



Department of  
Building and Housing  
*Te Tari Kaupapa Whare*

# Technical Review

## of the territorial authority functions of Southland District Council

### Summary Report

February 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 Southland District Council (the Council). The on-site stage of the review process was undertaken by the Department of Building and Housing (the Department) in October 2010.

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 are undertaking their core territorial authority building control functions under the Building Act 2004. Some aspects are very topical since the 2010 Canterbury earthquake, 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 2004<sup>1</sup>. For example, an assessment by the Department on the progress of all building consent authorities to get accredited undertaken in 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.<sup>2</sup>

## The Council

Southland District Council and its communities are diverse, ranging from coastal townships such as Riverton, tourist destinations such as Te Anau and Stewart Island, and large areas of open farmland and national parks. The Council is responsible for providing building control services over 30,753 square kilometres within its district. This makes Southland District Council the largest council, in terms of land area, in New Zealand.

Agriculture is the cornerstone of the Southland economy. The expansion and development of the dairying industry, in particular, is continuing to grow and makes up a substantial proportion of building control workload for the Council. At the same time, with exploration for lignite, gas, oil and coal this looks likely to provide an increased building control workload for the Council in the future. With five iconic tourist destinations (Milford Sound, Doubtful Sound, Fiordland National Park, Southern Scenic Route and Stewart Island) located in Southland, the District continues to be a beacon for tourists.

The main offices of the Southland District Council are situated at Invercargill, where the majority of the building control team are based. There is also a small satellite office at Te

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<sup>1</sup> 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](http://www.building.dbh.govt.nz)

<sup>2</sup> *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](http://www.building.dbh.govt.nz)

Anau, which has two building control officers who undertake the full range of building control functions, including processing of consents and inspections.

The following statistical information was requested to provide an indication of the volume and type of work the Council managed prior to undertaking the technical review.

### 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 June 2010 (unless mentioned otherwise)	
1	Building consents issued.	1949	
2	Buildings that have compliance schedules at 30 June 2010.	483	
3	Amended compliance schedules issued.	32	
4	Value of consented building work.	\$90,371,971	
5	On-site building warrant of fitness audits carried out.	75	
6	Exemptions issued under Schedule 1, clause (k).	Council does not maintain a record however would be very minimal in number	
7	Building consents issued with PIMs since 31 Jan 2010 and ending 31 July 2010.	11	
8	Building consents issued since 31 Jan 2010 and ending 31 July 2010.	1104	
9	Waivers and modifications issued.	Council does not maintain a record however would be very minimal in number. Two assessed recently.	
10	Notices to fix issued.	411	
11	Certificates for public use issued.	10	
12	Certificates of acceptance issued.	17	
13	Infringement notices issued.	34	
14	Section 124 notices issued for dangerous, earthquake-prone or insanitary buildings.	8	
15	Number of building consents for new buildings.	Residential <sup>3</sup>	Commercial <sup>4</sup>
		221 New dwellings 100 Garages	162
17	Number of building consents for additions and alterations to buildings.	281	Council does not maintain a record
19	Number of residential buildings that have undergone a change of use.	0	Council does not maintain a record
21	Number of residential buildings that have been affected by subdivision.	0	Council does not maintain a record

<sup>3</sup> Includes detached and multi-unit dwellings, and their associated ancillary/out-buildings from Building Code clause A1.

<sup>4</sup> Includes communal residential/ non-residential, commercial, industrial, and their associated ancillary/ out-buildings from Building Code Clause A1.

## 2. Executive findings and recommendations

### Findings

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

- documented its policies and procedures for various building control functions (eg, project information memoranda, dangerous and insanitary buildings, various notices and certificates it issues, building warrants of fitness, and amending and auditing compliance schedules)
- considered site-specific project information memorandum information when it undertook building consent processing functions
- had and applied systems and processes around the alterations, change of use, and subdivision provisions of the Building Act 2004
- provided site-specific information on their amended compliance schedules regarding the specified systems contained in buildings
- sought expert independent advice when this was needed in areas outside its recognised competence (eg, third party reviews by structural engineers and getting legal advice on their infringement notices policy)
- kept records of much of its regulatory decision-making (eg, its reports to the Building Control Manager on various building control functions)
- received appropriate verification that critical life safety specified systems are appropriately certified and functioning properly, before issuing certificates for public use
- had systems for issuing certificates for public use and certificates of acceptance
- had developed and disseminated information to the public about building control issues (eg, infringement notices)
- had developed forms for certain regulatory functions, which comply with the requirements of Form 13 (notice to fix) of the Building (Forms) Regulations 2004
- endeavoured to seek voluntary compliance as a first course of action, but demonstrated a willingness to ratchet-up its enforcement activities when justified (eg, seeking court orders).

### Performance improvement areas

The review identified four key areas where the Council needed to strengthen and improve its building control operations. Addressing these issues will 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 (see following page)
- ensuring documented policies and processes comply with legislative requirements and are being effectively implemented
- ensuring collective technical knowledge is sufficiently spread across the building control unit
- implementing mechanisms to improve customer service.

## Recommendations

Some of the key recommendations to the council under the four key areas noted previously are summarised below.

### Understanding and applying the Building Act 2004

- the Council needed to review its non-use of clause (k) of Schedule 1<sup>5</sup> of the Building Act 2004, document its policy around using clause (k), and communicate this (and the potential benefits of using it) to building control staff and external stakeholders/practitioners
- ensure all mandatory information required under the Building Act 2004 is included in any project information memorandum it produces
- staff needed to strengthen their understanding of the waiver and modification provisions, and earthquake-prone building requirements and when they are applicable
- building control staff needed to understand the different purposes of compliance schedule statements, compliance schedules, and building warrants of fitness, the information required on each, and when they are to be issued<sup>6</sup>
- all necessary information fields need to be completed on the Council's building control forms (eg, notices to fix and earthquake-prone building notices).

### Implementation of legislatively correct policies and processes

- separate procedures should be developed for issuing compliance schedules and compliance schedule statements
- all compliance schedules issued must contain specific performance standards, rather than just the relevant clauses of the Building Code, and include the approval year of the standard
- the Council's set forms for building warrants of fitness and Form 12As should:
  - not include the Council's letterhead on them (as this gives the impression the Council filled out and submitted these documents)
  - ask for all of the prescribed information as required by the Building (Forms) Regulations 2004
- ensure its forms for applying for certificates for public use and certificates of acceptance (and the subsequent certificates that the Council actually issues) satisfy all of the requirements of the prescribed Forms 8, 9, 15 and 16 of the Building (Forms) Regulations 2004
- stop issuing compliance schedules with certificates for public use (and instead refer to their draft compliance schedules where applicable).

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<sup>5</sup> Schedule 1 lists a range of types of building work that does not require a building consent. Clause (k) provides a catch-all category whereby Councils can use their discretion to exempt low risk minor building work from the requirement to obtain a building consent.

<sup>6</sup> *Owners' responsibilities to ensure their buildings are safe to use (Guidance on building warrants of fitness and compliance schedules)*. Published by the Department in November 2010 and available at: [www.building.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/building-wof-guidance.pdf](http://www.building.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/building-wof-guidance.pdf)

### Collective knowledge and technical expertise across the building control operations

- ensure its policy on clause (k) of Schedule 1 (building consent exemptions) is clearly understood by all building control staff so that 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)
- for some building control functions the Council would benefit from greater sharing of knowledge and skills across staff, rather than predominantly being assigned to one individual (eg, waivers and modifications)
- the Council should implement quality assurance initiatives for its building warrant of fitness and compliance schedule systems, including:
  - undertaking training of staff in the application of relevant provisions of the Building Act 2004 (eg, understand the different purposes between compliance schedules and compliance schedule statements, the information to be recorded on each document, and when it is appropriate to issue them)
  - requiring internal peer review by dedicated staff with expertise in these areas (or consolidating responsibility for these functions in a smaller, dedicated, number of staff until others have been up-skilled).
- implement a standard processing and inspection check sheet for building control officers to use when considering certificates for public use.

### 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 clause (k) if it is to be proposed as grounds for exempting a specific building project from the requirement to obtain a building consent
- check that all project information memoranda contain the source of the information specified and are clear to any lay readers about any requirements or measurements they specify and why they 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 memorandum information
- issue certificates of public use with clear expiry dates, track all certificates of public use it issues, and follow-up on expired certificates of public use
- enhance its certificate of acceptance system to:
  - record any suspensions and their reasons
  - ensure it only accepts complete applications for processing that contain all of the supporting information the Council needs to process it efficiently
  - ensure any work not covered by the certificate is clearly communicated.

## 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 is responsible, amongst 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:

- inspecting building work for which they have granted a building consent
- issuing notices to fix
- issuing code compliance certificates
- issuing compliance schedules
- receiving, considering, and making decisions on applications for building consents within set time limits
- determining whether applications for a building consent subject to a waiver or modification of the Building Code, or any document for use in establishing compliance with the Building Code, should be granted or refused
- ensuring 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 that 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.<sup>7</sup>

### 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.

<sup>7</sup> The Building Act 2004 is available at [www.legislation.govt.nz](http://www.legislation.govt.nz)

## **Method**

This technical review involved a team of four Department staff on site at Southland District Council for four days, followed up by several weeks of review work back in the office in Wellington.

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

- observe staff undertaking work in the Invercargill and Te Anau offices, and out on site
- review written material used and produced by staff (eg, policies, procedures, processing checklists and records, manuals and approved consent documentation)
- interview staff about their use of material and their work
- assess a random sample of building projects (case studies) that the territorial authority has been involved with, just before or during the review visit.

For this review, seven 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.

## 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 did not have a documented policy and procedures to guide staff decision-making around clause (k) of Schedule 1. The Department was advised the Council had historically very rarely used their discretion under clause (k). The only example provided by the Council was an exemption issued in 1995.

The Council was not applying a risk-base approach or seeking to realise the benefits and efficiencies that clause (k) could 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).

It was noted that the Council had received requests from customers seeking to use the clause (k) exemption for building projects such as some private wind turbines, domestic stair lifts, and composting toilets. However, the Council had elected not to issue any exemptions under clause (k).

The Council's public information about clause (k) was minimal. The information mentioned clause (k) but did not go into its potential benefits, the circumstances where it may be appropriate to use, or the Council's information expectations for those proposing to apply for this exemption.

## Conclusions

The Council needs to review its approach and processes around the use (or non-use) of clause (k) of Schedule 1 as this is a potentially valuable and efficient building control mechanism when used appropriately, that is under-utilised and which is legitimately available to building owners (or their agents) under the Building Act 2004.

<b>Recommendation 1</b>	
<b>The Department recommended that the Council:</b>	<b>Response from the Council:</b>
<b>Review its current non-use of clause (k) of Schedule 1.</b>	<b>The Council advised it disagreed with the findings relating to 'non-use' of clause (k) of Schedule 1. It has had very limited applications for consideration under clause (k) to date, hence the limited information available and limited policy around its consideration.</b>
<b>Document its policy around using clause (k) and communicate this (and the potential benefits of using it) to building control staff and external stakeholders.</b>	<p><b>The Council advised it will document procedures around consideration of exempt building work applications by 25 February 2011.</b></p> <p><b>The Council stated that the simple answer is to require applicants for exemptions to lodge project information memoranda to save duplication of processes and to provide a documentation trail for the decision*.</b></p> <p><b>The Council's public information identified clause (k) as an option for application for exempt building work. Other than that it did not see promoting the use of clause (k) as a territorial authority function.</b></p>
<b>Ensure the policy is clearly understood by all building control staff so that 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).</b>	<p><b>The Council advised confirmation of procedures relating to exempt building work, will be communicated to staff (by 25 February 2011) as part of the update process of the procedure manual.</b></p> <p><b>The Council advised sign off from the Manager Building Control will (by 25 February 2011) be required as part of all exempt building work applications.</b></p>

**\* The Department is of the view that the documented decision for applications under schedule 1(k) which the territorial authority needs to make, should, in itself provide an adequate documentation trail if appropriate policies and procedures are in place for staff to follow. Since project information memoranda have been optional since 1 February 2010, it is not appropriate for the Council to require an applicant to apply for a project information memorandum.**

**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 [www.dbh.govt.nz/publications-about-the-building-act-2004](http://www.dbh.govt.nz/publications-about-the-building-act-2004) .

## **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**

The Council's Procedure Manual included a process for receiving and issuing project information memoranda. The Department considered this process appropriate.

Between 31 January 2010 and 31 July 2010 only 11 building consents were issued with project information memoranda. Since project information memoranda have become voluntary, considerably fewer project information memoranda have been applied for and issued. The Department found the information that was historically collected and considered by the Council when producing project information memoranda was being considered as part of its internal building consenting processes. The Department supports this approach as it clearly demonstrates the Council is considering and documenting these often important site-specific factors when making building control decisions.

One of the case studies found that some mandatory information required by the Building Act 2004 was not always being included in the Council's project information memoranda. For example, for building work in Schedule 2 of the Building Act 2004, section 35(1) requires a statement that the building must comply with section 118 of the Building Act 2004 (relating to access to buildings for people with disabilities) and the associated access provisions of the Building Code. This information was omitted from project information memoranda.

Another simple way to strengthen the usefulness and clarity of the Council's project information memoranda would be to ensure they contain the source of the information and the actual meaning of any requirements they specify. For example, one case study did not specify the specific earthquake zone the building was in (it noted all three zone types) and there was no reference to snow loading when it cited some technical figures/measurements from a New Zealand Standard, making this section unclear.

The Council produced public information about project information memoranda, which was available in hard copy and on its website. The Department found that the information about

the voluntary nature of project information memoranda, and key benefits to building owners from having this information considered as part of the consenting process, could be more clearly set out in the Council's web material. For example, the on-line frequently asked questions about project information memoranda glosses over some of the benefits (although some of these are noted in the section about building consent processes).

The Department believes the Council's public information could be easily refined to consistently emphasise the following key points about project information memoranda:

- they are voluntary by law – people do not have to request or get them
- for some building projects they add value and are well worth getting as they give consent applicants and the Council greater assurance that the right things are checked-off at the preliminary design stage which could impact on the building down the track
- they enable the Council to make better, risk-based, site-specific decisions, when granting building consents. 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, councils have generally decided to still collate and consider project information memorandum information when they process building consents, as a matter of good practice.

## Conclusion

The Council's project information memoranda system requires improvement, as noted below.

<b>Recommendation 2</b>	
<b>The Department recommended that the Council:</b>	<b>Response from the Council:</b>
<b>Ensure all mandatory information required under the Building Act 2004 is included in any project information memoranda produced</b>	<b>The Council advised the project information memoranda template will be reviewed (by 25 February 2011) for clarity of information provided to customers and all relevant information required under the Building Act is included.</b>
<b>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 they are important.</b>	

<b>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 (see discussion above).</b>	<b>The Council advised public information on its website relating to project information memoranda will be amended (by 25 February 2011) to clarify that they are voluntary.</b>
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## 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 are received (as part of the section on granting building consent applications).

The Council's processing check sheet made reference to section 112 for alterations and the Department saw examples of this being used adequately along with requests for further information.

Although the prompts on the processing check sheet did not specifically address section 112(2) there was one example where the processing officer's notes made an assessment and decision based on the provisions of section 112(2). In this particular case, the Council officer was willing to grant the consent on the grounds that the installation of a manual fire alarm system would, based on the minor nature of the proposed building work, sufficiently improve the building's means of escape without the need to upgrade the building's access and facilities for persons with disabilities so as to fully satisfy the current Building Code.

### ***Change of use***

The Council was aware of the requirements of sections 114 and 115 and its Procedures Manual outlined a procedure for dealing with notification of change of use and/or building consent applications if they are received (as part of the section on granting building consent applications).

The Department noted that the Council's Procedures Manual did not refer to the degree of upgrade required for new household units where one did not exist before. It was suggested that the following text be added:

*'Upgrade new household units, where one did not exist before, so that they comply, as nearly as is reasonably practicable, with all Building Code clauses'*.

The Council's processing check sheet made provision for change of use and it was noted that this was being used adequately.

### ***Subdivisions***

The Council advised that it had not received any building consent applications that included buildings affected by subdivisions (refer to the Council's statistics provided in Figure 1, above).

The Council was aware of the requirements of section 116A and its Procedures Manual outlined a procedure for dealing with such applications if they were received (as part of the section on granting building consent applications).

## 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 the change of use process could be improved by including the recommendation below.

<b>Recommendation 3</b>	
<b>The Department recommended that the Council:</b>	<b>Response from the Council:</b>
<b>Should amend boxes 18 and 19 (under Granting Consent Application) in its <i>Building Control Procedure-Process Manual</i> so that a change of use relating to the creation of a new household unit, where one did not exist before, refers to the degree of upgrade required. That is, the new household unit(s) complies, as nearly as is reasonably practicable, with all Building Code clauses.</b>	<b>The Council advised it will amend (by 25 February 2011) boxes 18 and 19 of the Granting Building Consent process to clarify a building change of use relating to household unit upgrade so that it will comply as near as reasonably practical with the Building Code.</b>

## 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 that relates to access and facilities for people with disabilities.

### Findings

The Council has historically used the waiver provisions in the Building Act 2004 very infrequently. However, two waivers had been granted over the last year. Both waivers related to *clause C3 Spread of Fire*, of the Building Code. The Council had not processed any building consents where it modified the requirements of the Building Code.

All waivers identified were processed by one staff member and it was unclear whether other staff had a thorough understanding of the Building Act's waiver and modification provisions and when it was appropriate to use and apply them.

The Department noted one example where the Council had applied the waiver provisions in the Building Act 2004 when arguably they did not need to because the building consent application was considered to already demonstrate compliance with the Building Code through use of an alternative solution. Despite this, the Department found the Council's documentation of its waiver decision-making to be thorough.

In one of the case studies the Council had waived an entire clause of the Building Code when the applicant had only sought a waiver of a specific sub-clause. In most cases, waivers relate to a specific performance requirement of the Building Code (eg, C3.3.2(d)) and not an entire clause of the Building Code.

The Council's public information material<sup>8</sup> contained some guidance to the public on where it may be appropriate to apply for a waiver or modification in a building consent application.

The Council's building consent application form complied with the requirements covering waivers and modifications as prescribed by Form 2 in the Building (Forms) Regulations 2004.

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<sup>8</sup> Refer to SDC's documentation: *Identifying Relevant Code Clauses on a Building Consent Application*.

When the Council granted building consents that were subject to a waiver, the Council correctly notified the Department of Building and Housing in accordance with section 68 of the Building Act 2004.

### Conclusion

The Council had a system for handling waivers and modifications, and this system recorded the decision-making process well. However, the Council needed to ensure staff fully understood when it was appropriate to apply the waiver and modification provisions of the Building Act 2004.

<b>Recommendation 4</b>	
<b>The Department recommended that the Council:</b>	<b>Response from the Council:</b>
<b>Adopt the Department's <i>Notification of Waiver or Modification Form</i> to ensure the details of the waiver or modification sought are clearly documented and notified to the Department.</b>	<p>The Council advised it will adopt (by 25 February 2011) the Department's form for notification of waivers or modifications.</p> <p>The Council suggested the Department's form be modified to include postal, fax and email details for return of the completed form to the appropriate section of the Department. The Council stated it had emailed advice of waivers to <a href="mailto:info@dbh.govt.nz">info@dbh.govt.nz</a> in the past but there did not seem to be any clear direction as to where the notification was to go or end up.</p>
<b>Ensure awareness and understanding of the waiver and modification process and requirements amongst the wider building control team, including the guidance provided within the <i>Notification of Waiver or Modification Form</i>.</b>	The Council advised the guidance section on the rear of the waiver or modification form included in Appendix B of the initial report will be copied to all staff by 25 February 2011.

## 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 set 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 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 this by publicly displaying a current building warrant of fitness in their building and provide a copy to the territorial authority.

### Findings

#### **Compliance schedule statements**

The Council's internal *Building Control Procedure-Process Manual* combines issuing compliance schedules and compliance schedule statements. The Department found that this was leading to some uncertainty amongst Council staff as to the fundamental purpose of each document and when they should be issued.

A compliance schedule is a foundation document for the life of a building that lists specified systems and establishes their inspection, maintenance, and reporting requirements. In contrast, a compliance schedule statement is prescribed Form 10 under the Building (Forms) Regulation 2004. Compliance schedule statements are generally issued by the Council with the relevant code compliance certificate and compliance schedule. Compliance schedule statements are a temporary notification of the specified systems in the building, advise where the compliance schedule is kept, and are only valid for the first 12 months after the issue of the compliance schedule. After this time, a compliance schedule statement is replaced by the first building warrant of fitness, which is issued by the building owner or their agent on their behalf. Compliance schedule statements are not designed to contain the detailed information about the specified system's inspection and maintenance requirements which the Council sometimes includes on them – this information should be on the compliance schedule.

The Department also noted an example of a compliance schedule statement being issued while the building work was still under a certificate of public use and had not been issued with a code compliance certificate. This contravened section 104A of the Building Act 2004.

### ***Amending compliance schedules***

The Council's Procedure Manual includes a process for amending existing compliance schedules. We looked at three examples of recently amended compliance schedules and found that the Council was following their processes and doing this work adequately. Some of the compliance schedules were initially issued under the Building Act 1991 and these were being amended to align with the specified systems under the Building Act 2004. While doing this, the Council was providing site-specific information about the specified systems and also often including plans indicating the location of the specified systems. The Department supports this approach.

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.

One way to strengthen the Council's system is to ensure all issued compliance schedules contain appropriate performance standards rather than just referencing the relevant clause of the Building Code. For example, NZS 4512:2003 may be specified as an appropriate performance standard for fire detection and alarm systems, rather than just mentioning clause F7 of the Building Code. Where standards are referred to, it is also important to include the approval year of the standard. The Department found examples where the Council either gave multiple options for the performance standard, or omitted to include the relevant approval year of the standard they specified.

Additionally, the Department noted examples of compliance schedules that did not include all specified systems in the buildings concerned. This is an issue that would warrant further staff training, and the amendment process for compliance schedules is an opportunity for the Council to ensure that all compliance schedules accurately reflect the specified systems in the buildings.

### ***Building warrants of fitness***

The Council had a documented procedure for building warrants of fitness, which the Department considered to be sound.

The Department found the Council was endeavouring to be proactive and encourage consistency by providing standard forms for building warrants of fitness and Form 12As. However, it was including its own letterhead on such forms. A building warrant of fitness is a declaration by a building owner, or their agent on their behalf, 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 considered appropriate to have the Council's letterhead on those forms (even if the Council created a standardised form to encourage consistency). Those forms are not completed by the Council and that practice could confuse building owners who may think the Council will issue the building warrant of fitness.

The Council's standard form also 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 help provide useful information to other parties (eg, independent qualified persons or the Fire Service) who inspect the building.

However, the Department found examples of buildings having two versions of their building warrant of fitness – one issued by the independent qualified person and the other issued by the owner on Council letterhead. Similarly, a case of there being two versions of the Form 12A was also found.

The Council's standard form for building warrants of fitness could be improved by:

- amending the error in the "Important Notes" box – this should refer to Form 11 and not Form 13 as it currently does; and
- ensuring the form asks for all of the information required by prescribed Form 12 of the Building (Forms) Regulations 2004. One example is the section about where the compliance schedule is kept in the building.

These factors indicated to the Department that further staff training is required to ensure all relevant staff fully understand and can apply the building warrant of fitness and compliance schedule provisions of the Building Act 2004. Another option is for these functions to be handled, or at least peer reviewed, by dedicated staff that have expertise in these areas.

### ***Compliance schedule audits***

The Council had a policy of requiring 10 percent annual compliance schedule audit and this was being achieved. Each building control officer was responsible for planning and undertaking at least six compliance schedule/building warrant of fitness audits per year for their allocated geographical area of responsibility.

The Council maintained a database to check that these audits occurred. The database tracked the compliance schedule number, the building owner, the building location, the rapid number and the last inspection date. Priority was given to high risk buildings and previously unaudited compliance schedules. The next priority was to re-audit those compliance schedules where the longest time had elapsed since the previous audit. The Department considered the audit inspections database was an excellent tool and was being well utilised.

If the Council received a building consent application for an existing building that contained a specified system, this triggered a check whether an audit had been previously undertaken. If it hadn't, then an audit is planned for a later date.

If the Council received a compliance schedule amendment recommendation from an independent qualified person, it followed this up to by determining whether an amendment was needed and would amend the compliance schedule if it was appropriate.

The Council had a check sheet to assist with its audits; they were thorough and the decision-making was well documented. The Council's form did not specifically note any sub-categories within each of the 16 categories of specified systems set out in their form (eg, specified system 15 contains five different sub-categories that are recognised in the *Compliance Schedule Handbook*). This could be easily added to their form. This was amended by the Council shortly after the review.

## Conclusion

The Council had reasonably appropriate systems for processing and enforcing building warrants of fitness and amending compliance schedules. They were endeavouring to be proactive with their regulatory responsibilities. However, there was scope for improvement as recommended below.

<b>Recommendation 5</b>	
<b>The Department recommended that the Council:</b>	<b>Response from the Council:</b>
<b>Have separate written procedures for issuing compliance schedules and compliance schedule statements</b>	<b>The Council advised its Procedure-Process Manual will be modified by 25 February 2011 to reflect the two separate documents rather than a combined compliance schedule/statement.</b>
<b>Ensure building control staff understand the different purposes of each document, the information required to be recorded on each, and issue them at the appropriate times (this should be considered as a training priority)</b>	<b>The Council advised it will confirm its procedures relating to the two separate documents rather than a combined compliance schedule/statement. This will be communicated to staff as part of the update process of the Procedure Manual by 25 February 2011.</b>
<b>Ensure all issued compliance schedules contain specific performance standards, rather than just the relevant clauses of the Building Code, and include the approval year of the standard</b>	<b>The Council advised it will review its template compliance schedule to remove (by 25 February 2011) broader Building Code references as performance standards.</b>
<b>Ensure its standard forms for building warrants of fitness (Form 12) and independent qualified person certificate (Form 12A):</b> <ul style="list-style-type: none"> <li>• Do not include its letterhead on them</li> <li>• Ask for all of the information required by prescribed Form 12 of the Building (Forms) Regulations 2004</li> </ul>	<b>The Council advised it has removed its letterhead from its template building warrant of fitness and 12A form provided for customer assistance.</b>  <b>The building warrant of fitness template will be modified (by 25 February 2011) to reference Form 11 rather than Form 13 in the 'Important Notes' section and other Department recommendations.</b>
<b>Implement quality assurance initiatives for its building warrant of fitness and compliance schedule systems, including:</b>	<b>The Council advised it requires all new or amended compliance schedules to be reviewed by the Manager Building Control or nominated senior staff before issuing.</b>

<ul style="list-style-type: none"> <li>• Undertaking staff training in the application of relevant provisions of the Building Act 2004</li> <li>• Requiring internal peer review by dedicated staff that have expertise in these areas.</li> </ul>	
<p><b>Amend its Compliance Schedule Audit Form so it lists any sub-categories within each of the 16 categories of specified systems (where applicable).</b></p>	<p><b>The Council advised it has amended its Compliance Schedule Audit check-sheet to include specified system sub categories.</b></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](http://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. 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.

It is an offence to contravene this section 363 duty.

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 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 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 a documented policy and procedures for issuing notices to fix. This documentation was appropriate.

The Department found that the Council was identifying non-compliance and was appropriately issuing notices to fix. There was also evidence that enforcement action regarding notices to fix was being taken by the Council. The evidence included infringement notices being issued when notices to fix had not been complied with.

From a technical point of view, the notices to fix reviewed referred to the correct sections of legislation and clauses of the Building Code. They contained photographic evidence about the areas of non compliance, and included clear instructions about the remedial action the Council required. The use of photos with notices to fix is an excellent initiative and helped to clearly communicate the non-compliance to the specified person (usually the building owner).

The Council's notice to fix form complied with the requirements of Form 13 of the Building (Forms) Regulations 2004. The Council had added additional information requirements to their form (eg, information around the intended use) as they are entitled to under regulation 6(2) of the Regulations. However, the Department found that Council was not always completing such additional information requirements when issuing notices to fix.

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

### ***Certificate for public use***

The Council had a documented policy and procedure for issuing certificates for public use. However, it did not have a standard processing and inspection check sheet for building control officers to use when considering certificates for public use.

The Department found the Council's form for applying for certificates for public use and the certificates for public use it was issuing did not comply with the prescribed Forms 15 and 16 of the Building (Forms) Regulations 2004. For example, the form for applying for certificates for public use did not include the declaration as required by the Form 15 (confirming that no code compliance certificate had been issued). The Council's certificates for public use also did not contain a section relating to the applicant's contact details.

Examples were found of the Council issuing certificates for public use, which remained in force for a protracted period of time. It was clear that applicants were not always promptly fulfilling their statutory obligation to seek a code compliance certificate even though the Council's certificates for public use clearly reminded building owners of their duty to do this. There are some practical ways the Council can easily remedy this situation. These include: issuing certificates of public use with clear expiry dates, tracking all certificates of public use it issues (as it does with infringement notices), and following up on expired certificates of public use.

The Council's documented process required a compliance schedule/statement to be issued with a certificate for public use, rather than with a code compliance certificate. However, this practice is contrary to section 102 of the Building Act 2004. To achieve the same outcome, the Department believes the Council should refer to its draft compliance schedule (which is issued with the building consent) as the means for inspecting and maintaining specified systems in the interim period until such time as a code compliance certificate is issued<sup>9</sup>.

The Department noted that the Council was also sometimes placing a condition on certificates of public use instructing that maintenance and inspections of specified systems be undertaken. While the intent of the Council's actions was understood, the means it used to achieve this was not in accordance with the Building Act 2004 because it issued a compliance

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<sup>9</sup> If this approach is followed, note that the building warrant of fitness requirements under section 108 are not triggered until such time as a final compliance schedule is issued with the code compliance certificate.

schedule without a code compliance certificate. Again, the Council should be referring to the draft compliance schedule, as noted above, and conditioning the certificate of public use to ensure inspection and maintenance of the specified systems occur.

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

### ***Certificate of acceptance***

The Council had an appropriate documented policy and procedure for issuing certificates of acceptance. However, the Department found the Council's forms for applying for a certificate of acceptance and its certificate of acceptance standard form did not comply with the prescribed Forms 8 and 9 of the Building (Forms) Regulations 2004. Examples included:

- omitting the full contact details for owners/agent
- omitting current lawful established use information
- omitting information about the total floor area affected by the work.

Three examples were noted where the 20 day timeframe for processing certificates of acceptance was exceeded. The Council's records did not indicate whether the applications had been suspended as a result of the Council's inspections requiring remedial action. This could give rise to an incorrect perception that the statutory timeframe had been exceeded because of the Council's slow processing, when this was not the case. The Council should enhance its system to record any suspensions and their reasons.

Examples were noted of applications for certificates of acceptance received by the Council that did not contain sufficient information from applicants to justify the Council issuing a certificate of acceptance. Applicants need to provide clear reasons for why a certificate should be issued. Unless it is a minor omission, the Council should not accept incomplete applications for processing.

On reviewing some of the Council's certificates of acceptance, the Department considered there was a need for the Council to be more specific about some of the comments it was making on the certificates (for example, the section on what the certificate of acceptance did not cover). To illustrate this, several examples were found using the phrase 'building element and construction method durability'. The Department was unsure what this phrase meant. The Department was also unsure as to what work had been excluded on the basis that the work was unable to be inspected.

When the Council required a certain action to be taken as part of issuing a certificate of acceptance, the review found that the Council was checking that the required remedial work had been completed and complied with the Building Code and that the Council was satisfied on reasonable grounds that it should issue the certificate of acceptance.

### ***Infringement notice***

The Council had a documented policy and procedures for issuing infringement notices. This documentation was appropriate and had been independently vetted by an external lawyer. Details of the legal advice obtained are contained within the Council's procedural documentation. The Department acknowledges and supports the Council's decision to get

their policy and procedures externally peer-reviewed. The Department's assessment of the Council's policy found that its procedural documentation was sound and largely modelled on the Department's published guidance documentation.

Since adopting and implementing its infringement notice system the Council had issued 34 infringement notices for various offences under the Building Act 2004.

A review of the content and accuracy of several issued infringement notices identified the Council's infringement notices satisfied the requirements set out in the Building (Infringement Offences, Fees, and Forms) Regulations 2007. The Council was monitoring each infringement notice issued and sent out reminder notices when an infringement fee had not been paid 28 days after an offence had been committed.

Those building officers issuing infringement notices had the necessary authority and were authorised officers under this section 222 and 229 of the Building Act 2004.

In most instances the Council issued a notice to fix in conjunction with each of their infringement notices. The Department noted that notices to fix and building infringement notices are two separate tools. They can be used separately or at the same time<sup>10</sup>. This aspect of the enforcement process has largely been left up to each individual territorial authority to decide what works best for them. Following a review of the Council's infringement notices the Council's process was considered by the Department to be consistent, fair and well-documented.

The Council informed the Department that the use of infringement notices had been particularly effective in achieving compliance with the building warrant of fitness and compliance schedule provisions of the Building Act 2004. They stated there were many instances where the infringement notice had been withdrawn once the non-compliance was fixed.

The Council had an electronic system for tracking the status of infringement notices it issued.

The Council had clear public information for infringement notices<sup>11</sup>. This information explained the purpose and scope of infringement notices and the specific infringement fees for the various offences.

## **Conclusion**

The Council had appropriate and effective systems for issuing notices to fix, certificates for public use, certificates of acceptance, and infringement notices. However, there were some improvements that could be made to strengthen these systems, as noted in the following recommendations.

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<sup>10</sup> Provided in the Department's guidance document: *Building infringement scheme guidelines* available at: <http://www.dbh.govt.nz/UserFiles/File/Publications/Building/BCA/building-infringement-guidelines.pdf>

<sup>11</sup> *SDC Application Guide for Applying for a Building Consent*.

<b>Recommendation 6</b>	
<b>The Department recommended that the Council:</b>	<b>Response from the Council:</b>
<b>Ensure it fully completes all sections of any notice to fix it issues (including any additional information requirement it has imposed over and above the prescribed form)</b>	<b>The Council advised it will review (by 25 February 2011) processes to ensure the intended use section of the notice to fix is completed in the issued document.</b>
<b>Implement a standard processing and inspection check sheet for building control officers to use when considering certificates for public use</b>	<b>The Council advised it saw a separate check-sheet for certificate of public use as an unnecessary duplication. The existing building consent inspection check-sheet covers structural, specified systems, fire egress and accessibility assessment for consideration in issuing a certificate of public use.</b>
<b>Ensure its forms for applying for certificates for public use and certificates of acceptance (and the standard certificates that the Council actually issues) satisfy all of the requirements of the prescribed Forms 8, 9, 15 and 16 of the Building (Forms) Regulations 2004</b>	<b>The Council advised it would review (by 25 February 2011) its application templates for certificates of public use and certificates of acceptance to ensure they reflect what is required in the Building (Forms) Regulations 2004.</b>
<b>Stop issuing compliance schedules with certificates for public use (and instead refer to their draft compliance schedules where applicable)</b>	<p><b>The Council advised it was questionable that the issuing of compliance schedules was ever considered when certificates of public use were introduced as part of the Building Act 2004. The Council also advised it considers it took a proactive stance in getting the compliance schedule and statement issued where applicable under a certificate of public use so the operation of ongoing checking of specified systems was assured from the moment the building was occupied.</b></p> <p><b>The Council considers that whether it issues the draft or the final compliance schedule with a certificate of public use is really only semantics and an opinion in tidying up the shortcomings of the legislation around certificates of public use. Issuing a draft compliance schedule would mean a duplication of processes and revisiting the</b></p>

	<p><b>issue of the final compliance schedule at code compliance certificate stage.</b></p> <p><b>The Council advised it will continue to issue the final compliance schedule where applicable for a certificate of public use and hope the legislators tidy up the relationship of compliance schedules to certificates of public use in the next review of the Building Act.*</b></p>
<p><b>Issue certificates of public use with clear expiry dates, track all certificates of public use it issues, and follow-up on expired certificates of public use</b></p>	<p><b>The Council advised its certificate of public use template will be modified by 25 February 2011 to include an entry area for an expiry date.</b></p> <p><b>Follow-up to expiry dates for certificates of public use will be set up within the pathways computer system back to the issuing officer.</b></p>
<p><b>Enhance its certificate of acceptance system to:</b></p> <ul style="list-style-type: none"> <li><b>• record any suspensions and their reasons</b></li> <li><b>• ensure it only accepts complete applications for processing that contain all of the supporting information the Council needs to process it efficiently</b></li> <li><b>• ensure any work not covered by the certificate is clearly communicated.</b></li> </ul>	<p><b>The Council advised its processes relating to certificate of acceptance allows applications to be suspended, which stops the clock and a hold letter is generated back to the applicant. Processes will be reviewed by 25 February 2011 to ensure this is being actioned by all staff.</b></p> <p><b>The Council also advised it will be more thorough in its review of certificate of acceptance applications for supporting information before accepting into the system and where issued give better consideration to being more specific to inclusions and exclusions.</b></p>

\* The Department acknowledges that the Council's process of issuing compliance schedules with a certificate of public use provided some surety that the specified systems required to be operational for the certificate of public use to be issued were in fact being maintained and inspected appropriately. However, there is the potential for confusion in the ongoing maintenance and reporting procedures of the specified systems for the building warrant of fitness due to the possibility of issuing a certificate of public use for a building that may not have all of the specified systems installed. However, it may still be safe to occupy. Compliance schedules must be issued with code compliance certificates. A certificate of public use can be issued with conditions that include a defined period of time for the owner to apply for a code compliance certificate, and a requirement for the owner to ensure inspections and maintenance of the relevant specified systems are undertaken to ensure those specified systems remain operable.

## **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 procedures for managing dangerous and insanitary building notifications. The policies are available on the Council's website.

The Department found that the Council had followed its policies and processes. It was monitoring and enforcing the dangerous and insanitary building requirements when necessary and thoroughly documenting its decision-making.

For example, part of its procedure required an inspector to provide a written report (based upon a standard template) to the Building Control Manager. Those reports were detailed, evidence-based, and contained sketches and photos, and where required, included external expert opinion (eg, structural engineering). The Department considered this was an appropriate way of documenting and justifying these important decisions.

While the Council initially sought voluntary compliance, it was noted that, when necessary, the Council was prepared to ratchet up its enforcement activities. For example, it applied to the District Court for an order authorising it to undertake building work if remedial action was not undertaken.

The Department accompanied a Council officer on dangerous and insanitary inspections. The Council officer correctly presented his warrant and identification and explained clearly his purpose for undertaking the inspection.

The Council also demonstrated it was interacting with other agencies and having regard to their advice (eg, New Zealand Fire Service) when dealing with dangerous buildings.

#### ***Earthquake-prone buildings***

The Council had a documented policy and procedures for managing earthquake-prone buildings. The policy was available on the Council's website.

The Council had adopted a passive approach to dealing with earthquake-prone buildings. That is, it did not actively seek out potentially earthquake-prone buildings, but generally relied on notifications through applications for building consents. Subsequent to the Canterbury

earthquake of September 2010, the Council is reviewing its position and will be publicly consulting about whether its approach remains appropriate.

One of the case studies from the review identified the inappropriate use of an earthquake-prone building notice. In that instance, the building did not meet the definition of an earthquake-prone building, and a dangerous building notice would have been the appropriate regulatory tool to use.

One of the case studies from the review also identified an earthquake-prone building notice that did not contain all of the required information (eg, the date of issue). The Council was, however, correctly issuing notices to fix, where appropriate, to manage Building Code compliance matters in relation to earthquake-prone buildings.

### **Conclusion**

The Council's dangerous and insanitary buildings system was administered and documented well. However, it needed to ensure its staff fully understood and could apply its earthquake-prone building procedures.

<b>Recommendation 7</b>	
<b>The Department recommended that the Council:</b>	<b>Response from the Council:</b>
<b>The Council should raise awareness amongst staff about the correct application of earthquake-prone building procedures and ensures any changes, in light of the current review, are clearly communicated to building control staff.</b>	<b>The Council advised any changes to its dangerous/insanitary and earthquake-prone building policy will be communicated to staff once finalised and approved by Council towards the end of March 2011.</b>

## 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.



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