections 100-111 of the Building Act 2004 sets out the responsibilities for owners of buildings that have or are required to have a compliance schedule. These sections also specify the responsibilities of building consent authorities and territorial authorities under the compliance schedule and building warrant of fitness systems. All buildings (except detached single household units that do not have a cable car) containing specified systems, such as fire alarms and lifts, require these systems to be listed on a compliance schedule. The owner must ensure continued effective operation of those specified systems and confirm ongoing inspection and maintenance by publicly displaying a current building warrant of fitness in their building and provide a copy to the territorial authority.

Findings

In 2010, the Council recruited a dedicated staff member to undertake its regulatory functions relating to compliance schedules and building warrants of fitness. Some of the findings in our review were based on the Council's activities before this staff member was recruited. Therefore, the Department acknowledges the Council may have rectified some of the issues noted in these earlier case studies. The Council should also consider knowledge and skill retention issues in case this staff member was ever to move on.

Compliance schedule statements

The Council's internal procedure manual did not have a process covering compliance schedule statements. Section 104A of the Building Act 2004 requires territorial authorities to provide building owners with a compliance schedule statement. This requirement was inserted by the Building Amendment Act 2008.¹⁰

A compliance schedule statement for a new building's compliance schedule incorrectly included systems which were not specified systems as currently defined in the Building Act 2004 and Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005. Examples of items which are not specified systems are safety barriers, access and facilities for people with disabilities (excluding audio loops) and fire hose reels.

¹⁰ The Council's processes around compliance schedules and building warrants of fitness are based on the Department's *BCA Development Guide*. This Guide was published before the Building Amendment Act 2008 and so does not cover compliance schedule statements.

Amending compliance schedules

The Council's manual included a technically sound process for amending existing compliance schedules.¹¹

The Council's website also contained public information around amending compliance schedules.

The Department examined several examples of recently amended compliance schedules and found that the Council was adequately following its processes. Some of the compliance schedules were initially issued under the Building Act 1991. Those that related to the building consenting process were being amended to align with the specified systems under the Building Act 2004. Conversely, the Department noted examples of:

- compliance schedules that did not include all specified systems that were actually present in the buildings concerned (eg, a fire alarm system, roof vent providing mechanical smoke control)
- specified systems being included on the compliance schedule when they were not actually present at the time of the review (eg, exit signs above automatic doors).

The review found, and the Department supports, the Council providing site-specific information about the specified systems on its amended compliance schedules and often included plans indicating the location of the specified systems.

Although issuing new (or amended) compliance schedules as a result of a building consent application is a building consent authority function and outside the broad scope of this review, the Department also noted that site-specific information was being included on the compliance schedules observed. Again, the Department supports this approach.

Although there is no prescribed form for a compliance schedule, the Council issued a number of amended compliance schedules in which many of the fields on the document were not being completed (eg, various owner contact details).

Building warrants of fitness

The Council had a documented policy and procedure for building warrant of fitness.¹² This was based on the Department's *Building Consent Authority Development Guide* and was technically sound.

The Council had developed a database for tracking annual building warrants of fitness, which included a flag to send reminder letters to owners (or their agents) one month prior to the expiry date.

The Department found the Council was endeavouring to be proactive and encouraged consistency by providing standard forms for building warrants of fitness and Form 12As. The Department found one example of a building warrant of fitness on the Council's files which

¹¹ Nelson City Council's BCA Training Manual (internal document only) – *TM-49 (Amending a compliance schedule and flowchart)*.

¹² Nelson City Council's BCA Training Manual (internal document only) – *TM-39 (Building warrant of fitness) and 40 (Building warrant of fitness: audits and inspections)*.

was printed on Council letterhead. A building warrant of fitness is a declaration by a building owner, or their agent on behalf of the owner, that all the specified systems have been inspected, maintained, and reported in accordance with the compliance schedule for the previous 12 months. Therefore, it was not appropriate to have the Council's letterhead on these forms (even if the Council created a standardised form to encourage consistency). These forms are not completed by the Council and this practice could potentially confuse building owners who may think the Council is responsible for issuing the building warrants of fitness.

The Department also found some building warrants of fitness which had been submitted to the Council failed to provide all of the information required by prescribed Form 12 of the Building (Forms) Regulations 2004.

The Council's standard form included a section on information about the specified systems on the compliance schedule. While this is not a requirement of prescribed Form 12 of the Building (Forms) Regulations 2004, the Department supports the Council doing this. This practice will provide useful information to other parties (eg, independent qualified persons or the New Zealand Fire Service) who inspect the building.

The Department found an example of a building having two versions of its building warrant of fitness – one issued by the independent qualified person and the other issued by the owner on Council letterhead.

The Department found two examples of the Council having been provided with documents called 'Interim building warrants of fitness' by one independent qualified person. These were provided to certify that the independent qualified persons had fulfilled the designated procedures under the compliance schedule, but acknowledged that proof of the building owner's inspections had not yet been obtained. Therefore, a full building warrant of fitness could not be issued. The Department noted that 'interim building warrants of fitness' have no legal status under the Building Act 2004. While not prohibited by the Building Act 2004, the Department considers there is the potential for uncertainty and confusion to arise. Such documents should be presented as mere notifications to the Council, rather than as something that could be confused with a prescribed form.

A further area that needed improvement was to ensure alignment of the 12 month period between the compliance schedule anniversaries and the Form 12As. A Form 12A is required to cover the 12 month period between the anniversary dates of the issued compliance schedule. However, in several cases it was found that Form 12As were not being issued for the full 12 month period. The Department also found some Form 12As were being issued after their related building warrants of fitness had been issued. Technically, this should not happen. Form 12As need to be issued before the building warrant of fitness can be supplied. Form 12As need to be attached to it, because their fundamental purpose is to provide assurance and certification in order for the building warrants of fitness to be supplied.

The Department found Form 12As were sometimes being provided for some systems and features that are not specified systems (eg, access and facilities for people with disabilities (excluding audio loops), means of escape from fire). The Department notes such passive systems do not come within the current definition of a specified system under the Building Act

2004 and Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005.

It was suggested the Council formally advise building owners (and independent qualified persons) that these passive systems are no longer required to be on the compliance schedule and can be removed by the owner (or owner's agent) lodging a completed Form 11¹³ with the Council. Doing this would reduce owners' compliance costs as these passive systems would no longer be inspected and maintained by independent qualified persons.

The Building Act 2004 requires building owners to supply building warrants of fitness by the anniversary of the compliance schedule. In one example, the Department noted that while the building warrant of fitness was signed on the anniversary, it was not actually received by the Council until 45 days later. While it is the owner's obligation to supply the building warrants of fitness on time, there could still be a risk to the Council from such delays. If the specified system failed in this period and caused harm to life or property the Council could be criticised for not tracking overdue building warrants of fitness.

Compliance schedule audits

The Department supports the Council undertaking audits where building consent applications involve buildings with compliance schedules, or when it has received an application to amend a compliance schedule. This process started in August 2010 with 70 audits being undertaken in that month.

The Council had a check-sheet to assist with its audits. The Department found this to be thorough and decision-making was well documented. The Council's form specifically noted any sub-categories within each of the 16 categories of specified systems (eg, specified system 15 contains five sub-categories as per the Department's guidance document *Compliance Schedule Handbook*¹⁴).

The Department would support the Council expanding its auditing activity to proactively look at all existing compliance schedules, particularly those originating under the Building Act 1991. This would help ensure compliance schedules only included those systems that meet the current definition of a specified system and accurately reflected all those installed specified systems in the building. This would also enable the Council to notify building owners that certain systems are not specified systems and therefore do not need to be checked by independent qualified persons. This would reduce compliance costs for the building owner and eventually mean less work for the Council. It would also be a good customer service initiative on the Council's part.

The Department suggests priority is given to high risk buildings (eg, hospitals, hotels and motels, cinemas and buildings of public assembly) and previously un-audited compliance schedules. The next priority would be to re-audit those compliance schedules where the longest time had elapsed since the previous audit. A simple audit and inspections spreadsheet would be a useful tool to assist with this.

¹³ Application for amendment to compliance schedule

¹⁴ This guidance document is freely available on-line at:

<http://www.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/compliance-schedule-handbook.pdf>

Conclusion

The Council had reasonably sound systems underpinning its building warrant of fitness and compliance schedule systems. However, there was scope for some improvement as recommended below.

Recommendation 5	
The Department recommended that the Council:	Response from the Council:
develop written procedures for issuing compliance schedule statements.	Council advised it had drafted a procedure for issuing compliance schedule statements. The statement will be issued in the format as per Form 10 of the Building (Forms) Regulations 2004.
ensure new compliance schedule statements only include systems that are defined as a specified system in the Building Act 2004 and Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005.	Council advised it would ensure all new compliance schedule statements include only specified systems as defined under Schedule 1 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005.
ensure all compliance schedules accurately reflect the specified systems in the buildings.	Council advised it believed the majority of compliance schedules reflect the correct specified systems in the building. Older compliance schedules may be incorrect and will be amended accordingly via audits and/or building warrant of fitness renewals.
ensure building warrants of fitness and independent qualified persons' Form 12As the Council receives: <ul style="list-style-type: none"> - do not include Council letterhead on them - contain all the information required by prescribed Forms 12 and 12A of the Building (Forms) Regulations 2004. 	Council advised letterheads had only been used over a five to six month period. Letterhead has been removed.
advise independent qualified persons wanting to provide the information contained in their 'interim building warrants of fitness' to do so as a notification only so as to avoid potential confusion with a building warrant of fitness.	Council will advise independent qualified persons to provide information as a notification only in the interim (prior to building warrant of fitness renewal).

<p>remind independent qualified persons that Form 12As must cover the period between compliance schedule anniversaries (i.e. issued on the anniversary date, or before if all the procedures have been completed).</p>	<p>Council advised a reminder will be sent to all independent qualified persons on the South Island independent qualified persons register.</p> <p>Operationally, some 12As are late (i.e. after the building warrant of fitness anniversary date) due to time delays, for example in relation to remedial/maintenance work to a specified system. Hence, inspection and reporting is usually verified and compliant, however, maintenance or remedial work may be required at the 11 or 12 month of the renewal date (creating a timing issue). Another example is if building work is in progress and requires the decommissioning of a specified system during construction.</p>
<p>remind building owners (or their agents) not to issue building warrants of fitness before all applicable Form 12As certifying compliance have been issued collectively.</p>	<p>Council advised a reminder will be sent to all independent qualified persons on the South Island independent qualified persons Register. This is often an issue of timing and co-ordination between the independent qualified persons and the building owner. Particularly where multiple independent qualified persons are involved.</p>
<p>expand its current compliance schedule auditing activity to proactively look at all existing compliance schedules (particularly those originating under the Building Act 1991) to check they only include systems that meet the current definition of a specified system under the Building Act 2004 and Regulations made under this Act.</p>	<p>Council advised that since the Department's visit it had expanded its compliance schedule auditing activity to include random audits (five per cent) for the next financial year.</p> <p>A replacement building compliance officer has been recruited and started early July 2011. Skill retention has been strengthened by training commercial inspectors and processors and implementing a mentorship partnership with Tasman District Council's compliance officer.</p>

Note: For further education, it is suggested that a copy of the Department's guidance on building warrants of fitness and compliance schedules (November 2010) is sent by the Council to every independent qualified person in the district and to building owners when they submit their annual building warrant of fitness. It is also recommended that copies be provided to all relevant Council staff, to familiarise themselves with the legislative requirements. This guidance document is freely available on-line at: www.building.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/building-wof-guidance.pdf .

5.6 Issuing regulatory notices and certificates under the Building Act 2004

Purpose

To examine the Council's procedures for:

- issuing and enforcing notices to fix
- issuing certificates for public use and to ensure that the buildings the certificates relate to are safe for the public to use
- issuing certificates of acceptance and the steps it takes to decide whether it has reasonable grounds to believe building work complies with the Building Code
- issuing infringement notices and any follow-up action.

Background

The following parts of the Building Act 2004 were considered in relation to this term of reference.

Notice to fix

A notice to fix is a statutory notice requiring a person to remedy a breach of the Building Act 2004 or Regulations made under the Building Act 2004. It is similar to a notice to rectify under the previous Building Act of 1991, but can also be issued for all breaches of the Building Act 2004 (not just for building work). Some important points about notices to fix are noted below.

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

Certificate for public use

Under section 363 of the Building Act 2004 a person who owns, occupies, or controls premises which are intended to be open to, or are being used by the public, must not use or permit the use of any part of the premises that is affected by building work, if:

- a building consent is required, but has not been granted for the work, or

- no code compliance certificate has been issued and no certificate for public use has been granted, or
- the conditions on a certificate for public use have not been complied with.

If the building owner wishes to allow members of the public to use the building, where a building consent has been granted, the building owner may apply for a certificate for public use under section 363A of the Building Act 2004.

Certificate of acceptance

A certificate of acceptance can be used in situations where work has been done without a building consent, or where a building consent authority cannot issue a code compliance certificate. A certificate of acceptance provides verification for a building owner that part of, or all of, the completed building work carried out without a building consent complies with the Building Code, in so far as the Council could ascertain depending on what parts of the building work could or could not be checked.

An owner may apply for a certificate of acceptance when any of the following situations occur.

- An owner (or predecessor in title) carried out building work for which a building consent was required but was not obtained (under either the 1991 or 2004 Building Acts).
- A building consent authority that is not a territorial or regional authority is unable to, or refuses to issue a code compliance certificate in respect of building work for which it granted a building consent.
- Building work carried out urgently (see section 42 of the Building Act 2004).

The issuing of a certificate of acceptance does not relieve a person from the requirement to obtain a building consent for their building work. The territorial authority still has the ability to issue a notice to fix and to prosecute if building work has been carried out without a building consent.

Infringement notice

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

The infringement offences and fees are set under Schedule 1 of the Building (Infringement Offences, Fees, and Forms) Regulations 2007 and Schedule 2 deals with the prescribed infringement notice.

Findings

Notice to fix

The Council had technically sound documented policy and procedures around issuing notices to fix.¹⁵ This was based on the Department's *Building Consent Authority Development Guide*.

¹⁵ Nelson City Council's BCA Training Manual (internal document only) – *TM-29 Notices to fix and flow charts (v 1.0 April 2009)*.

The Council had developed a database for tracking notices to fix it had issued. This equipped it with the ability to send out reminder letters to building owners. The Council advised its standard practice, in the first instance, is to seek voluntary compliance before issuing notices to fix. If non-compliance continues it advised it would usually then consider issuing a notice to fix. However, the Department found one example of the Council issuing a notice to fix where arguably it would have benefited from closer discussions with the building owner before issuing the notice.

The Department found the Council was identifying non-compliance in the course of its day-to-day building control activities and was usually appropriately issuing notices to fix. However, the Department also found examples where there was room for improvement. For example, in one case a notice to fix required the building owner to ensure that a fire alarm system continued to meet the performance standards, despite the fact that the compliance schedule did not contain any performance standards for that system.

If a notice to fix is not acted upon, the Council would assess the risk of the non-compliance. If the non-compliance was minor, one option it considered was to issue a further notice to fix or to follow-up with the building owner directly. If there was a life safety risk the Council would pursue other enforcement options. The Department notes that the Building Act's infringement notice system would provide a sound tool for further enforcement action if this was needed. The Council was reforming its internal processes to cover such situations. Council advised at the time of the review visit that it was working on incorporating the use of infringement notices into its notice to fix process, and this would occur by July 2011.

The Council had entered into a memorandum of understanding with an external provider to issue notices to fix for illegal building work.

From a technical point of view, the notices to fix the Department reviewed referred to the correct sections of legislation. The Council's notice to fix form complied with the requirements of Form 13 of the Building (Forms) Regulations 2004. While the Department found some issued notices that did not always cover all of the information fields on the notice, these did not pose a major concern.

The Council had also developed information for the public which covers notices to fix.

Certificate for public use

The Council had documented policy and procedures around issuing certificates for public use.¹⁶ This documentation was technically sound and the Council's procedures ensure only appropriately qualified and experienced staff could issue certificates for public use (the building control manager, team leader (inspections), senior building consents officer, and the senior building inspector).

The applications for certificates for public use and the issued certificates for public use were consistent with the prescribed Forms 15 and 16 of the Building (Forms) Regulations 2004. One minor issue the Department noted was the certificate for public use application form did

¹⁶ Nelson City Council's BCA Training Manual (internal document only) – *TM-48 Certificates for public use (v 1.0 April 2009)*.

not reference the attachments noted in prescribed Form 15. Intuitively, however, this information was being included with the applications the Department considered.

The Department noted that Council was issuing certificates of public use for the right type of situation (eg, a shop wanting to operate without a code compliance certificate). It was also appropriately placing conditions upon the certificates (eg, expiry dates and public display of the certificates). The Council was also proactively tracking certificates of public use it had issued. If appropriate it would extend the life of the certificate upon request.

The Department found that Council was receiving appropriate verification that critical life safety specified systems are appropriately certified and functioning properly, before issuing certificates for public use.

Certificate of acceptance

The Council had a documented policy and procedure for issuing certificates of acceptance.¹⁷ This material was technically sound and based upon the Department's *Building Consent Authority Development Guide*.

Several external contractors were engaged to undertake inspections of the building work which was the subject of a certificate of acceptance application. These people prepared the necessary reports to justify issuing the certificate of acceptance. Minimal input from Council inspection staff was being provided, however, the Department was advised the Council would be playing a greater role in this area in future.

Certificates of acceptance can only be issued by the Council's building control manager or team leader. The Council's processing team leader provided peer review for all certificates issued. This ensured technically competent people were involved in issuing certificates of acceptance.

The Council's standard forms for applying for a certificate of acceptance and its certificate of acceptance standard form were largely consistent with the prescribed Forms 8 and 9 of the Building (Forms) Regulations 2004. There were two omissions on Council's application form from the requirements of prescribed Form 8.

- Under the 'Agent' field, the first point of contact for communications with the Council.
- Under the 'Building work' field, the date the building work had been carried out.

The Department also noted some certificates of acceptance the Council had issued were only partially completed. Examples of missing information included:

- full contact details for the owners/agent
- location of the building within the site/block number
- building name
- level/unit number.

¹⁷ Nelson City Council's BCA Training Manual (internal document only) – *TM-42 Certificate of acceptance (territorial authority)* (v 1.0 April 2009).

The applications for certificates of acceptance the Department considered were sound and contained the necessary information the Council needed in order to accept the application.

Upon reviewing a sample of the Council's certificates of acceptance, the Department found it was appropriately specifying what building work was covered by the certificate and what work was excluded. The Department, however, did note an inconsistency in the Council's documentation. The certificate of acceptance stated the Council had not undertaken any on-site inspections. In contrast, the external provider's report on the unauthorised building work, correspondence from the builder, and an internal Council file note stated a Council inspector had been on site.

The Department noted one example where the 20 day timeframe for processing a certificate of acceptance had been significantly exceeded.

Infringement notices

The Council has formally decided to adopt a system of issuing infringement notices under the Building Act 2004 as one of its enforcement tools. At the time of the review visit the Council was still implementing its decision. The building control manager was finalising policy and procedures to incorporate infringement notices into the Council's notice to fix procedures.¹⁸ The Department noted this would need to include updating warrants for enforcement staff. It had been communicating these developments to the wider public to prepare for the implementation of the infringement notice regime. The new system is expected to be operational by July 2011.

The Department was advised the Council was proposing to take a risk-based approach to its enforcement activity. If the issue of concern had life safety implications the Council would issue one notice to fix. If this was not complied with, an infringement notice would be issued. For situations without life safety implications, the Council may issue several notices to fix before serving an infringement notice, depending on the nature and seriousness of any breach of the building legislation. If necessary, the Council would prosecute building owners if this was appropriate. For example, in 2010 one building owner received a substantial fine after being prosecuted for an illegal building occupation.

The Council's draft infringement policy was largely based on the Department's guidance document published in June 2008.¹⁹

Conclusion

The Council has appropriate systems for issuing notices to fix, certificates for public use and certificates of acceptance, which were being used effectively. However, there are some improvements that can be made to strengthen these systems and the Department noted that Council was in the process of implementing an infringement notice regime.

¹⁸ Nelson City Council's BCA Training Manual (internal document only) – *TM-51 Infringement Notices*.

¹⁹ <http://www.dbh.govt.nz/UserFiles/File/Publications/Building/BCA/building-infringement-guidelines.pdf>

Recommendation 6	
The Department recommended that the Council:	Response from the Council:
<p>ensure it fully completes all sections of any notice to fix it issues and includes all of the required information.</p>	<p>In regards to the notice to fix case study the decision was at Council's discretion to achieve a formalised outcome, record and specify a date for compliance.</p> <p>The compliance schedule was issued in 1994 and like many early compliance schedules requires amendment to include performance standards via audits and/or building warrant of fitness renewals and/or a building consent application.</p> <p>A monitored fire alarm is considered specified system 2 (automatic or manual emergency warning system) under Schedule 1 of the Building (Specified Systems, Change the Use, and Earthquake-prone Buildings) Regulations 2005. It will be perceived by building users to be operational and provide early warning for user safety.</p> <p>The Council advised in regards to notice to fix NF0057 that the compliance date for remedial action to occur was specified as 'to take place prior' to 01.02.09.</p>
<p>ensure the grounds for issuing a notice to fix are sufficient</p>	<p>The Council advised it will expand its description of non-compliance on the notice to fix.</p>
<p>ensure its forms for applying for certificates of acceptance (and the standard certificates that the Council actually issues) satisfy all of the requirements of the prescribed Forms 8 and 9 of the Building (Forms) Regulations 2004.</p>	<p>Council advised that only the building manager or team leader is able to issue certificates of acceptance. Contractors may review certificates of acceptance and/or provide assessment reports.</p> <p>Council has addressed the two omissions specified and updated its internal forms.</p>
<p>ensure it only accepts complete applications for certificates of acceptance for processing that contain all of the supporting information the Council needs.</p>	<p>The Council advised that the certificate of acceptance case study involved re-cladding work and was initiated as emergency work under section 41 of the Building Act 2004 (cladding requiring immediate repair). A Council inspector had been requested on</p>

	<p>site (20.04.09) by the owner to discuss remedial work with their consultant, who subsequently inspected, reviewed and prepared a certificate of acceptance report (dated 30.05.09) for Council via a certificate of acceptance application. The Council advised on the process forward and did not carry out formal inspections. This was prior to the certificate of acceptance application and assessment.</p> <p>The certificate of acceptance was received 04.08.09 and issued 30.07.10. The Council inspector did not issue a notice to fix as it was emergency work in which the owner applied for a certificate of acceptance under section 42 provisions. In addition to the certificate of acceptance an application for building consent was applied for and granted on 28.10.10 to re-clad the rest of the house due to ongoing cladding issues.</p> <p>Council advised it will ensure all fields of the certificate of acceptance application and certificate are completed.</p>
<p>consider ways of ensuring the 20 day timeframe for processing certificates of acceptance are complied with.</p>	<p>Council advised its reporting systems for certificate of acceptance applications are being reviewed to monitor statutory timeframes.</p>



5.7 Functions in relation to dangerous, earthquake-prone or insanitary buildings

Purpose

To examine the Council's procedures in relation to exercising their powers under section 124 of the Building Act 2004.

Background

Section 124 of the Building Act 2004 provides powers to territorial authorities in respect of dangerous, earthquake-prone or insanitary buildings.

Findings

Dangerous and insanitary buildings

The Council had clearly documented policies and internal procedures for managing dangerous and insanitary building notifications.²⁰ The policies were available on the Council's website.²¹ These policies were technically sound, and based on the Department's *Building Consent Authority Development Guide*.

Council advised it had not issued any dangerous and insanitary building notices during the last two or three years. The Department could not therefore gauge how the Council was implementing its procedures.

Earthquake-prone buildings

Nelson is in a zone of moderately high seismicity and has a range of building types and ages, reflecting steady development over the last century. These include unreinforced masonry buildings to modern multi-storey steel and concrete structures.

The Council advised that historically it had pursued the strengthening of un-reinforced masonry buildings under the Local Government Act 1974 and the Building Act 1991.

The Council had a documented policy and internal procedures for managing earthquake-prone buildings.²² The policy was available on the Council's website.²³ The policy was largely consistent with the Department's guidance to councils on developing earthquake-prone building policies. The policy was due to be reviewed in 2011 (as required by the Building Act 2004).

The Council advised it was in the process of changing its approach to more proactively identify and manage earthquake-prone buildings, rather than dealing with such buildings through the building consent process. In recent times, the Council had contracted a dedicated

²⁰ Refer to *Earthquake-prone, dangerous and insanitary buildings policy (2006)* and the Council's BCA Training Manual (internal document only) – *TM-46 (Insanitary buildings)* and *TM-47 (Dangerous buildings)*.

²¹ <http://www.nelsoncitycouncil.co.nz/assets/Our-council/Downloads/earthquake-prone-building-policy-may06.pdf>

²² Refer to *Earthquake-prone, dangerous and insanitary buildings policy (2006)* and the Council's BCA Training Manual (internal document only) – *TM-44 Earthquake-prone buildings*.

²³ <http://www.nelsoncitycouncil.co.nz/assets/Our-council/Downloads/earthquake-prone-building-policy-may06.pdf>

structural engineer to administer its earthquake-prone buildings policy, provide technical advice, and to maintain its register. The Department found that the engineer had helped to ensure the Council had a structured and well organised approach to managing earthquake-prone buildings within its jurisdiction. This included producing and mailing a periodic newsletter to provide information to building owners and engineers.

The Department supported this proactive approach; however, it is important that other Council staff become familiar with this part of its regulatory activities in case the structural engineer is unavailable or moves on.

The Council had developed a register to track its earthquake-prone building activity. Some of the key findings the Department noted when considering the register are shown in the table below.

Status of building stock (a snapshot of earthquake-prone building stock as at September 2010)	
Number of entries in earthquake-prone building register (desktop assessment only)	240 existing entries (which continues to be added to).
Initial evaluation process status	Six buildings and 11 bridges had been labelled potentially earthquake-prone after being evaluated. Some of these buildings were being further assessed in greater detail.
Legacy issues from the Building Act 1991	42 buildings were recorded as having had historic strengthening work undertaken under the Building Act 1991. The Council had since established that 17 of these buildings were 'false alarms' (i.e. records for the buildings were not up to date and did not reflect the true structural risk they posed). 14 buildings had been upgraded to meet the full requirements of the relevant structural requirements of the time (prior to the Building Act 1991). ²⁴ 11 buildings were given 'interim securing' to two-thirds of these structural requirements.

The Council had also developed sound guidance to assist the public.²⁵

The Department's review of the Council's earthquake-prone building system had highlighted some specific issues that needed to be worked on. Once buildings have been identified as potentially earthquake-prone through the initial evaluation process, the Council needed to formalise what follow-up activity it undertook and ensure consistency in its approach.

If the initial evaluation process clearly established the building was earthquake-prone then the Council would consider whether to issue a section 124 notice to the building owner to confirm that the building was earthquake-prone. This notice needed to clearly state what remedial building work was to be carried out and a timeframe for it. If the results of the initial evaluation process were not clear then the Council should direct the building owner to commission a

²⁴ Such buildings complied with Chapter 8 of Model Building Bylaws (NZS 1900:1985).

²⁵ <http://www.nelsoncitycouncil.co.nz/assets/Our-council/Downloads/earthquake-prone-building-policy-user-guide-2010.pdf>

more detailed analysis of the building. Depending on the outcome of this further analysis, the Council needed to consider whether to issue a section 124 notice to the building owner.

In one case study the Council did not use the Building Act's provisions around issuing a section 124 notice. Instead of requiring a detailed analysis after the initial evaluation process (as per the Council's policy) it placed, with the owner's approval, a condition on a building consent it issued, which required the owner to enter into a formal agreement to strengthen the building within a stipulated timeframe. Such a condition is not provided for under the Building Act 2004.²⁶ Essentially the building consent condition was acknowledgement that Council considered the building to be earthquake-prone. In this case, the Department believed it would have been more appropriate to have issued a section 124 notice.

For the 12 month period ending 30.06.10, which the Department looked at during the review, the Council did not issue any section 124 notices. In light of the case study mentioned above we suggest that the Council needs to further consider using the section 124 legislative tool.

Conclusion

The Department fully supports the work that has been undertaken in recent times to identify earthquake-prone buildings and ensure technical resources have been dedicated to this activity. The Department also considered the Council's system could be further enhanced by implementing more comprehensive follow-up action after its initial evaluations.

Recommendation 7	
The Department recommended that the Council:	Response from the Council:
strengthen the part of its procedures for managing earthquake-prone buildings after the initial assessment phase.	Council advised that dependent on the outcome of the initial evaluation process report, a timeframe of 12-24 months to engage an engineer and prepare a detailed engineering assessment is specified and confirmed by letter to the building owner unless otherwise agreed. This is as per the Council's earthquake-prone building policy, procedures and public information. The initial evaluation process report in most cases only indicates whether the building is potentially earthquake-prone.
use the appropriate legislative tools when administering its earthquake-prone building policy (eg, issuing	Council advised that in the case study dealing with the earthquake-prone building it was not deemed earthquake-prone or

²⁶ The conditions that can be placed on building consents are specified in sections 67, 72, 75, 90, and 113 of the Building Act 2004.

<p>section 124 notices instead of using building consent conditions).</p>	<p>dangerous, so section 124 of the Building Act 2004 would not apply. Due to a building consent application a structural assessment was made and an initial evaluation process report provided. The initial evaluation process indicated the building was potentially earthquake-prone.</p> <p>The condition (now recorded as addendum) was correct to inform the owner as per its procedures and earthquake-prone building policy. A timeframe for structural upgrade was determined and agreed to by the owner to be completed by December 2013. This is as per the earthquake-prone building policy.</p>
<p>ensure awareness is raised among staff about its earthquake-prone building procedures to help ensure knowledge retention if the structural engineer is unavailable or leaves.</p>	<p>Council advised staff were aware of the procedures and who is responsible and competent to advise and review information and reports on earthquake-prone buildings.</p> <p>Both the manager and contract engineer respond to all public enquiries about earthquake-prone buildings.</p> <p>Both the land information memorandum and project information memorandum officers have been trained and have access to earthquake-prone building information, conditions and the Council's computer database.</p>



6. 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 with the additional comments.

- Prior to July 2009, the earthquake-prone building policy had not been implemented by Council.
- Prior to January 2010, compliance schedule and building warrant of fitness functions were contracted out of Council (20 hours/week) for administrative functions only.
- Council's building unit has endeavoured to employ/recruit suitably qualified/experienced staff to undertake the above functions, implement and improve processes and educate our customers and building owners.
- The Department's recommendations have assisted in identifying improvements and confirm good practice to date at Nelson City Council.
- As a means of continuous improvement, readability and to assist Councils' responses to the Department, it is recommended that numbered subheadings be provided to each paragraph of the Department's technical review reports.

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