



Department of
Building and Housing
Te Tari Kaupapa Whare

Performance improvement lessons from the formal complaints about building consent authorities

January 2010



Contents

1	Introduction	3		
2	Executive Summary	4		
3	Recommendations	7		
4	Key themes from the complaints.....	9		
4.1	The building consenting process.....	9		
4.2	Technical competence and professionalism.....	11		
4.3	Timeliness.....	12		
4.4	Approval and certification functions.....	12		
4.5	Communication and customer service	13		
4.6	Enforcement and follow-up.....	13		
4.7	Inspections.....	14		
4.8	Costs	14		
4.9	Documenting decision-making and record keeping	15		
4.10	Exemptions from building consent requirements	16		
4.11	Amendments to existing building consents	16		
4.12	Other issues	17		
	Appendix 1: Background information	18		
	Appendix 2: Method and limitations.....	21		
	Appendix 3: Published guidance and advice	22		

Introduction

The Department of Building and Housing (the Department) plays a key role in monitoring how building consent authorities (BCAs) perform their statutory building control functions under the Building Act 2004.¹

One part of the Department's monitoring activities involves responding to complaints² about BCAs. The majority of these complaints relate to the building consent authority functions established by the Building Act 2004, and these include functions to process building consent applications, undertake building inspections, and approve building work as compliant with the building consent and the Building Code.

The report summarises the key themes across the 61 formal complaints³ received about BCAs performance between May 2006 and December 2009. It outlines key recommendations and advice in response to specific issues raised, and identifies relevant best practice guidance, advice and resources. This information will be useful for both BCAs and complainants who are practitioners in the sector to help ensure potential problems are prevented in the future.

The report offers some key practical recommendations on improving the performance issues in the wider building control system.

The report is aimed primarily at building officials in BCAs. It also aims to assist the wider building and construction sector to better understand the most common issues raised as complaints to the Department.

It is important to note that, with such a small number of formal complaints to assess, care needs to be taken when drawing any conclusions about BCAs performance. The limitations with this report's evaluation are discussed further in Appendix 2.

¹ These functions are predominantly contained in parts 2 (Building) and 3 (Regulatory responsibilities and accreditation) of the Building Act 2004 and include issuing building consents and code compliance certificates, processing building consent applications and undertaking building inspections during construction.

² The Department's complaints management role is outlined in Appendix 2.

³ The Department also receives hundreds of informal complaints about Councils each year. Refer to Appendix 2 for more information.

Executive Summary

Overview of complaints

- Sixty one formal complaints were made to the Department about BCAs across a three-year period (May 2006- December 2009). Fifty nine of these (97 percent) have been resolved by the Department, with three in progress at the time of writing this report.
- Complaints were made against 30 different BCAs. Most of the BCAs concerned had only one or two complaints made to the Department about their performance.
- As discussed in Appendix 2, this report does not compare individual BCAs as the Department does not consider data from 61 complaints sufficient to do this effectively. Specific conclusions cannot be made from such a small dataset without considering other factors (eg, population, numbers of building consents issued by each BCA etc).
- Generally, smaller councils had a disproportionate number of complaints relative to the number of consents issued and their populations, compared with the medium/provincial and large metropolitan councils. Similarly, medium/provincial councils had disproportionately higher complaint rates compared with larger councils.

Key themes from the complaints

1 The building consenting process

Fifty percent of complaints commented on the core stages of the building consent process - receipt, assessment, and granting and issuing. Many of the issues discussed under timeliness (4.3) and costs (4.8) relate directly to the processes adopted by BCAs to receive and vet consent applications.

The review identified a significant number of complainants (as consent applicants) consider that there is deficiency in the current building

consent assessment process applied by BCAs. Specifically concerns were expressed about BCAs:

- requesting further information in support of a consent application which applicants considered unnecessary, unreasonable or superfluous
- allocating staff without the necessary technical skills or competence to assess consent applications
- assessing compliance against a standard higher than that required by the New Zealand Building Code.

2 Technical competence and professionalism

Twenty-six percent of complaints involved an allegation that BCA staff were not technically competent or professional in their handling of a building consent application.

Our review highlighted that complainants perceive that BCA staff without the prerequisite skills and competence are frequently assigned to building consent processing work. The main areas of concern about the level of technical competence of BCA staff related to their understanding and assessment of:

- legislative requirements (Building Act 2004 and Building Regulations)
- accessibility compliance requirements
- fire and weathertightness compliance requirements

3 Timeliness

Twenty four percent of the complaints raised concerns about the timeliness of BCAs building consent processing and approval functions.

The review found that complainants have specific concerns about the timeliness of BCAs consent processing and approval functions regarding BCAs:

- Not granting building consent applications within the 20 working day statutory timeframe as specified under section 48 of the Building Act.
- Making requests for further information in close proximity to the 20 working day time limit.

4 Approval and certification functions

Twenty percent of complaints raised concerns about BCAs approval and certification functions.

Our analysis of the complaints identified that complainants have specific concerns about BCAs:

- Allowing public buildings to operate and be open to members of the public without code compliance certification.
- Providing inaccurate or inconsistent advice by informing consent applicants that code compliance would be issued and then changing their position.
- Approving non compliant building work, including disabled access and facility provisions of the Building Code.

5 Communication and customer service

Eighteen percent of complaints expressed concerns about how BCAs were communicating with their clients, or raised generic customer service issues.

Specifically our review found that complainants believe that BCAs are:

- unwilling to engage in discussion about issues or problems, or respond to phone calls, letters or e-mails
- not customer centric in their focus and are not prepared to be proactive in addressing issues or problems they may raise
- silo – focused in their approach, with this evidenced by a lack of co-ordinated communication between Council planning and building control departments
- overly risk adverse and primarily driven in their decision making by a fear of liability.

6 Enforcement and follow-up

Eighteen percent of complainants raised concerns about a range of enforcement or follow-up issues. eg: BCAs not addressing or following up on unauthorised or non-consented building work and issuing notices to fix without sufficient detail for Building Code contraventions.

The review identified that complainants have specific concerns about BCAs:

- Follow-up of unauthorised or non-consented building work taking place
- Manner of issuing notices to fix (e.g., issuing a notice without clearly articulating the remedial work required and the reasons)

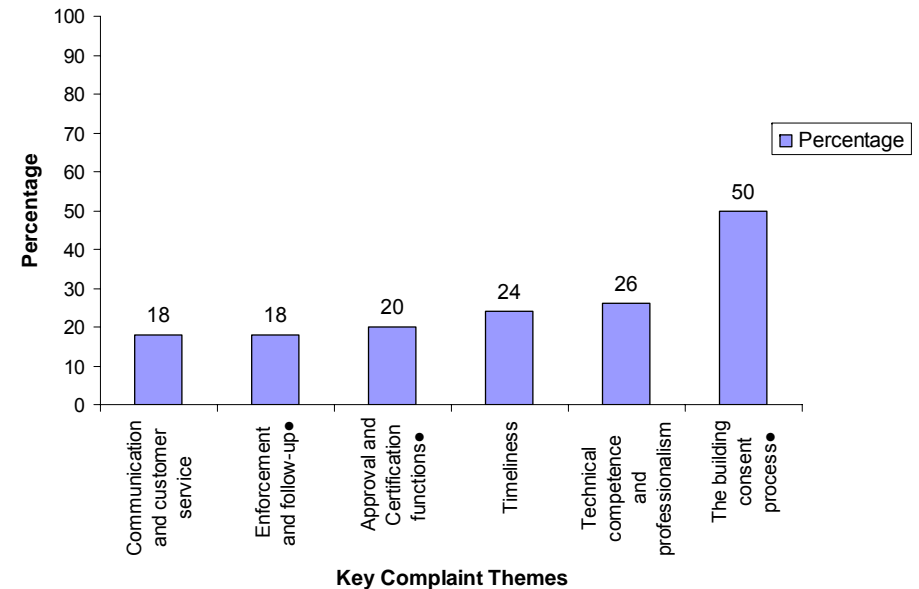
BCA Complaints Received - May 2006 to December 2009

7 Illustrating the complaints

The accompanying diagram outlines the percentage distributions of the key complaint themes across the 61 formal complaints received by the Department over the period May 2006 to December 2009.

Notes on complaint theme categories:

- Enforcement and follow-up incorporates issues regarding BCAs not appropriately addressing or following up on unauthorised or non-consented building work and issuing notices to fix without sufficient detail for Building Code contraventions.
- Approval and certification functions incorporates the following issues: public buildings operating without code compliance certificates; BCAs mistakenly advising that code compliance would be issued and then changing their minds; BCAs requiring complainant to apply for a certificate of acceptance; and non-compliant building work being approved by BCAs.
- The building consent process incorporates issues relating to the following: receipt and vetting of consent applications; the assessment of applications for building consent and the process applied by BCAs in issuing building consents (e.g., quality of decisions, refusal to issue consent, incorrect plans issued with consent and consents issued without detailed plans and documents in the application).



Recommendations for building consent authorities

Recommendations from the analysed complaints about BCAs are as follows.

- Ensure all building control staff (including relevant administration and technical clerks) understand the requirements of the Building Act 2004 and associated Building Regulations – if in doubt read the guidance referenced in this report or seek advice. One good source for advice is the Department's Consent Authority Capability and Performance Group's helpline (e-mail info@dbh.govt.nz, or telephone 0800 242 243).
- Ensure all building control staff (including relevant administration and technical clerks) understand the BCAs documented systems, processes, and procedures and consistently apply them.
- Clearly communicate all information requirements to customers. In the consenting context it is important to be clear about what you are asking people to provide, why you need the information and how it is relevant to compliance checking. Letting customers know at the front end of the process is the most efficient way.
- Provide clear and understandable guidance and advice to consent applicants on BCAs requirements for consenting (including the consenting, processing, inspection, approval process and information requirements) as well as on timing requirements, and the BCAs use of the statutory time clock.
- Ensure building control and supporting administration staff work within their technical limitations and are not allocated work that is beyond their skills, abilities and competencies.
- Strengthen systems and procedures for vetting and accepting consent applications to ensure all applications have appropriate supporting documentation of sufficient quality and detail.
- Ensure key decisions, reasons for decisions and outcomes of decisions are recorded by staff in sufficient detail and communicated effectively to applicants where appropriate. File the necessary information relating to building consents properly.
- Implement peer review processes for internal and contracted work to ensure rigour, consistency and quality.
- Contract specialist technical expertise when there are limited skills and expertise in-house for an assessment of a specific building consent or area of consent.
- Implement an effective enquiries and complaints management process and act on them promptly, implementing recognised performance improvements to avoid reoccurrences.

Recommendations for building consent applicants (designers, developers, builders etc)

Recommendations from the analysed complaints for building consent applicants are as follows.

- Ensure BCAs are provided with complete and accurate consent information to enable BCAs to make effective compliance decisions.
- Ensure consent applications contain sufficient and adequate design information to establish compliance with the Building Code.
- Review and understand public consenting information, including applicants developing an understanding of their statutory obligations and responsibilities prior to submitting an application for consent.
- Recognise that BCAs are 'verifiers' and not designers in the building control system. To work effectively BCAs must be presented with quality consent information and documents that illustrate Building Code compliance.
- Understand that council fees for their various regulatory activities are set through a community consultative process under the Local Government Act 2002 and not the Building Act 2004, consequently they are outside the Department's jurisdiction. All complaints about consent fees should be escalated within the Council in the first instance. All consent applicants have the right to question and have their consent fees explained and justified.
- Understand that not all building work requires a building consent and that the Schedule 1 of the Building Act defines types of work that are exempt
- Understand that it is the responsibility of building owners to obtain a building consent where these are required, including the decision whether their proposed building work is exempt under the Building Act. If in doubt they should obtain advice from a building professional or their local BCA, but the decision remains their responsibility.
- Provide BCAs with sufficient detail about building consent variations, ensuring that all variations are communicated to BCAs as early as possible.
- Understand the different legal requirements that can apply to building work (e.g., the Resource Management Act 1991, the Fire Service Act 1972, the Local Government Act 2002 and the Building Act 2004, etc).

Key themes from the complaints

The 12 key themes raised in the complaints about BCAs are summarised below. The main issues raised are identified, and supporting recommendations for performance improvement outlined.

4.1 The building consenting process

Fifty percent of complaints commented on the core stages of the building consent process – lodgement/vetting, assessment, and granting and issuing.

4.1.1 Receipt/lodgement of building consent applications

Issues

One complainant raised a specific concern about a BCAs receipt of their building consent application where the BCA had allegedly refused to accept it. Many of the issues discussed under timeliness (4.2) and costs (4.8) relate directly to the processes adopted by BCAs to receive and vet consent applications.

Recommendations

BCAs need to:

- Ensure consent receipt and vetting procedures are sound so that applications submitted with insufficient information are consistently rejected at lodgement.
- Provide comprehensive guidance and information to consent applicants about how councils receive and vet consent applications to ensure they comply with the Building Act and Building Regulations.
- Ensure reasons and decisions to grant building consent applications are recorded in sufficient detail.

- Ensure consent vetting tasks are allocated to people with the correct technical skills and experience.
- Train and educate front-counter staff to recognise and reject incomplete or incorrect applications, and to offer helpful advice on how to remedy shortcomings.
- Provide clear communication about what is wrong or inadequate, why the information is needed, and how it relates to Building Code compliance decision-making.
- Ensure the consent lodgement and vetting checklist provides sufficient detail.
- Offer to meet applicants to discuss building projects before lodgement of an application if appropriate, to ensure they include sufficient information for efficient processing.
- Provide clear and understandable guidance and written information to applicants on BCA requirements for consenting (including the application, processing, inspection and approval process).

Applicants need to:

- Ensure they provide the BCA with the necessary complete and accurate information to enable smooth processing and informed compliance checks. All of the complaints about the BCAs receipt, vetting and processing procedures involved consent applications that did not contain sufficient or adequate design information.

4.1.2 Assessment of building consent applications

Issues

Thirty-eight percent of complaints raised concerns about the BCAs assessment of building consent applications. Specifically:

- BCAs requesting further information that applicants did not consider necessary, reasonable or relevant.
- BCAs processing building consent applications and not identifying Building Code non-compliances nor picking up on Building Act requirements. Several complainants suggested the processors may have lacked the technical competence to process consents.
- BCAs may have assessed compliance against a higher standard than the Building Code requires.
- BCAs accepting producer statements that have not been subject to sufficient scrutiny. This usually reflected a difference of opinion between the BCA and the complainant about the level of detail in the producer statement or the weight it should be given in the overall compliance decision.
- Confusion over means of compliance used – eg, whether an acceptable solution was being used as the basis of the application or a proposed alternative solution. One complainant suggested that BCAs rejected alternative solutions due to a lack of expertise to assess proposals rather than on compliance grounds.
- The allocation of applications to contractors for processing.
- One complainant questioned why they could not submit two different design options in an application and decide late.
- Establish, and effectively use, good building consent processing checklists to ensure compliance with all relevant clauses of the Building Code.
- Allocate building consent applications to staff or contractors with the requisite technical competence to process them.
- Implement peer review processes for internal and contracted work to ensure rigour and consistency (particularly for complex and technical design proposals).
- Obtain certainty around the actual means of compliance the applicant is proposing to use (e.g., acceptable solutions, alternative solutions or a combination thereof).
- Ensure applications contain specific and relevant information about proposed alternative solutions and how it will comply with the relevant Building Code clauses.
- Contract specialist technical expertise for assessment of specific design proposals, alternative solutions and producer statements, when there is no BCA in-house expertise.
- Keep detailed records of assessment processes used for producer statements and alternative solutions.
- Ensure policies for considering producer statements address: the minimum information requirements, author competence and how decisions will be made based on these statements.
- Ensure staff are trained in the requirements and tools of the Building Act (including minimum standards, options and flexibility) and how to apply them.
- Provide clear information to applicants about additional information required and reasons why.

Recommendations

BCAs need to:

- Clearly understand the legal requirements which relate to processing and issuing of building consents (including sections 40-52 of the Act).
- Clearly understand other fundamental sections of the Building Act 2004 including (but by no means limited to):
 - **Section 17** – which requires building work to comply with the Building Code
 - **Section 18** – which specifies that building work does not have to achieve performance criteria additional to or more restrictive than the Building Code
 - **Section 19** – which specifies a number of ways that compliance with the Building Code can be established.

Applicants need to:

- Ensure consent applications contain sufficient and adequate design information to establish Building Code compliance.

4.1.3 Granting and issuing building consents

Issues

Twelve percent of complaints were concerned about the process for issuing a building consent. Specifically:

- Decisions not complying with the requirements of the Building Act.
- The refusal to issue a building consent by a BCA.
- Incorrect plans being issued with a building consent.
- Building consents issued without detailed plans and documents in the application and with minimal information on file.

Recommendations

BCAs need to:

- Provide legitimate justification/explanation and advice to the applicant when rejecting a consent application.
- Ensure reasons for and outcomes of key decisions are recorded by staff in sufficient detail.
- Ensure adequate plan detail outlining the proposed building is included in the issued consent.
- Ensure records are kept of stamped and approved consent applications (including superseded plans).
- Consistently file information relating to building consents (including correctly date stamped and signed copies of documents and inspection records).

4.2 Technical competence and professionalism

Issues

Twenty-six percent of complaints involved an allegation that BCA staff were not technically competent or professional in their handling of a building consent. While a range of technical issues were raised, the complaints mostly related to the core building consent compliance checking functions of building officials. Specifically:

- Basic level of knowledge and understanding about the Building Act 2004 and associated Building Regulations (including the New Zealand Building Code).
- Understanding of documents that support the core building legislative framework (eg, compliance documents such as acceptable solutions or best practice industry guidance documentation).
- How legislation and administrative knowledge was being used and applied during the building consent processing, inspection and approval stages.
- Understanding the scope of their technical knowledge and not working outside their levels of technical competence.
- Work being allocated beyond skills and experience of staff.
- Insufficient training and supervision being provided.

While no single technical issue received a significant number of complaints, complainants' main areas of concern were the BCAs knowledge and understanding of:

- Building Act 2004 requirements
- accessibility compliance requirements
- assessment of fire compliance requirements
- Weathertightness compliance requirements

Around six percent of complaints raised general concerns about the professionalism, honesty and integrity of building control officers they had been dealing with.

Recommendations

As building control work becomes more scientifically and technically complex, the technical knowledge and ability of building officials must also increase.

BCAs need to:

- ensure training systems link to desired outcomes, and target specific improvements in staff competency and performance
- develop strategies to make best use of available skilled technical staff.
- consider the relationship between building complexity/category and the technical skills required
- ensure staff are allocated building control work that is appropriate to their skills, abilities and competencies
- identify capacity and competency to undertake specific tasks in-house and tasks which need to be contracted out
- invest in and adequately support staff training and continued professional development.

4.3 Timeliness

Issues

Twenty four percent of the complaints raised concerns about timeliness of BCAs building consent processing and approval functions.

Specifically:

- Building consents not being granted (or refused) within the 20 working days specified by section 48 of the Building Act.
- Timing issues associated with BCA requests to applicants for additional information (often with the requests being made and the processing clock being suspended very close to the 20 working day time limit).

Recommendations

There have been high volumes of applications for building consents and other building control activities in recent times (this has reduced somewhat now given the current economic climate) which have significantly impacted on BCAs timeliness and performance.

BCAs need to:

Strengthen systems and procedures for vetting and accepting consent applications to ensure appropriate supporting documentation.

- Reject poor and inadequately detailed building consent applications at lodgement stage.
- Train staff to recognise and reject incomplete or incorrect consent applications.
- Provide better consumer information and guidance on documentation and timing requirements prior to accepting applications, including offering pre-lodgement meetings.
- Adequately resource building control operations.

Applicants need to:

- Ensure their building consent documentation includes the necessary quality and detail of information to enable the BCA to make an informed and timely compliance decision.

4.4 Approval and certification functions

Issues

Twenty percent of complaints raised concerns about BCAs approval and certification functions. Specifically:

- Public buildings operating without code compliance certificates.
- BCAs mistakenly saying a code compliance certificate would be issued and then changing their minds.
- BCAs requiring complainants to apply for a certificate of acceptance.
- Non-compliant building work being approved by BCAs. Including non-compliance with accessibility requirements for people with disabilities.

Recommendations

BCAs need to:

- Document policies and procedures covering the issue or refusal of code compliance certificates and certificates of acceptance.
- Ensure key decisions, reasons for decisions and outcomes of decisions are appropriately recorded in relation to code compliance certificates and certificates of acceptance.
- Ensure that compliance decisions to issue code compliance certificates and certificates of acceptance are peer reviewed by staff who did not perform the inspection, to help ensure consistency and quality.
- Ensure that a final, paper-based review of the consent is undertaken (by a technically competent building official) to ensure all relevant inspections have been undertaken and all necessary as-built documentation has been received and checked.
- Ensure staff are allocated building control work that is appropriate to their skills, abilities, and competencies (e.g., accessibility compliance requirements).
- Ensure there is a training system that links training to desired outcomes and targets specific improvements in staff competency and performance (e.g., accessibility compliance requirements).
- Contract specialist technical expertise for assessment of a specific design proposals (e.g., accessibility compliance requirements) when the required skills are lacking in-house.
- Implement peer review processes to ensure rigor and consistency of decisions.

4.5 Communication and customer service

Issues

Eighteen percent of complaints expressed concerns about how BCAs were communicating with their clients, or raised generic customer service and performance issues. Specifically:

- An unwillingness to enter into discussions about issues and problems, or to return phone calls or reply to letters and emails.
- Lack of a 'customer service' focus and help with applicants problems or issues.

- Lack of communication and coordination between council building control and planning departments.
- Lack of adequate guidance, advice or information to consent applicants.

Recommendations

BCAs need to:

- Have clear policies and procedures for communicating effectively with building consent applicants, particularly when there are issues or concerns.
- Have clear public information to assist customers (eg, explaining the consenting process and the expectations around information needed to make compliance decisions).
- Clearly communicate what they believe is wrong, why they need the information, and how it relates to their Building Code compliance decision-making for deficient building consent applications.
- Have clear policies and procedures for receiving and managing enquiries and complaints about building control functions and customer service issues.
- Ensure enquiries and complaints are recorded, managed and resolved
- Provide staff with information and training on dealing with enquiries and complaints.
- Ensure there is good communication between council teams responsible for administering different legislation (eg, the Resource Management Act 1991, the Building Act 2004 and the Liquor Licensing, etc).

Applicants need to:

- Read and understand public consenting information, their statutory obligations and responsibilities before lodging a consent.
- Applicants need to realise that BCAs core compliance checking role is an integral part of the building process. For BCAs to do this

properly, they need good information to show how proposed building work will comply the Building Act and Building Code.

- Applicants need to realise that BCAs are ‘verifiers’ not designers in the building control system. To work effectively they need to be presented with quality consent information and documentation that clearly illustrates Building Code compliance.

4.6 Enforcement and follow-up

Issues

Eighteen percent of complainants raised concerns about a range of enforcement or follow-up issues. Specifically:

- Unauthorised or non-consented building works taking place, with allegations that BCAs did not follow-up compliance and concerns about risks associated with the building sites (including hazardous substances and lack of access and facilities for people with disabilities).
- Concerns about the issuing of notices to fix (e.g., issuing a notice to fix without describing the remedial work actually required and reasons for non - compliance).

Recommendations

BCAs need to:

- have clear policies which identify situations when it is appropriate to issue a notice to fix
- provide detailed information in a notice to fix about the contravention, building work required and the reasons why. Any notice needs to clearly document what is wrong, tell the consent applicant what they need to do and why, and detail, as appropriate, the remediation required to ensure compliance.

TAs need to:

- provide clear guidance on when a building consent is required, and exemptions to the process
- follow up non-consented or unauthorised building work
- have a sound understanding of the relevant legislation in order to undertake enforcement activities.

4.7 Inspections

Issues

Sixteen percent of complaints raised concerns about inadequate BCA inspection processes for ensuring work had been undertaken according to the building consent. Some complainants alleged BCAs were negligent and or incompetent. Specifically:

- Inadequate inspection processes and perceived lack of technical competence of inspectors.
- Inspectors identifying further work to be completed after approving inspections and saying a code compliance certificate would be issued, or having already issued one.
- Inspectors not identifying non-compliances with the Building Code during inspections.
- One specific technical concern was in relation to the inadequacy of roof inspections, which later contributed to weathertightness problems.
- Inconsistency and contradiction of interpretation by different inspectors on the same job.

Recommendations

BCAs need to:

- ensure inspectors can communicate effectively and make detailed records of completion of all required inspections

- ensure key decisions, reasons for decisions and outcomes/actions from decisions are appropriately recorded and filed by inspectors
- ensure inspectors are allocated work that is appropriate to their skills, abilities and competencies
- address limitations in the technical building compliance knowledge of inspectors and understand where these weaknesses exist
- implement peer review processes for inspections to ensure rigor, quality and consistency.

4.8 Costs

Issues

Fourteen percent of the complaints involved complainants believing BCAs had asked them to pay unreasonable compliance costs. Specifically:

- The BCAs fees and charges for applying for a building consent or other regulatory functions.
- Personal and business costs to the applicants due to time delays in the building consent approval process.

Recommendations

BCAs need to:

- strengthen systems and procedures for vetting and accepting consent applications to ensure all applications have appropriate supporting documentation
- train staff to recognise and reject incomplete or incorrect applications at lodgement stage
- ensure work is allocated to people with the right skills and experience
- provide clear and understandable guidance and information to applicants on requirements for consenting (including the quality of consent documentation required), on timing requirements, and the BCAs use of the statutory time clock.

Applicants need to:

- understand that council fees for their various regulatory activities are set under the Local Government Act 2002. This involves a community consultation process where people can have their say. Section 219(1) of the Building Act 2004 enables a council to impose a fee or charge in relation to building consents or any other function or service under the Act (e.g., undertaking building inspections or approval functions). The Department does not have a role in determining or auditing council fees and has no jurisdiction in these matters.
- ensure they do not contribute to delays and costs from the building consent process, by ensuring documentation includes the necessary information for the BCA to make an informed and timely compliance decision.

4.9 Documenting decision-making and record keeping

Issues

Eight percent of complaints touched on issues relating to how BCAs were documenting their decision-making, managing information, and keeping records. Specifically:

- Complainants could not access consent file information about their properties or building projects.
- Minimal information was kept on consent files.
- The BCA did not retain copies of stamped approved building consent documents.
- Some consented documents were not date stamped (or denoted in some other way) as being received and approved.

Recommendations

BCAs need to:

- clearly identify what information needs to be recorded and how to do this
- ensure the rationale for compliance decisions is always documented and staff have the tools to do this (e.g., procedures, guidelines and checklists)
- ensure there is adequate information on the building consent file to explain key decisions, and the outcomes and reasons for them
- ensure information is stored securely and can be easily retrieved
- undertake quality assurance measures (e.g., internal audits or peer review) of regulatory decision-making to ensure staff consistently follow such procedures
- have systems to ensure records of stamped and approved consent applications are kept on territorial authority files for the life of the building
- consistently file information on building consents (including signed copies of documents and correctly date stamping documents)
- ensure all staff are trained to use the filing systems and know what information needs to be filed.

4.10 Exemptions from building consent requirements

Issues

One complaint centred on a disagreement between the BCA and the complainant about whether the building work in question actually needed a building consent under the Building Act 2004.

Recommendations

BCAs need to:

- clearly understand each exemption and be willing to provide advice to the public and industry.

Applicants need to:

- understand that not all building work needs a building consent. The Building Act includes types of building work that are exempt
- such exemptions recognise that certain low risk building work does not need to be subject to the normal building consent approval process
- schedule 1 of the Building Act contains a list of such exempted building work. In October 2008 the list was expanded
- it is the building owner's responsibility for getting a building consent if required and for deciding if their proposed work is exempt under the Building Act 2004
- even if building work does not require a building consent it must still comply with the Building Code (section 17 of the Building Act refers). This is the building owner's responsibility in the first instance.

4.11 Amendments to existing building consents

Issues

A small number of complaints focused on how BCAs were handling proposed variations to building work that had already received a building consent. While these varied in complexity, the key theme was a poor or inefficient process for assessing proposed variations which did not seem to distinguish between relatively minor and major ones. Some complainants felt that the BCA was applying overly rigorous requirements for relatively simple proposed variations.

Recommendations

BCAs need to:

- have a sound process for receiving and handling variations and making amendments and provide clear applicant guidance about what is expected
- distinguish between minor and major variations. Minor variations do not usually affect compliance with the Building Code, while major variations usually have clear compliance implications

- clearly document decision-making when processing amendments
- establish whether the variation complies with the Building Code
- if it does comply, then BCAs systems should clearly describe how amendments to building consents can then be made; a range of possible methods can be used depending on the significance and complexity of the change and its impact
- ensure that ultimately what gets built is reflected in the final consent documentation
- the Building Amendment Act 2009 details some clarity around amendments.

Applicants need to:

- Provide sufficient detail about the variation and how it complies with the Building Code.
- Communicate all variations to the BCAs prior to undertaking the work.

4.12 Other issues

A small number of complaints raised additional issues; these are outlined in the accompanying sections.

4.12.1 BCAs accreditation status

Issues

Some complainants queried some BCAs accreditation status under the BCA Accreditation Scheme – usually based on the complainants’ perceptions and opinions of the competency and professionalism of BCA staff.

Recommendations

Applicants need to:

- document specific concerns and reasons why they dispute a BCAs accreditation status and raise these in the first instance with International Accreditation New Zealand (IANZ). IANZ is the appointed building consent accreditation body, responsible for assessing consenting authorities for accreditation as a BCA, including regular ongoing and special assessments.

4.12.2 Resource Management Act 1991

Issues

A small number of complainants raised issues that were outside the jurisdiction of the Building Act 2004 and related to the Councils district plan requirements under the Resource Management Act 1991. There appears to be significant confusion with consent applicants about how these two Acts work together in practice and what requirements are building verses planning ones.

Recommendations

BCAs need to:

- provide clear and understandable guidance and information on the role and requirements of the Building Act and the Resource Management Act in the consent process (refer to the joint guide published by the Department and the Ministry for the Environment, which explains this interface in Appendix 3)
- provide clear explanations about what requirements are planning verses building ones and why they are required
- ensure there is good communication between council teams responsible for administering different legislation, namely the Resource Management Act and the Building Act.

Applicants need to:

- endeavour to clearly understand the different legal requirements in the development and construction processes.

Appendix 1– Background information

Role of Building Consent Authorities

The Building Act 2004 sets out a number of obligations and responsibilities on those involved in building and construction. From a building control perspective, local councils are responsible for undertaking building control regulatory functions under the Act for building work carried out in their districts. In terms of the building consenting system, building consent authorities (BCAs) perform several roles, including:

- receiving applications for building consents
- assessing and verifying that building consent applications comply with the requirements of the Building Act and Building Regulations made under the Act (including the Building Code)
- granting and issuing building consents
- undertaking inspections of building work
- issuing and refusing to issue code compliance certificates, compliance schedules and notices to fix
- receiving and managing inquiries about building control functions.

The Building Act 2004 also established a complaints procedure to allow people to make complaints to the Department if they believe a BCA is failing to perform its functions properly.

The Department's complaints management role

Section 200 of the Building Act 2004 empowers the Chief Executive of the Department to receive and investigate complaints against BCAs. The Department can only investigate complaints about a BCA if the complaint is about:

- a BCA failing to properly perform its statutory functions under parts 2 and 3 of the Act without good reason, or
- a BCA acting negligently in performing its statutory functions.

This means that the Department can generally only investigate complaints about a BCAs performance relating to the following broad areas:

- establishing compliance with the Building Code
- assessing, processing and granting building consents
- issuing documents such as code compliance certificates, compliance schedules and notices to fix
- conducting inspections of building work undertaken
- providing building consent applications to, and receiving advice from, the New Zealand Fire Service Commission
- administering the building levy.

The Department does not manage complaints about BCAs that do not relate to the performance of their building control functions.

The Department's complaints management process

The Department has implemented a staged process to manage complaints. It has been designed to ensure information is appropriately collected from the respective parties and considered with an open mind. The Department specifically designed the process to ensure all complaints are handled in a way that is consistent with the principles of natural justice.

Detailed information about the Department's complaints management process is provided on the Department's website.⁴

This includes a specific complaints form that has been developed to lodge a complaint about a BCA with the Department. The form helps ensure that the Department receives the necessary information from the complainant to enable it to fully consider the issues raised and take these up with the BCA concerned.

Complainants are encouraged to initially raise their complaint with the BCA concerned before approaching the Department. If the complaint is still unsatisfied, the complaints process usually commences following receipt of a written complaint by the Department. This usually occurs when the Department receives:

- a completed complaints form
- a letter or email to the Chief Executive of the Department
- a letter addressed to the Department
- correspondence forwarded via the Office of the Minister of Building and Construction
- a phone call inquiry fielded by the Department's Call Centre.

In summary, complaints are managed over three key phases of activity.

In the first phase the Department formally acknowledges its receipt of the written complaint and confirms how it will be handled in the first instance. The Department may at this point request additional supporting information or seek clarification to substantiate the details of the complaint. At the same time, the Department notifies the BCA concerned in writing. To enable the Department to effectively enquire into the specific matters raised by the complaint, copies of relevant documentation are requested from the BCA and a response sought to the matters alleged by the complaint.

⁴ Refer to www.dbh.govt.nz/consumer-complaints

The second phase of activity commences once all information relevant to the complaint has been received from the BCA and complainant. At this point, the Department will undertake a more formal assessment of the complaint. Such enquiries are primarily documentary based, whereby staff review the information obtained about the complaint from all parties. Further contact with the parties may also be made to assist with this assessment.

The third phase involves making a decision about the best course of action to be taken.

Prior to deciding whether to formally decline or accept the complaint, as required under section 200(2)(a), the Department may resolve the issue by:

- deciding the BCA acted appropriately and no further action should be taken
- referring the complaint to another Government department or agency better placed to respond to the matters raised by the complaint
- upholding the substance of the complaint and helping facilitate a satisfactory outcome with the complainant and BCA concerned
- upholding the substance of the complaint and recommending the BCA makes the necessary performance improvements to avoid a reoccurrence of the situation
- upholding the substance of the complaint and placing additional monitoring on the BCA (e.g., undertake a technical review)
- referring the complainant to the Department's Determinations Team to resolve any building compliance technical issues of dispute between the parties via the Determinations process. These usually involve instances where a complainant raises concerns with a BCAs interpretation and application of the Building Act 2004 or the Building Code.

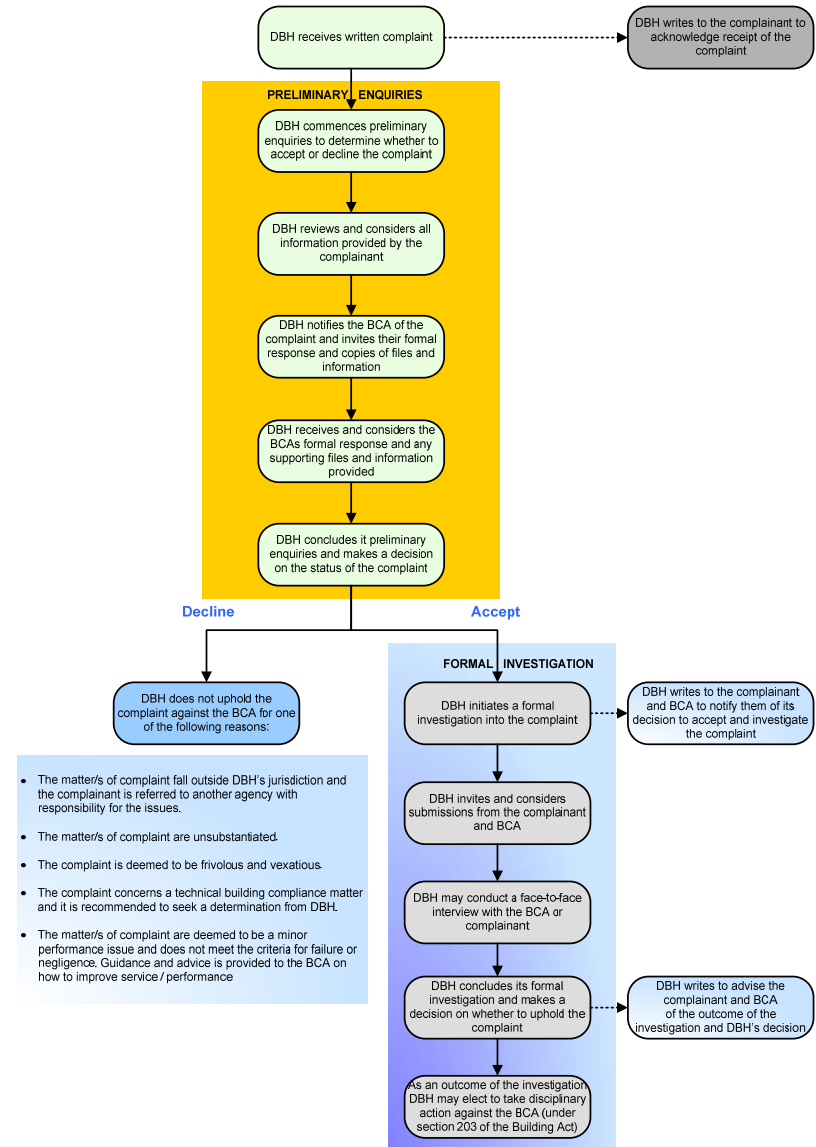
If the Department does not resolve the issue in any of the above ways, it may decide under section 200(2)(a) to commence a formal investigation in to the matters raised. The process for such an investigation is contained in section 202 of the Building Act 2004. Depending on the

outcome of this process, a series of potential disciplinary powers are available to the Chief Executive of the Department of Building and Housing. These include:

- issuing a warning to the BCA
- requiring the BCA to take certain remedial action
- limiting the functions that the BCA may perform under the parts 2 or 3 of the Building Act 2004
- suspending or revoking a BCAs registration status (only for BCAs that are not territorial authorities or regional councils – such as private organisations) and
- making a recommendation that the Minister appoint one or more persons to act in the place of a BCA (that is the territorial authority or a regional council) in relation to all or any of its functions.

The adjacent process flow map summarises the key steps.

Overview of the Department's Complaints Management Process



Appendix 2– Method and limitations

The Department undertook a systematic review of the 61 formal complaints it received between May 2006 and December 2009 and identified the key themes and issues.

Hard copy files maintained by the Department were assessed for each complaint. The files hold all material correspondence from the parties to the complaint provided to the Department and any correspondence the Department made while considering it.

Each complaint was summarised and categorised so that key issues raised across all complaints could be identified. This involved summarising the findings from the complaints process and any recommendations made to the BCA or complainant concerned. Many complaints covered more than one issue or theme and were therefore coded accordingly. For example, a single complaint may have made allegations about a building official's technical competency and also raised issues about the timeliness of the BCAs consent processing or the fees charged.

The 61 complaints that form the basis of this report were only those that the Department assessed and considered further management was needed under the complaints framework established in the Building Act. Each year the Department's Consent Authority Capability and Performance Group, which runs the Department's complaints process, receives hundreds of queries and informal complaints from the building and construction sector or wider public. These can usually be resolved relatively simply with advice given over the telephone or via email, or by clarifying issues with the parties concerned. Such interactions have *not* been included in this report as they were not dealt with as formal complaints.

With such small formal complaint numbers, care needs to be taken when drawing any conclusions about BCAs performance based purely on the number of complaints made. Many other factors come into play, including:

- The large difference in the volumes of building consents issued across BCAs – generally the larger metropolitan BCAs issue considerably more building consents and often for more complex building work. Based on the volume of work alone, more complaints could reasonably be expected to be made against such BCAs.
- The dataset for the report does not include the more minor queries and informal complaints and concerns discussed above, or those complaints are taken up only with the BCA concerned and never referred to the Department.
- The number of complaints each BCA received does not necessarily indicate the number of complainants. A small number of individual complainants could lodge multiple complaints about one BCA.
- The key themes raised by the complaints summary do not tell the full story about whether the complaint in question was actually justified. Across the 61 complaints, the outcomes of the Department's assessment varied. In some cases, the BCAs actions were regarded as completely appropriate and no further action was considered necessary. However, in other cases, the BCA agreed to strengthen its building control processes or systems or to look for ways to provide a better service to the immediate complainant and its other customers.

Appendix 3 – Published guidance and advice

Title	Summary of content
A Beginner’s guide to resource and building consent processes	This document explains in plain English the requirements of, and relationship between, the Resource Management Act 1991 and the Building Act 2004. It was jointly produced by the Department and the Ministry for the Environment. This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/resource-and-building-consent-processes.pdf
Guide to applying for building consent (simple residential buildings)	This document describes the key issues to consider when applying for a building consent, and describes the minimum documentation that should be supplied with an application to demonstrate compliance with relevant clauses of the Building Code. This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/guide-to-applying-for-a-building-consent.pdf
Building officials’ guide to the Building Act 2004	This document outlines the key changes introduced by the Building Act 2004. The main topics it covers are: <ul style="list-style-type: none"> • responsibilities of TAs and BCAs • core building control provisions (project information memoranda, building consents, compliance schedules) • other provisions (warnings and bans, offences, product certification) • a comparison with the Building Act 1991. This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/officials-guide.pdf
Pre-lodgement meetings for building consent applications	Articles in the October 2008 editions of BCA Update and Codewords discuss the benefits of having pre-lodgement meetings for building consent applications. They are available at: www.dbh.govt.nz/bca-update and www.dbh.govt.nz/codewords-index
Developing consumer information about the building consenting process	An article in the May 2008 BCA Update summarises the activities councils should cover in their consumer information to explain the consenting process to the public. It is available at: www.dbh.govt.nz/bca-update
Tips for easier consent processing	An article in the December 2007 Codewords provides some key tips to smooth the consenting process. It is available at: www.dbh.govt.nz/codewords-index
Supply of manufacturers’ produce literature with building consent	An article in the October 2008 BCA Update details what manufacturers’ product literature should be provided to support

applications	building consent applications. It is available at: www.dbh.govt.nz/bca-update
Recording key decisions, reasons, and outcomes	An article in the October 2007 edition of BCA Update highlights best practice around what key decisions should be recorded by building officials during the consenting, inspection, and approval process. It is available at: www.dbh.govt.nz/bca-update
Benefits of project information memoranda	Articles in the December 2007 editions of BCA Update and Codewords discuss the benefits of obtaining a PIM and how to apply for them. They are available at: www.dbh.govt.nz/bca-update and www.dbh.govt.nz/codewords-index
Means of establishing compliance: alternative solutions	This report contains guidance on how to use alternative solution proposals when applying for building consents. Includes the use and assessment of alternative solutions by building consent authorities. This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/Guidance-information/pdf/alternative-solutions.pdf
Producer statement guidance	Relevant guidance on how BCAs should consider producer statements when making compliance decisions was published in the following editions BCA Update: October 2007, October 2008 and June 2009. These are available at: www.dbh.govt.nz/bca-update
Summary of findings report: 2007/08 building consent authority accreditation assessments	This report summarises the key findings from the assessments of 72 territorial authorities and three regional councils that applied to become BCAs under the BCA Scheme introduced by the Building Act 2004. This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/BCA/BCA-summ-findings.pdf
Building Consent Authority Accreditation Preparation and Self-assessment Guide	This document contains information to assist territorial and regional authorities that apply to become BCAs to prepare policies, processes and procedures for accreditation assessment. This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/bca-self-assmt-guide.pdf
Building officials' FAQs	This document provides answers to building officials' most frequently asked questions about the consent and inspection process under the Building Act 2004. This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/building-act/bofficials-faqs.pdf
Building consent authority development guide	This document provides a tool for organisations who want to become a BCA. It includes process flowcharts and information about the technical processes and procedures of territorial authorities, regional authorities, and BCAs. This information includes these organisations statutory functions and responsibilities under the Building Act 2004. This is available at: www.dbh.govt.nz/bc-guide/index.html

Building Act 2004: Information for designers, builders and specialist trades	<p>This document discusses changes to building legislation as a result of the Building Act 2004 and new regulations including:</p> <ul style="list-style-type: none"> • contracts for building work • building consents and inspections • spec building and housing developments • occupational licensing. <p>This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/bact-industry.pdf</p>
Competency assessment issues	<p>The December 2007 edition of BCA Update highlights issues around competency assessments found during the BCA Scheme implementation. This available at www.dbh.govt.nz/bca-update</p>
Certificates of acceptance	<p>The December 2007 editions of Codewords and BCA Update provide further guidance on the intent of certificates of acceptance and how they should be used. These articles are available at: www.dbh.govt.nz/pub-building-index</p>
Certificates for Public use Effective 21 July 2005	<p>Codewords edition July/August 2005 provides guidance on the intent of certificates for public use and how they should be used. This article is available at: www.dbh.govt.nz/pub-building-index</p>
Earthquake-prone building provisions of the Building Act 2004: Policy guidance for territorial authorities	<p>This document provides guidance on how councils can make a policy for dealing with earthquake-prone buildings. The main topics covered include:</p> <ul style="list-style-type: none"> • the intent of the legislation • a policy template • policy guidance • a model policy. <p>This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/building-act/e-quake-policy.pdf</p>
Dangerous and insanitary building provisions of the Building Act 2004: Policy guidance for territorial authorities	<p>This document provides guidance on how to make a policy for dealing with dangerous and insanitary buildings. The main topics covered include:</p> <ul style="list-style-type: none"> • a policy approach • priorities for action • dealing with heritage buildings • a template check sheet for inspections. <p>This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/building-act/dang-insan-guidance.pdf</p>

Building infringement scheme guidelines	<p>This document contains information to assist effective and appropriate implementation of the Building (Infringement Offences, Fees, and Forms) Regulations 2007 and the development of relevant local enforcement policies and procedures. This is available at: www.dbh.govt.nz/building-infringement-scheme-guidelines-index</p> <p>The August 2008 BCA Update and March and May 2008 editions of Codewords also have articles on the guidelines. These are available at: www.dbh.govt.nz/bca-update</p>
Building Act 2004: New safety measures for premises intended for public use – Section 363	<p>This document contains information about section 363 of the Building Act 2004, which covers premises intended for public use that are affected by building work. The main topics discussed are:</p> <ul style="list-style-type: none"> • when section 363 applies • responding to section 363. <p>This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/bact-363.pdf</p>
Outstanding building consents	<p>The December 2007 editions of BCA Update and Codewords provide guidance on how councils should follow up on those buildings that do not have code compliance certificates. These are available at: www.dbh.govt.nz/bca-update</p>
Identification and analysis of building consent, inspection and approval costs	<p>This report focuses on changes in building control costs and building costs in the period from 2000/01 to 2006/07, and the contribution of the Building Act to those changes. Particular focus is given to costs around the building consent, inspection and approval functions of local councils under the Building Act.</p> <p>The report identifies that overall building costs have increased across the given period, with the costs of materials, project management, overhead costs, and labour still comprising the largest components. The report is available at www.dbh.govt.nz/pub-bca-accreditation. The BCA Update (June 2009) also discusses this report. It is available at www.dbh.govt.nz/bca-update</p>
Building Act 2004: Guide to exemptions from building consent requirements	<p>This document contains a high-level overview of the changes to Schedule 1 of the Building Act 2004, which came into force in October 2008. Schedule 1 lists the types of minor building work that do not require a building consent. This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/Guidance-information/pdf/guide-to-exemptions.pdf</p>
Building work that does not require a building consent: A Guide to Schedule 1 of the Building Act 2004	<p>This document provides more detail about each of the exemptions in Schedule 1 and specific examples to illustrate where they are likely to be appropriate. This is available at: www.dbh.govt.nz/UserFiles/File/Publications/Building/Building-Act/building-work-that-does-not-require-building-consent.pdf</p>

<p>Guidance on changes to schedule 1</p> <p><i>Refer BCA Updates for: December 2008, October 2008</i></p>	<p>These articles are available at: www.dbh.govt.nz/pub-building-index</p>
<p>Building consent requirements simplified</p> <p><i>Refer Codewords articles for: December 2008 and September 2008</i></p>	
<p>Q&A about recent changes to Schedule 1 of the Building Act 2004</p> <p><i>Refer Codewords articles for: December 2008 and September 2008</i></p>	
<p>Schedule 1 – work that does not require a building consent</p> <p><i>Refer Codewords article for: January 2007</i></p>	
<p>Guide to building consent amendments</p>	<p>This document outlines the Department of Building and Housing's expectations around notifying proposed variations to building consents, assessing those variations and making amendments to building consents.</p>
<p>Variations and amendments to building consents</p>	<p>Articles in the BCA Update of August 2008 and Codewords December 2008 provide best practice guidance on how amendments to already consented work should be made. These articles are available at: www.dbh.govt.nz/pub-building-index</p>
<p>Amendments to building consents - a practical approach</p>	

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