

BUILDING ACT 2004 AND BUILDING AMENDMENT ACT 2005 POLICY STATEMENT

COMPLIANCE AND LEGISLATION

Policy Objectives

1. To promote a regulatory environment that allows for the design and construction of buildings in a manner that is time and cost-effective to building owners, occupiers and developers;
2. To ensure that buildings are designed and constructed to be used in a way that enhances the well-being of people who own them and use them;
3. To ensure that any regulatory agency with delegated powers pursuant to the Building Act 2004 (including any subsequent amendments), interpret and apply the provisions of the Act in a fair, reasonable and consistent manner.

Application

Property Council New Zealand will advocate for outcomes that are consistent with the objectives of this policy.

Rationale

The building, construction and property industry is one of the key drivers of economic growth in New Zealand. The industry is job-rich and the wealth created through building construction, ownership and occupancy enables local economies throughout New Zealand to grow and prosper.

The ability to design, construct and maintain new and existing buildings in New Zealand is significantly influenced by the provisions of the Building Act 2004 (and the amendment provisions set out in the Building Amendment Act 2005) (“the Act”). The purpose of the Act is set out in section 3 of that Act. It provides for “... *the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings ...*”

Property Council accepts that the Act is New Zealand’s fundamental document regulating building and construction. The Act codifies the rules and responsibilities pertaining to the design and construction of buildings (including the refurbishment (building works) of existing buildings).

Property Council supports the refinement of the Act to ensure that the Minister, the Chief Executive (Department of Building and Housing), and all territorial authorities and all Building Consent Authorities authorised to and exercising the powers of the Act do so in a timely manner to ensure the design and construction of cost effective buildings, but in a manner that minimises compliance costs and achieves sensible outcomes. Consistent with this refinement, the Act must reflect only those regulatory provisions that contribute to the efficient and cost-effective construction and refurbishment of buildings, and the well-being of people who own them and use them.

The economic viability of building and construction projects requires that applications for building consents, variation to building consents, and applications for Certificates of Public Use are handled in a fast and timely manner. Property Council places a premium on supporting a regulatory environment that enables building consent authorities to process applications in a timeframe that is compliant with the statutory deadline codified in the Act.

Policy Requirements

Building consent application times (forfeiture of levy by Building Consent Authority)

Any person or organisation applying for a building consent is liable to pay a levy pertaining to the estimated value of the building work to which the building consent relates. Section 48(1) of the Act requires that a Building Consent Authority must, within 20 working days after receiving an application for a building consent that complies (e.g. in the prescribed form and containing the information that the authority reasonably requires), –

- (a) grant the application; or
- (b) refuse the application.

Pursuant to section 48(2) to the Act, a Building Consent Authority may, within the 20 working days period, require further information in respect of the application (and if so, the period is suspended until it receives that information).

The Act should be amended to require that if a Building Consent Authority fails to comply with the requirement codified under section 48(1) to either grant or refuse the application; that authority should forfeit part of the levy pertaining to a building consent. Such an amendment would provide a disincentive for a Building Consent Authority to delay the processing of applications for any reason other than the requirement for further information.

The Act should permit a Building Consent Authority to grant an extension for a specified period of time for the purpose of processing of an application¹. If a large quantity of information pertaining to the application, or the requirement to consult with specified organisations such as the New Zealand Fire Service Commission, is likely to compromise the Building Consent Authority's operations, a Building Consent Authority should be able to, –

¹ The requirement for a specified period of time would provide the applicant with a greater degree of certainty as to the time it will take a Building Consent Authority to make a decision as to whether to grant or refuse the application.

- (a) specify a period of extension not exceeding more than 10 working days;
- (b) give the reasons for that extension;
- (c) confirm that the applicant has the right to complain to the Chief Executive of the Department of Building and Housing

The Act should be further amended to require that if a Building Consent Authority requires further information pursuant to section 48(2) of the Act, it shall forfeit part of the amount of the levy pertaining to a building consent if the information requested is unreasonable and not required by the authority in determining whether to grant or refuse the application. The suggested text for such a test is that the Building Consent Authority should be able to show that it acted on reasonable grounds and that the information required from the applicant was essential to ensure compliance with the Building Code for the works which the building consent application relates to.

Section 48(2) of the Act should also be amended to require that the provision for the Building Consent Authority to provide further information shall apply up to 10 working days after the date that the application was lodged. This requirement provides the applicant with the possibility that he or she may be able to source and provide the additional information requested so as to aid the authority in determining whether to grant or refuse the application. If the request for further information is not received within 10 working days after the date of lodgement then the authority should be deemed to have accepted the application and that the applicant can expect to receive a Building Consent within the statutory timeframe.

Nothing in section 48 or the amendments proposed by Property Council should prevent a Building Consent Authority and the applicant from agreeing to an alternative deadline. If agreement is reached to amend the statutory deadline, but the Building Consent Authority does not comply with the agreed revised deadline, then that Building Consent Authority should be liable to forfeit part of the levy pertaining to the building consent.

Information requirements (prescribed form)

Section 45 of the Act codifies how to apply for a building consent. The plans and specifications that must accompany a building consent application are codified pursuant to section 45 and required by regulations specified pursuant to section 402 of the Act.

While the Act prescribes the requirement to provide information, there is no consistency in terms of the type of detail of information required by different Building Consent Authorities. The lack of consistency is not in itself a failing of the Act. However a lack of consistency in terms of information requirements from one Building Consent Authority to the next is problematic and requires clarification.

It is suggested that standardised forms issued by regulation be adopted by building consent authorities throughout the country, or multiple forms that are based on the size or nature of the work². This would provide the development community of commercial and residential prospects with a greater level of certainty

² Property Council supports all Building Consent Authorities complying with the schedule of information required pertaining to a building consent application currently lodged (as at 8 March 2006) with the Auckland City Council.

and understanding in terms of the type and detail of information provided. The provision of useful and rigorous information by the applicant at the point of lodgement would enable the Building Consent Authority to reduce the time it takes to consider a building consent application pursuant to section 48 of the Act.

Building Consent variations

A building consent that has been issued sets a benchmark against which a building or building works is assessed for the purpose of ascertaining code compliance. If a variation to the approved building works is required, the process for obtaining a variation is consistent with the process for applying for the original building consent itself, no matter whether the variation is significant or not.

No statute or regulation codifies what constitutes a variation. The absence of a statutory trigger for requiring a variation is problematic because the process for applying for a variation, as with the building consent is both expensive and time-consuming and can affect the ability to obtain a Code Compliance Certificate.

Pursuant to section 7 of the Act, **Restricted Building Works** means building work that, –

- (i) requires a building consent; and
- (ii) relates to an element of the building that is critical to the integrity of the building and the health and safety of its occupants; and
- (iii) is declared by the Governor-General, by Order in Council, to be a restricted building work for the purposes of this Act.

Restricted Building Works includes (without limitation) work on the building envelope and the structural support of the building.

The Act should be amended to require that a variation to a building consent is only required in relation to **Restricted Building Works** pursuant to section 7 of the Act. As a consequence a variation to a building consent is required only if for example the variation impacts on the integrity of the building and the health and safety of its occupants. If the proposed building works falls outside of the definition as codified under the Act, then no variation should be required³.

For the purpose of empowering a Building Consent Authority to apply discretion, nothing in the Act should limit an Authority from identifying, at the time of granting a building consent, any other building works that will require a variation application if any change is made.

Certificate of Public Use

A Certificate of Public Use may be issued for the purpose of allowing for an existing public building to be occupied prior to completion of a project (normally occupancy and usage of a building would be delayed until

³ A Building Consent Authority should have the discretion to determine what building works require a variation.

a Code Compliance Certificate has been issued for the work). A Certificate of Public Use may be issued by a territorial authority if, and only if, "... satisfied on reasonable grounds that members of the public can use the premises or part (as the case may be) safely..."

There is no consistency as to how different territorial authorities establish what information is necessary to determine that the safety of the public will not be compromised via staged occupancy and public use. The requirement to provide information pursuant to an application for a Certificate of Public Use (and the subsequent negotiation with a territorial authority in order to obtain that document) can be both time-consuming and add an extra cost to the overall building project.

Section 362A of the Act should be amended to require a Building Consent Authority if requested by the applicant, at the time of granting a building consent or variation, to notify the applicant as to the nature of the building works that will trigger the requirement to obtain a Certificate of Public Use. The amendment should also specify at what point the works will require a Certificate of Public Use to be issued prior to occupation. For prearranged circumstances a Certificate of Public Use should be issued automatically if all necessary inspections have been carried out to ensure compliance with the conditions of a building consent.

Building warrants of fitness and other fees

Section 108 requires that an owner of a building for which a compliance schedule has been issued must supply to the territorial authority a building warrant of fitness. This warrant of fitness includes prescribed information pertaining (and not limited) to the inspection, maintenance and performance of specified systems set out in a Compliance Schedule.

Section 108 places the burden of supply of information pertaining to a building warrant of fitness solely on the owner of the building. Therefore the cost of compliance with the Act rests with the owner of the building, not the territorial authority.

No territorial authority should be permitted to charge an administration fee for handling information pertaining to section 108 (although some do). To remove all doubt about the right to charge, section 108 should be amended to prohibit a territorial authority from charging an administration fee for the purpose of receiving information pertaining to a building warrant of fitness.

Chief Executive to act as a Building Ombudsman

The Chief Executive to receive, consider and determine outcomes pertaining to matters codified under section 177 of the Act. To this extent the Chief Executive assumes a role and function similar to the Ombudsman.

Section 177 of the Act must also enable an applicant to apply for a determination pertaining to –

- the time it takes a Building Consent authority to process a building consent application beyond the 20 working day statutory deadline (including (a) any extension of time requested by the Building Consent Authority, and (b) the reasons given for the extension of time);

- any attempt by a territorial authority to charge administrative fees for handling information (in particular, administrative charges pertaining to section 108 of the Act); and
- any attempt by a Building Consent Authority to impose conditions on the applicant to address issues that are not considered by the applicant to be relevant to the proposed building works.