
REPORT 4
(1215/52/IM)

SUBMISSION ON BUILDING AMENDMENT BILL NO 3

1. Purpose of Report

The purpose of this report is to approve the Wellington City Council submission on the Building Amendment Bill No 3 (253-1) (the Bill), *attached* in draft form as Appendix One. The Bill proposes amendments to the Building Act 2004 (the Act).

This report follows on from Report 5 (1215/52/IM) to the Strategy and Policy Committee on 22 April 2010.

2. Executive Summary

The Government introduced the Bill to Parliament on 9 December 2010. The Bill has been referred to the Local Government and Environment Select Committee. Submissions on the Bill close on 4 March 2011.

The Bill is part of a package of reforms to the Act proposed in the wake of industry-wide consultation carried out by the Department of Building and Housing in 2010. The key features of the Bill are:

- introduction of a 'stepped risk-based approach' (four classes of building work based on risk) to how building consent and inspection requirements are administered, so that the role of the building consent authorities at each step is aligned with the risk involved;
- clearer statutory signals as to the accountabilities of participants involved in building design and construction.

Officers generally support the intent of the proposals in the Bill, but have a number of significant reservations as outlined below. It is considered that if the proposals are implemented in a holistic and integrated manner, they should improve the delivery of cost-effective building control services. While there will be complexities for the Council to navigate and new processes/skills to develop, the end outcome for the public should be a system that balances expedited building consent processes against the risk of a sub-standard building performance outcome.

However, as indicated above, officers have significant concerns about some aspects of the Bill and its relationship to the other reforms anticipated as part of the Government's Building Act Review process.

Those concerns are:

- the amount of detail that has been deferred for inclusion in regulations to be made by the Governor-General by Order in Council. This approach makes it difficult to accurately gauge the likely impact of the Bill on the Council's current consenting and inspection operations or to plan for system or process changes (refer section 5.3.1) the piece-by-piece approach to reform of the wider range of matters considered by the Department of Building and Housing during the Building Act Review process, rather than the development of draft legislation that deals with all of the identified issues in an integrated way (refer section 5.3.2);
- the likely ineffectiveness in practice of the Bill's provisions that are intended to signal the accountabilities of the different people typically involved in construction projects (refer section 5.3.3);
- insufficient attention has been given to the relationship between the proposed provisions for stepped risk-based consenting and inspection and the Act's existing provisions that apply to all classes of building consent, such as section 112 (alteration of existing buildings) (refer section 5.3.4);
- the Bill provides insufficient certainty about building consent authorities' options when proposed building work does not fit neatly into one of the proposed risk-based classes of building consent, or where redesignation is required (refer section 5.3.5).

The proposed stepped risk-based approach to building consents generally represents a shift in responsibility away from building consent authorities, towards other parties more directly involved in the design, construction, and use of buildings. However, the devolution of responsibility to LBPs has the potential to result in a building quality and performance issues (such as leaky buildings), if it isn't carefully thought out and managed.

Officers consider that appropriate financial surety arrangements for licensed building practitioners carrying out building work are critical to the success of the proposed system. It is disappointing that financial surety requirements do not form part of this Bill. Note a further Amendment Bill covering these aspects has been signalled for later in 2011.

Officers stand by their comments in response to the 2010 discussion document. The Bill has been put forward in relation to a relatively narrow range of matters, although officers recognise that the Bill is one component of a wider reform programme that Cabinet has approved. In officers' view, it would be preferable to delay legislative amendments until a broader range of changes to the Act (identified as part of the current reform package) can be promoted and considered in an integrated way.

If the intention is that the Bill's provisions will not come into force immediately or in the near future, it is questionable why it needs to be passed into law at this time. A better approach would be to use the time available to prepare a more comprehensive amendment bill, having regard to other aspects included in the Government's building reform package; and to develop statutory definitions in place of the references to regulations that currently appear in some clauses of the Bill.

Officers have prepared a submission to the Local Government and Environment Select Committee that identifies and discusses these concerns, which is *attached* in draft form as Appendix One.

3. Recommendations

Officers recommend that the Committee:

1. *Receive the information;*
2. *Agree to the submission on the Bill attached in draft form as Appendix One;*
3. *Note that the closing date for this submission is 4 March 2011;*
4. *Delegate to the Portfolio leader, Built Environment and the Chief Executive the authority to approve minor editorial changes to the submission, or changes necessary to give effect to amendments approved by the Committee (if any), prior to the submission being sent to the Local Government and Environment Select Committee;*
5. *Agree for the Mayor and Chief Executive to be given the authority to appear before the Local Government and Environment Select Committee to speak in support of the submission;*
6. *Note that officers will be contributing to a Local Government New Zealand (LGNZ) working group that will provide input into a LGNZ submission on the Bill.*

4. Background

In February 2010, the Department of Building and Housing (**the DBH**) published a discussion document entitled *Cost-effective quality: next generation building control in New Zealand* and called for public submissions on the questions and proposals it contained.

The discussion document sought feedback in four areas:

- Part 1: Clarifying the Act's purpose and principles and the requirements of the building code;
- Part 2: Moving to a more balanced approach to building regulatory control, by reducing the degree building consent authority oversight required in relation to lower-risk building work;
- Part 3: Building consumer confidence, by improving consumer awareness of building matters and improved contractual and financial surety arrangements for building projects; and
- Part 4: The impacts of improving building control in New Zealand.

On 22 April 2010, the Strategy and Policy Committee approved a Wellington City Council submission in response to the discussion document. The submission outlined the Council's 'in principle' support for changes of the kind discussed in Parts 1 to 3 of the discussion document, while emphasising the need for amendments to be developed

as a comprehensive package. The submission also identified several issues of concern to the Council and highlighted a limited number of changes that the Council opposed.

The DBH published a summary of the submissions it received on the discussion document in June 2010. The summary of submissions relevantly observes:

There was broad support across sectors for the principle of skilled professional taking more responsibility and accountability for their work. Submitters from all sectors agreed that work to improve the clarity of the purpose and principles and links between the Act, [building code], and other regulation and guidance would be useful.

Submitters were asked whether building consent authority oversight should be proportionate to risk. One hundred and thirty-four agreed that it should and 26 disagreed, with differing views about how oversight based on risk could be achieved.

The DBH reported to the Cabinet Economic Growth and Infrastructure Committee on the feedback to the discussion document in June/July 2010. In response to a range of matters that included the DBH's report, Cabinet approved a legislative reform package for building control matters on 2 August 2010. The reform package included the following items:

Item	Date
Make changes to the Building Act to provide for: <ul style="list-style-type: none"> (a) clarity of accountabilities; (b) improved contract provisions, clearer obligations and new legal remedies; (c) improved resolution of residential building contract disputes; (d) stepped risk-based administration of building consent and inspection requirements; (e) provide supporting information for all parties 	Mid 2011
Introduce stepped risk-based consenting for low-risk residential building work and commercial building work	From mid 2012

Other matters to be investigated as part of the reform package include:

- amendments to Schedule 1 of the Building Act to expand the categories of very low-risk building work that do not require building consent (achieved on 23 December 2010 through the Building (Exempt Building Work) Order 2010);
- how the building code can be amended to improve clarity in relation to requirements for timber treatment, fire safety, noise insulation, and signage;
- whether the application of the doctrine of joint and several liability in the construction industry should be altered;
- whether residential construction warranties should be underwritten by a specified scheme of financial surety; and
- how the Act might be amended to require the provision of information on certain matters by building contractors to consumers.

The Bill is the first legislative response to the matters listed in the table above. It primarily addresses items (a) and (d) and therefore does not relate to all of the matters proposed as part of the wider reform package.

The explanatory note to the Bill refers to the current system's heavy dependence on building consent authorities to ensure building quality. It goes on to state that change is required to provide incentives for building professionals and tradespeople to take responsibility for the quality of their work and to stand behind it. The explanatory note then confirms that the Bill:

- introduces a stepped risk-based approach to how building consent and inspection requirements are administered so that the role of the building consent authorities at each step is aligned with the risk involved;
- more clearly signals the accountabilities of participants involved in building design and construction;
- enhances accountability under the licensed building practitioners regime;
- provides for an owner-builder exemption from the Act's restricted building work provisions;
- repeals the offence of allowing the public use of a building without a code compliance certificate for building work commenced between 1992 and 2005;
- makes a number of changes to enhance the building warrant of fitness regime; and
- makes a number of other minor and technical amendments.

The Bill has been referred to the Local Government and Environment Select Committee. Public submissions on the Bill close on 4 March 2011 and the Select Committee is scheduled to report back to Parliament on the Bill on 30 June 2011.

5. Discussion

5.1 What will the Bill change?

5.1.1 Building consents divided into four classes

The Bill will divide building consents into four separate classes. These are described in more depth in section 5.2 below.

The general purpose of the amendment is to align the degree of building consent authority oversight with the perceived 'risk' of a below-standard building quality outcome. In this regard:

- Council will have a reduced role in relation to low-risk and simple residential building consents, because it is considered there is a relatively low risk that work carried out under those types of consent will not comply with the building code. The large part of any risk that does exist is transferred to licensed building practitioners (LBPs), who from 1 March 2012 will have to be licensed to carry out certain restricted building work. Licensed building practitioners will be the sole class of person authorised to carry out building work under a low-risk or simple residential building consent.

- Council will have a reduced role, but some new responsibilities targeted at ensuring approved quality assurance processes are followed, in relation to commercial building consents, because it is considered that the typical involvement of third party experts (architects, engineers, large scale construction companies, etc) in commercial construction processes means there is a relatively low risk that commercial building work will not comply with the building code. Commercial building consents are not expected to include multi-residential projects (e.g. apartment buildings).
- Standard building consents will be subject to the consenting process that currently applies to all building consents under the Act.

5.1.2 New provisions added to the Act to outline accountabilities/responsibilities

The Bill amends the purpose and principle provisions of the Act to make specific reference to the accountability of participants in building projects.

These general provisions are augmented by new sections 14A to 14F, which purport to outline the different responsibilities of: owners, owner-builders, designers, builders, and building consent authorities. Section 14A confirms that sections 14B to 14F are not definitive, are for guidance only, and do not reflect legal responsibilities. Refer section 5.3.3 for discussion of Officer concerns relating to these provisions.

5.1.3 Amendments to provisions for licensed building practitioners

The provisions of the Act that govern licensed building practitioners are amended to facilitate their new responsibilities in relation to low-risk and simple residential building work. The Bill also provides for the creation of a Code of Ethics for licensed building practitioners. Refer to section 5.3.6 for discussion of Officers concerns relating to these provisions.

5.1.4 Other changes

The Bill proposes a number of technical changes that are necessary to enable the amendments described more broadly above. These changes include a proposal to repeal the term 'code compliance certificate' and to replace it with 'consent completion certificate', on the basis that this new label better reflects the policy of the Act and the practical significance of the document that concludes the usual building control process. Other changes include exemptions for 'owner-builders' from the current requirement that restricted building work must be carried out or supervised by a licensed building practitioner, changes to the building warrant of fitness regime and repeal of offence of allowing public use of a building before a CCC is issued. Officers have no significant concerns with these particular proposed changes.

5.2 *Impact on building consent authority liability*

The proposed stepped risk-based approach to building consents generally represents a shift in responsibility away from building consent authorities, towards other parties more directly involved in the design, construction, and use of buildings. However, the devolution of responsibility to LBPs has the potential to result in building quality and performance issues (such as leaky buildings), if it isn't carefully thought out and managed.

A consequent reduction in the Council's potential liability under the Act may be expected. However, legal advice provided to officers indicates that the Council's role and legal responsibilities will not be eroded altogether, even for the types of building work where primary responsibility for determining code compliance will be shifted to other persons.

Whilst the proposal implies reduced liability for Council through less involvement, liability will always remain while the Council is responsible for vetting of quality assurance. Regardless of the interpreted level of responsibility, should negligence become apparent the financial risk remains for Council while the legal precedence of joint and several liability continues.

The stepped risk-based approach to building consents will involve the Council in new processes that it has not previously had to administer. In particular, the commercial building consent process will involve the Council as an auditor and approval authority for risk management and quality assurance processes, rather than an assessor of the quality of building work. This is a fundamental shift from the kind of oversight traditionally exercised by the Council.

The different functions associated with each type of building consent that have the potential to give rise to liability on the Council's part are identified on the next page:

Type of building consent	Impact
<p>Standard building consents</p> <div data-bbox="240 338 748 506" style="border: 1px solid black; border-radius: 15px; padding: 10px; margin-bottom: 10px;"> <p>20 working days consent processing time (10 if NMUA used)</p> </div> <div data-bbox="240 528 748 792" style="border: 1px solid black; border-radius: 15px; padding: 10px; margin-bottom: 10px;"> <p>Factors to consider: grant of consent</p> <ul style="list-style-type: none"> (a) Compliance with Schedule 1C (b) Building work will comply with the building code if it is properly completed in accordance with the plans and specifications accompanying the application (reasonable grounds) </div> <div data-bbox="240 815 748 1151" style="border: 1px solid black; border-radius: 15px; padding: 10px;"> <p>Factors to consider: grant of consent completion certificate</p> <ul style="list-style-type: none"> (a) Complete application (b) Building work complies with consent (reasonable grounds) (c) Where compliance schedule is required, specified systems are capable of achieving performance standards in consent (reasonable grounds) </div>	<p>The Supreme Court has recently confirmed the Council's duty of care in relation to the functions of issuing a building consent, conducting inspections of building work, and issuing a code compliance certificate (or consent completion certificate). Once the Bill is passed into law, this duty of care is likely to continue to apply without change to standard building consents.</p>
<p>Low-risk building consents</p> <div data-bbox="229 1256 748 1424" style="border: 1px solid black; border-radius: 15px; padding: 10px; margin-bottom: 10px;"> <p>5 working days consent processing time</p> </div> <div data-bbox="229 1447 748 1688" style="border: 1px solid black; border-radius: 15px; padding: 10px; margin-bottom: 10px;"> <p>Factors to consider: grant of consent</p> <ul style="list-style-type: none"> (a) Compliance with Schedule 1A (b) Building work is low risk (reasonable grounds) (c) Any LBP named in the application is actually a LBP (reasonable grounds) </div> <div data-bbox="229 1733 748 2027" style="border: 1px solid black; border-radius: 15px; padding: 10px;"> <p>Factors to consider: grant of consent completion certificate</p> <ul style="list-style-type: none"> (a) Complete application (b) No outstanding NTFs (c) Where compliance schedule is required, specified systems are capable of achieving performance standards in consent (reasonable grounds) </div>	<p>The Council is likely to owe a duty of care in relation to each of the functions identified in relation to low-risk building consents. However, because it is not part of the Council's function to determine code compliance issues, the practical risk exposure to liability of the kind currently experienced in relation to leaky buildings is significantly reduced. This reflects the weaker causative link between any negligence on the Council's part, and harm/loss ultimately suffered by a current or future owner of the relevant building work.</p> <p>The position is complicated by the provision of a power for the Council to decline to issue a low-risk building consent where it considers that the proposed building work may endanger the safety of a person or result in a significant building quality failure. This arguably imposes a duty on the Council to determine whether either of these thresholds is reached in relation to every low-risk building consent application that it is called on to process. Because of the potentially severe consequences of either outcome, it is likely that a court would find the Council to owe a duty of care in relation to decisions to exercise, or not to exercise, this power.</p>

<p>Simple residential building consents</p> <p>5 working days consent processing time</p> <p>Factors to consider: grant of consent</p> <ul style="list-style-type: none"> (a) Compliance with Schedule 1B (b) Building work is simple residential (reasonable grounds) (c) Prescribed aspects of building work will comply with building code (reasonable grounds) (d) Any LBP named in the application is actually a LBP (reasonable grounds) <p>Factors to consider: grant of consent completion certificate</p> <ul style="list-style-type: none"> (a) Complete application (b) No outstanding NTFs (c) Building work inspected in accordance with prescribed requirements complies with consent (reasonable grounds) (d) Where compliance schedule is required, specified systems are capable of achieving performance standards in consent (reasonable grounds) 	<p>Again, the Council is likely to owe a duty of care in relation to each of the functions identified above. The ramifications of a finding of liability where a function is performed (or omitted) negligently are slightly greater than is the case for low-risk building consents, as the Council will have a code compliance assessment and inspection role as part of this process. It is likely that the Council's established duty of care will apply in relation to these particular functions, although the duty may be slightly narrowed by the restriction of the Council's role to 'prescribed' matters.</p> <p>As is the case for low-risk building consents, the position in relation to simple residential building consents must also be considered in light of the Council's power to decline to issue a building consent where it considers that the proposed building work may endanger the safety of a person or result in a significant building quality failure.</p>
<p>Commercial building consents</p> <p>20 working days consent processing time</p> <p>Preliminary</p> <p>Owner must obtain approval of Risk profile and Quality Assurance System</p> <p>Factors to consider: grant of consent</p> <ul style="list-style-type: none"> (a) Compliance with Schedule 1D (b) Nothing has occurred since approval given that would have resulted in approval being withheld <p>Factors to consider: grant of consent completion certificate</p> <ul style="list-style-type: none"> (a) Complete application (b) Approved QAS has been complied with (c) Safety systems operating in accordance with specifications (d) Compliance memoranda in order (e) Process requirements and verification of code compliance required by QAS satisfied (f) No outstanding NTFs ((b) to (e) on reasonable grounds) 	<p>The Council does not currently owe a duty of care in relation to commercial building work when performing its functions under the Act. It is anticipated that this principle will continue to apply. While new functions are involved, the proposed changes to the consenting process for commercial building work do not displace the fundamental presumption that commercial parties are able to, and frequently do, take steps to protect themselves from project-associated losses. If anything, the new approach to commercial building consents confirms Parliament's recognition of the different layers of expertise and contractual protection that typically exist in relation to commercial building work. This is the basis for the removal of building consent authorities to a risk management and quality assurance role.</p> <p>While Officers support in principle the proposal for commercial work, the proposal has not considered that the majority of commercial work is not new construction controlled by the highest level professionals, and it remains a concern as to how the proposal would work with smaller contracts.</p>

5.3 Officers' response to the Bill

Intent of the Bill generally supported

Officers generally support the intent of the Bill, but have a number of significant concerns as outlined below. It is considered that if the proposals are implemented in a holistic and integrated manner, they should improve the delivery of cost-effective building control services. While there will be complexities for the Council to navigate and new processes/skills to develop, the end outcome for the public should be a system that balances expedited building consent processes against the risk of a sub-standard building performance outcome.

Areas of concern

Despite officers' general support for the intent of the Bill, officers have a number of significant concerns, of which the most significant are outlined briefly below. Others are more minor in nature and relate to the smooth functioning of the Bill's proposed amendments to the Act. Officers' main concerns are:

5.3.1 The amount detail that has been deferred to regulation

It is extremely difficult for Wellington City Council (or any other council) to evaluate the likely effect of the new stepped risk-based approach to consenting processes when the scope of fundamental terms is unknown. In particular, the definitions of commercial, low-risk and simple residential building work are critical when estimating the volume of applications that are likely to fall into each class. The opaque reference to 'regulations' in each definition means that BCAs have to make 'best guess' assumptions about the scope of each term, in order to gauge what the impact might be on regular processing volumes and operations.

We understand that the Bill's provisions for stepped risk-based consenting are not intended to come into force immediately. Instead, their application will be delayed until Government determines that a critical mass of appropriately qualified LBPs exists. This corresponds to Cabinet's indication that the stepped risk-based consenting model should be introduced at some point after mid 2012.

In these circumstances, officers consider that time exists for the substance of the definitions identified above to be developed and incorporated into the Act itself, rather than being deferred for prescription in regulations. That would enable BCAs to undertake a much more robust analysis of the likely impact of the amendments proposed in the Bill, with consequential benefits for the comments that can be presented to the Select Committee.

Officers are also concerned that the process for developing regulations is much less transparent and participatory than that for the amendment of primary legislation. It is acknowledged that it may be easier to 'tweak' regulations than the Act, if it is determined that the scope of the definitions is initially incorrect. However, officers would prefer that the scope of proposed definitions is published in draft legislation which participants in the building industry can directly assess and comment on. The flexibility lost through this approach is adequately offset by the prospect that definitions set through a full public consultation process will be framed correctly first time around.

5.3.2 Piece-by-piece approach to reform

The DBH discussion document circulated in February 2010 as part of the Building Act Review recognises that cost-effective, quality buildings are dependent on five different but interlinked inputs:

1. Authorities target their regulatory control to the level of risk
Skilled, capable people who stand behind their work
Minimum requirements that are clear and widely known
Well-informed owners maintain their buildings appropriately
Clear, upfront, contracted agreements between all parties

In its response to the discussion document, Wellington City Council recognised and endorsed the linkages between these matters, commenting:

It is important to ensure the proposals are developed as an integrated package with a number of equally important and interdependent processes. To borrow the analogy of the discussion document - the building control engine will fail if all the cogs are not aligned and working effectively. A weakness in any of the processes will impact on others and result in an inefficient regime that is unbalanced and ineffective.

The amendments proposed in the Bill largely relate to the first input listed above: authorities target their regulatory control to the level of risk. The amendments may also have an indirect effect on the second and third inputs. The amendments do not appear to address the fourth and fifth inputs.

Officers stand by the comment in response to the discussion document. It is disappointing that the Bill has been put forward in relation to a relatively narrow range of matters, although it recognises that the Bill is one component of a wider reform programme that Cabinet has approved. In officers' view, it would be preferable to delay legislative amendments until a broader range of changes to the Act (identified as part of the current reform package) can be promoted and considered in an integrated way.

Officers do not perceive any need for the stepped risk-based approach to building consents to be introduced in relative isolation at this point in time, when the introduction of the new provisions is going to be delayed pending growth in LBP numbers in any event.

5.3.3 Ineffectiveness in practice of accountability definitions

The Bill amends the purpose and principle provisions of the Act to make specific reference to the accountability of participants in building projects. These general provisions are augmented by new sections 14A to 14F, which purport to outline the different responsibilities of: owners, owner-builders, designers, builders, and building consent authorities.

While these changes sound positive, on close reading it is hard to see how they will materially impact on the treatment of accountability and responsibility within the building industry. This is primarily because the strength of the provisions is significantly diluted by the terms of section 14A, which states that new sections 14B to 14F are: not definitive; are for guidance purposes only; and do not reflect legal responsibilities. It is also relevant that there is no apparent link between the sections

14A to 14F and the Act's other provisions or processes. In light of these factors, the only real benefit of the provisions lies in providing some education about the typical roles of the identified types of person - no material consequences flow directly from these sections or any departure from their terms.

While officers recognise that new sections 14B to 14F cannot practically purport to exhaustively or absolutely establish the legal duties of the various parties to construction projects. We consider the qualifications provided in section 14A have diluted the value of sections 14B to 14F too severely.

Officers also consider there should also be sections that outline the responsibilities of LBPs and/or territorial authorities. A provision clarifying the responsibilities of LBPs would be consistent with the policy intent of affirming accountability and responsibility within the building industry, particularly given the special role of LBPs in relation to building work carried out under a low-risk or simple residential building consent.

5.3.4 Relationship between the proposed and existing provisions

Officers are unclear how the new processes for low-risk, simple residential, and commercial building consents are intended to relate to the Act's existing provisions in relation to:

- waivers and modifications of the building code (section 67);
- natural hazards (sections 71 to 74);
- building across two or more allotments (sections 75 to 83);
- alterations to existing buildings (section 112);
- change of use (sections 114 and 115).

In some cases, it is assumed that the provisions will apply in the normal way. In others, that becomes a practical challenge.

For example, where a person proposes to alter an existing building by carrying out low-risk building work, it is unclear whether the BCA will be able (or required) to assess the degree to which the building complies with the building code for the purposes of section 112(1), when the matters to which its discretion is limited under new section 52H do not address code compliance at all but are limited to:

- (a) whether the proposed building work is low-risk building work; and
- (b) whether the person who is going to carry out the building work is actually a LBP.

If section 112 is expected to apply as an overlay on new section 52H, then the purported efficiency of the low-risk building consent path in relation to alterations to existing buildings is questionable. Similar concerns arise in relation to the provisions identified above that involve consideration of code compliance matters, such as section 115 of the Act.

Officers recommend that the linkages between these provisions and the new stepped risk-based consenting processes are more carefully considered to ensure that the provisions interoperate effectively and without prejudice to the policy aims of the stepped risk-based consenting approach.

5.3.5 Where building work does not fit neatly into one category

Officers anticipate receiving applications for building consent that do not fit neatly into one or other of the four building consent classes created by the Bill. The Bill is silent as to what happens in this event and we anticipate that this will be a cause of dispute. Officers consider the Bill provides insufficient certainty about building consent authorities' options when proposed building work does not fit neatly into one of the proposed risk-based classes of building consent, or where redesignation is required.

Similar issues may arise where proposed building work involves different aspects that span different classes of building consent: the Bill is silent as to whether an owner can break the project into different consents that cover the different pieces of qualifying building work.

Officers anticipate that some consent applicants will seek to stratify proposed building work into different categories in order to expedite the regulatory treatment of construction projects.

If this is not how the stepped consenting process is intended to work, a provision confirming that BCAs can apply standard building consent requirements to an application for building work that doesn't fall wholly into one of the new categories would pre-empt any uncertainty about this issue.

5.3.6 Amendments to provisions for licensed building practitioners

The provisions of the Act that govern licensed building practitioners are amended to facilitate their new responsibilities in relation to low-risk and simple residential building work. The Bill also provides for the creation of a Code of Ethics for licensed building practitioners.

Officers strongly support the development of a Code of Ethics for LBPs but consider that the significance of the Code of Ethics would be enhanced by the inclusion of a clear requirement for LBPs to comply with it. As framed, the Bill does not contain such an obligation and instead, requires compliance indirectly by providing disciplinary sanctions for breaches of the Code of Ethics.

5.4 Consultation and Engagement

The DBH and LGNZ attend meetings of the Metro Strategic Building Group which has representation from the Auckland Council, Tauranga, Hamilton, Porirua, Wellington, Christchurch and Dunedin City Councils. Representatives of this group have helped LGNZ in preparing their submission and have given direct feedback to the DBH.

The Metro Strategic Building Group has also expressed concerns that the proposals are not well understood by local government and suggested to the DBH that they need to engage better with senior managers. As a result, the DBH attended the LGNZ Rural sector group meeting on 17/18 February and the Metro Mayors meeting on 22 February.

Officers have also discussed the review and Wellington City Council's submission with colleagues from other councils within the Wellington Region. The regional group is in general agreement with the comments made in Wellington's submission.

5.5 Financial Considerations

The most significant amendment proposed in the Bill is the adoption of a 'stepped risk-based' approach to building consents. The practical implications of this proposal for the Council are discussed below. The remaining changes will alter (and perhaps improve) the operation of the Act in minor ways, but will not materially affect the Council's operations.

It is noted that due to the anticipated implementation timeframe of mid 2012 we do not anticipate and impacts on the 2011/12 Annual Plan year. However, change is likely to be required for the next LTCCP round in 2012/13.

5.5.1 Impact on current consent processing and inspection loads

The new building consent classes are accompanied by new divisions of building work: i.e. low-risk building work, simple residential building work, and commercial building work. The new building consent processes will be available in relation to each class of building work.

However, the Bill proposes that the statutory definitions of each new type of building work will be set by regulations, made by the Governor-General by Order in Council. Consequently, the scope of work that is likely to be covered by each definition is currently unknown. It is therefore difficult to gauge the proportion of anticipated building consent applications that may fall into each class.

Officers have nevertheless made some educated guesses about the potential scope of each class of building work. On that basis, it is possible that the stepped risk-based approach to consenting would result in a distribution of consents along the following lines in Wellington City:

Low-risk building consents:	5%
Simple residential building consents:	60%
Commercial building consents:	20%
Standard building consents:	15%

- These figures are based on a best guess analysis of consents issued in the 2009/10 financial year.

5.5.2 Impact on revenue

In light of the Council's reduced regulatory involvement in the three new classes of consent to be created by the Bill, this division of consents would be expected to result in an overall reduction in the Council's consent processing and inspection loads. For example, Council inspection responsibilities will be virtually excluded in relation to the 25% of applications expected to fall into the 'low-risk' and 'commercial' building consent classes, while a significantly reduced inspection responsibility may apply to the estimated 60% of applications in the 'simple residential' building consent class. It must be emphasised that the Council would still have *some* role in every building consent issued irrespective of class.

An alteration in consent processing and inspection loads will have a consequential impact on building control fees. It is estimated that as much as 85% of applications in 2009/10 would be covered under the new categories however the relationship to fees is as follows:

	% of total applications	% of fees
Low-risk building consents	5	3
Simple residential building consents	60	45
Commercial building consents	20	34
Standard building consents	15	18

If involvement by Council Officers in the building consent process for the three new classes of consent were halved then customers would expect the fees to reduce accordingly. However, this might not be the case in practice (due to business and funding requirements) although the proportionate decrease would be similar due to the significant change in operations.

A 40 - 60% reduction in fees across the three classes would equate to approximately 30 - 50% reduction in total building consent income. However, the Council would have to consider whether a corresponding reduction in staff numbers gives sufficient cover or flexibility to respond to fluctuating workloads and requests for service especially in light of a requirement to turn some applications around within five working days. Effectively, careful consideration of minimum staffing numbers would be required before building consent fees were set.

It should also be noted that the DBH is reviewing the administration arrangements of the building control functions. The DBH is looking at consolidating the number of BCAs in the sector – the Government has said that the current 73 BCAs is too many – through exploring two options: a national consenting body or several regional bodies. It is too early to determine how this would impact on the Council.

5.6 Climate Change Impacts and Considerations

There are no direct climate change impacts or considerations related to this decision.

5.7 Long-Term Council Community Plan Considerations

There are no LTCCP implications of the decision to send a submission to the Local Government and Environment Select Committee on the Building Amendment Bill No 3 consultation document.

6. Conclusion

Officers recommend that the Strategy and Policy Committee approve the draft submission in Appendix One and agree to it being sent to the Local Government and Environment Select Committee.

Contact Officers: *John Scott, Group Manager, BCLS*
Richard Toner, Chief Building Officer, BCLS

Supporting information
<p>Strategic Fit / Strategic Outcome</p> <p>This report relates to item 6.2.1 Building Control and Facilitation in the LTCCP, which is part of the Urban Development Strategy.</p>
<p>LTCCP/Annual Plan reference and long term financial impact</p> <p>Not applicable.</p>
<p>Treaty of Waitangi considerations</p> <p>No specific Treaty of Waitangi considerations have been identified.</p>
<p>Decision-making</p> <p>A decision to approve the proposed submission to the Local Government and Environment Select Committee is not considered to be significant and the Committee can proceed on the basis of the information and analysis in this report.</p>
<p>Consultation</p> <p>(a) General consultation</p> <p>As the Bill relates to the Council's regulatory functions under the Act, it is considered that consultation is not necessary in order for the Committee to give adequate consideration to community views.</p> <p>(b) Consultation with Maori</p> <p>No issues of specific interest to Maori have been identified.</p>
<p>Legal implications</p> <p>Legal advice was received during the development of the proposed submission to the Local Government and Environment Select Committee.</p>
<p>Consistency with existing policy</p> <p>The proposed submission to the Local Government and Environment Select Committee is consistent with existing Council policy and the submission made to the Department of Building and Housing in April 2010 in response to the discussion document <i>Cost-effective quality: next generation building controls in New Zealand</i>.</p>

Submission

to

**The Local Government and Environment
Select Committee**

on

The Building Amendment Act (No 3)

From Wellington City Council

4 March 2011

Wellington City Council submission on the Building Amendment Bill No 3

To: The Local Government and Environment Select Committee

From: Wellington City Council
101 Wakefield Street, PO Box 2199, Wellington

Contact: Richard Toner, Chief Building Officer, Building Consents & Licensing Services

Date: 4 March 2011

Wellington City Council wishes to appear before the Committee to speak to its submission.

1 Introduction

Wellington City Council (**WCC**) welcomes the opportunity to make a submission on the Building Amendment Bill No 3 (**Bill**).

WCC recognises that change is needed within the building industry - and the associated regulatory environment - to provide incentives for building professionals and tradespeople to take responsibility for the quality of their building work and to stand behind it.

WCC generally supports the intent of the Bill, which seeks to address this issue but has some significant reservations. In particular, WCC endorses the modification of building consent and inspection processes to reflect the varying levels of risk associated with different types of building work. If implemented effectively and in a holistic and integrated manner, the stepped risk-based approach to consenting and inspection provided for in the Bill is likely to foster efficiencies in the regulatory control of building work, while encouraging people directly involved in the design and construction of buildings to take responsibility for the quality of their work. In the latter regard, WCC supports the idea of providing a clearer statutory signal of the accountabilities of the different people typically involved in construction projects.

Without resiling from the sentiment of general support expressed above, WCC does have some significant concerns about particular aspects of the Bill. These include:

- the amount of detail that has been deferred for inclusion in regulations to be made by the Governor-General by Order in Council, an approach which makes it difficult for building consent authorities to accurately gauge the likely impact of the Bill on their current consenting and inspection operations;
- the piece-by-piece approach to reform of the wider range of matters considered by the Department of Building and Housing (**DBH**) during the Building Act Review process, rather than the development of draft legislation that deals with all of the identified issues in an integrated way;
- the likely practical ineffectiveness of the Bill's provisions that are intended to signal the accountabilities of the different people typically involved in construction projects;
- that insufficient attention has been given to the relationship between the proposed provisions for stepped risk-based consenting and inspection and existing provisions in the Building Act 2004 (**Act**) that will apply to all classes of building consent, such as section 112 (alteration of existing buildings);

- that the Bill provides insufficient certainty about building consent authorities' options when proposed building work does not fit neatly into one of the proposed risk-based classes of building consent, or where redesignation is required.

These concerns are discussed in more detail in Part 2 of this submission. Comments of a more technical nature are made on a clause by clause basis in Part 3 of this submission.

For convenience, the following abbreviations have been used throughout this submission:

- Building consent authority (**BCA**)
- Licensed building practitioner (**LBP**)
- National multiple-use approval (**NMUA**)

2 General comments

Timing

Transition to the stepped risk-based building consent process will be a complex task for BCAs. The new process will involve the reallocation and retraining of staff in new processes that have no counterpart in previous legislation. This is particularly acute in relation to the consenting process for commercial building work, which will require BCA staff to develop new skills in risk profiling and quality assurance evaluation.

WCC considers that at least twelve months will be required from the enactment of the amending legislation to the introduction of the stepped building consent structure. The implications for ongoing accreditation of BCAs will also need to be considered.

Also on the issue of timing, WCC considers that it is important to emphasise that the LBP regime - which is an original part of the Act - is not yet fully operational. In that sense, the current building reform package is taking place against the background of legislative provisions that have not been practically tested. The quality of the building outputs that might result from LBP involvement in restricted building work is as yet unknown. WCC considers that a cautious approach should be taken to making aggressive changes to a system that has not been implemented and that can only be evaluated, at least at this point in time, on a theoretical level.

Cost of implementation

WCC anticipates there will be significant cost involved in developing and implementing system and process changes as a result of the proposed changes.

These costs range from officer (or contractor) time spent developing new forms in print and electronic formats; developing and training officers in new processes; redevelopment of IT systems to manage the new classes of building consent effectively; training in new skill sets; and downsizing including redundancies.

Given planning and budgeting cycles within local government councils need a minimum of twelve months lead time to budget and plan for these costs.

Deferral of matters of detail for specification in regulations

The stratification of building consents into a number different classes has resulted in the introduction of new terminology into the Act. In particular, the Bill proposes to amend section 7 of the Act by introducing the following terms:

- commercial building work;

- low-risk building work;
- prescribed aspects;
- quality assurance system;
- risk profile;
- safety system;
- simple residential building work.

The meaning of all of these terms is stated to be given or prescribed 'by regulations made under [the] Act'.

It is extremely difficult for WCC - and other BCAs - to evaluate the likely effect of the new stepped risk-based approach to consenting processes when the scope of fundamental terms like those identified above is unknown. In particular, the definitions of commercial, low-risk and simple residential building work are critical when estimating the volume of applications that are likely to fall into each class. The opaque reference to 'regulations' in each definition means that BCAs have to make 'best guess' assumptions about the scope of each term, in order to gauge what the impact might be on regular processing volumes and operations.

It is clear from clause 2 of the Bill, which allows the Bill's provisions to come into force in a piecemeal way, and the introductory speech by Hon Anne Tolley on behalf of the Minister for Building and Construction, that the Bill's provisions for stepped risk-based consenting are not intended to come into force immediately. Instead, their application will be delayed until Government determines that a critical mass of appropriately qualified LBPs exists. This corresponds to Cabinet's indication that the stepped risk-based consenting model should be introduced at some point after mid 2012.¹ In these circumstances, WCC considers that time exists for the substance of the definitions identified above to be developed and incorporated into the Act itself, rather than being deferred for prescription in regulations. That would enable BCAs to undertake a much more robust analysis of the likely impact of the amendments proposed in the Bill, with consequential benefits for the comments that can be presented to the Select Committee.

WCC is also concerned that the process for developing regulations is much less transparent and participatory than that for the amendment of primary legislation. It is acknowledged that it may be easier to 'tweak' regulations than the Act, if it is determined that the scope of the definitions is initially incorrect. However, WCC would prefer that the scope of proposed definitions is published in draft legislation which participants in the building industry can directly assess and comment on. WCC considers that the flexibility lost through this approach is adequately offset by the prospect that definitions set through a full public consultation process will be framed correctly first time around.

Holistic reforms required

The DBH discussion document circulated in February 2010 as part of the Building Act Review recognises that cost-effective, quality buildings are dependent on five different but interlinked inputs:²

1. Authorities target their regulatory control to the level of risk

¹ Cabinet Min (10) 27/10 at paragraph 10.

² Department of Building and Housing *Cost-effective quality: next generation building control in New Zealand* (February 2010) at 4.

2. Skilled, capable people who stand behind their work
3. Minimum requirements that are clear and widely known
4. Well-informed owners maintain their buildings appropriately
5. Clear, upfront, contracted agreements between all parties

In its response to the discussion document, WCC recognised and endorsed the linkages between these matters, commenting:

It is important to ensure the proposals are developed as an integrated package with a number of equally important and interdependent processes ... To borrow the analogy of the discussion document - the building control engine will fail if all the cogs are not aligned and working effectively. A weakness in any of the processes will impact on others and result in an inefficient regime that is unbalanced and ineffective.

The amendments proposed in the Bill largely relate to the first input listed above: authorities target their regulatory control to the level of risk. The amendments may also have an indirect effect on the second and third inputs. They amendments do not appear to address the fourth and fifth inputs.

WCC stands by its comment in response to the discussion document. It is disappointed that the Bill has been put forward in relation to a relatively narrow range of matters, although it recognises that the Bill is one component of a wider reform programme that Cabinet has approved. In WCC's view, it would be preferable to delay legislative amendments until a broader range of changes to the Act (identified as part of the current reform package) can be promoted and considered in an integrated way. WCC does not perceive any need for the stepped risk-based approach to building consents to be introduced in relative isolation at this point in time, when the introduction of the new provisions is going to be delayed pending growth in LBP numbers in any event.

Accountability and responsibility weakly outlined

WCC endorses the Bill's intent in relation to the identification of typical accountabilities and responsibilities of people commonly involved in construction projects.

That intent is most obviously manifested in amendments to the purpose and principle provisions of the Act, which refer to a stronger identification of accountability and responsibility within the building industry.³ These alterations are in turn backed up by the insertion of new sections 14A to 14F into the Act, which identify the specific responsibilities of different participants in construction projects.

While these changes sound positive, on close reading it is hard to see how they will materially impact on the treatment of accountability and responsibility within the building industry. This is primarily because the strength of the provisions is significantly diluted by the terms of section 14A, which states that new sections 14B to 14F are: not definitive; are for guidance purposes only; and do not reflect legal responsibilities. It is also relevant that there is no apparent link between the sections 14A to 14F and the Act's other provisions or processes. In light of these factors, the only real benefit of the provisions lies in providing some education about the typical roles of the identified types of person - no material consequences flow directly from these sections or any departure from their terms

³ It is acknowledged that the transfer of responsibility to LBPs in the context of low-risk and simple residential building work, and to LBPs and other professionals in the case of commercial building work, is likely to indirectly improve accountability within the building industry.

WCC recognises that new sections 14B to 14F cannot practically purport to exhaustively or absolutely establish the legal duties of the various parties to construction projects. However, we consider the qualifications provided in section 14A have diluted the value of sections 14B to 14F too severely.

Further comments in relation to specific features of sections 14B to 14F are set out in Part 3 below.

Relationship between new building consent classes and existing provisions in the Building Act 2004

It is unclear how the new processes for low-risk, simple residential, and commercial building consents are intended to relate to the Act's existing provisions in relation to:

- waivers and modifications of the building code (section 67);
- natural hazards (sections 71 to 74);
- building across two or more allotments (sections 75 to 83);
- alterations to existing buildings (section 112);
- change of use (sections 114 and 115).

In some cases, WCC assumes that the provisions will apply in the normal way. In others, that becomes a practical challenge. For example, where a person proposes to alter an existing building by carrying out low-risk building work, it is unclear whether the BCA will be able (or required) to assess the degree to which the building complies with the building code for the purposes of section 112(1), when the matters to which its discretion is limited under new section 52H do not address code compliance at all but are limited to:

- (a) whether the proposed building work is low-risk building work; and
- (b) whether the person who is going to carry out the building work is actually a LBP.

If section 112 is expected to apply as an overlay on new section 52H, then the purported efficiency of the low-risk building consent path in relation to alterations to existing buildings is questionable. Similar concerns arise in relation to the provisions identified above that involve consideration of code compliance matters, such as section 115 of the Act.

With respect, WCC recommends that the Committee carefully considers the linkages between these provisions and new stepped risk-based consenting processes, to ensure that the provisions interoperate effectively and without prejudice to the policy aims of the stepped risk-based consenting approach.

New building consent classes: what happens when things don't line up neatly?

WCC anticipates receiving applications for building consent that do not fit neatly into one or other of the four building consent classes created by the Bill. The Bill is silent as to what happens in this event. For instance, it is unclear whether the intention is that:

- an applicant can segment their project into different classes of building consent (arguably a form of staging), to take advantage of the efficiencies the different classes offer; or alternatively
- that the BCA will examine whether all of the building work comprising a stage of a project qualifies as low-risk, simple residential, or commercial building work, and if it

does not fit wholly into any one of these categories, apply the standard building consent process.

This issue is expanded on further in Part 3 below. WCC invites the Committee to consider the issue and would welcome some clarification in the language of the Bill.

3 Specific comments

Many of the specific amendments proposed in the Bill are not contentious at a technical level (i.e. other than in respect of the general concerns discussed in Part 2 above). However, there are a number of proposed provisions, or amendments to existing provisions, that WCC considers require specific comment. These are identified and discussed in the table below.

Clause (Bill)	Section (Act)	Nature of amendment	Comment
2	N/A	Commencement provision	<p>Provides for the deferred or staged introduction of the Bill's provisions.</p> <p>WCC agrees that the introduction of stepped risk-based consenting should be delayed until the LBP regime is fully in effect and a critical mass of licensed building practitioners exists. In WCC's view, this is necessary to ensure that:</p> <ul style="list-style-type: none"> • the quality of building work that is not subject to ordinary regulatory control under the stepped risk-based consenting system is maintained; and • labour costs in the construction industry are not artificially inflated by a deficit of available licensed building practitioners. <p>WCC also considers that appropriate financial surety arrangements for LBPs carrying out building work under low-risk, simple residential, or commercial building consents are critical to the success of the proposed system. WCC is disappointed that financial surety requirements do not form part of the Bill.</p> <p>If the intention is that the Bill's provisions will not come into force immediately or in the near future, it is questionable why it needs to be passed into law at this time? WCC considers that a better approach would be to use the time available to:</p> <ul style="list-style-type: none"> • prepare a more comprehensive amendment bill, having regard to other aspects included in the Government's building reform package; and • to develop statutory definitions in place of the references to regulations that currently appear in some clauses of the Bill

Clause (Bill)	Section (Act)	Nature of amendment	Comment
4	3(b)	Insertion of new purpose: promotion of accountability in accordance with responsibility	<p>Links to outlines of responsibility in new Part 1 Subpart 4 (sections 14A to 14F).</p> <p>WCC welcomes the identification of accountability and responsibility in as a fundamental purpose of the Act. However, as discussed below, this signal is arguably not supported by meaningful provisions elsewhere in the Act.</p>
5	4(2)	Insertion of new principle (q): relates to accountability of participants in building consent and construction processes	<p>WCC acknowledges that this principle is logically connected to new section 3(b) and that it is appropriate for the issue to be addressed in terms of both the overall statutory <i>purpose</i> and also the <i>principles</i> to be applied when certain powers are exercised, or certain functions and duties are performed, under the Act.</p> <p>While WCC welcomes the signal given by this provision, it questions its practical efficacy. In particular, it is notable that the paragraph will not directly apply to the actions of any of the persons identified within it (i.e. owners, designers, builders, and BCAs), due to the limits on application that arise through section 4(1) of the Act.</p>
N/A	7	'building consent' definition: still refers to section 49 (to be repealed and replaced under the Bill)	<p>Reference needs to be altered to reflect new provisions: e.g. building consent means a standard building consent, a low-risk building consent, a simple residential building consent or a commercial building consent.</p> <p>Alternatively, the definition should refer to section 41, or sections 52H, 52L, 52O, 52T.</p>
6(2)	7	'commercial building work', 'low-risk building work', 'prescribed aspects', 'quality assurance system', 'risk profile', 'safety system', 'simple residential building work' definitions inserted	<p>Definitions simply refer to regulations.</p> <p>Comments as per Part 2 above.</p>
6(1)	7	'code compliance certificate' definition repealed and replaced with 'consent completion certificate'	<p>WCC observes that there is no transitional period around the change from 'code compliance certificate' nomenclature to 'consent completion certificate'.</p> <p>This means that a person with a contract or other legal document that purports to require a code compliance certificate must rely on section 18 of the Interpretation</p>

Clause (Bill)	Section (Act)	Nature of amendment	Comment
			<p>Act 1999, although there is some uncertainty about its application in these circumstances.</p> <p>A transitional provision deeming consent completion certificates to be equivalent to code compliance certificates for the purposes of contractual arrangements entered into before a certain date would arguably avoid this uncertainty and would benefit the parties to such contracts.</p>
8	9	<p>New paragraph (ad) excludes a significant range of electricity-related plant from the definition of 'building'</p>	<p>New paragraph refers to the definition of 'works' in section 2(1) of the Electricity Act 1992. That definition, and related terms, are as follows:</p> <p>Works- <i>(a) means any fittings that are used, or designed or intended for use, in or in connection with the generation, conversion, transformation, or conveyance of electricity; but</i> <i>(b) does not include any part of an electrical installation.</i></p> <p>Electrical installation [essentially captures all fittings from the point of supply to the point of consumption on a property: e.g. wiring and points etc].</p> <p>Fittings means everything used, or designed or intended for use, in or in connection with the generation, conversion, transformation, conveyance, or use of electricity.</p> <p>This exclusion is extremely broad. For example, it arguably catches domestic photo-voltaic cells installed on the roof of a building.</p> <p>WCC considers that it should be restricted by a requirement for the exempted electricity 'works' to be part of a NUO system, consistent with new paragraph 9(ac).</p>
10	14A	<p>States that sections 14B to 14F are for guidance only and are not definitive or inclusive (this should presumably be 'exclusive')</p>	<p>Sections 14B to 14F are presumably intended to give effect to the references to accountability and responsibility incorporated into sections 3 and 4.</p> <p>However, the strength of the provisions is significantly diluted by section 14A. When considered in the overall context of the Act, the only benefit of the provisions lies in providing some education about the typical roles of the identified types of person - no material consequences flow directly from these sections or any departure from their terms.</p> <p>WCC recognises that new sections 14B to 14F cannot</p>

Clause (Bill)	Section (Act)	Nature of amendment	Comment
			practically purport to exhaustively or absolutely establish the duties of the various parties to construction projects. However, it queries whether the qualifications provided in section 14A have diluted the strength of the following provisions too severely.
10	14B	Outlines the responsibilities of an owner	<p>WCC is concerned that these provisions don't recognise that there may be overlaps between these roles: for example, an owner who carries out building work arguably falls within sections 14B, 14C and 14D. Similarly, because the definition of 'building work' includes various types of design work, a person may simultaneously be a designer subject to section 14D and also captured by section 14E. In a similar vein, there is no reference in the provisions to ensuring that building work is coordinated (for instance, between trades) or supervised appropriately, which are - in WCC's experience - two matters that have a critical impact on building quality.</p> <p>In relation to section 14D, there is no explanation as to why only plans/specifications/advice prepared <i>for building consent purposes</i> are relevant. Because all building work must comply with the building code, WCC considers that the same standard should apply to all building-related design work, regardless of whether it is prepared for building consent purposes.</p> <p>Section 14F(a)(i) doesn't fit well with either the low-risk building consent or simple residential building consent processes, although WCC acknowledges that the opening language of paragraph (a) indicates that this description of responsibility is not absolute.</p> <p>WCC queries whether there should also be sections that outline the responsibilities of LBPs and/or territorial authorities. A provision clarifying the responsibilities of LBPs would be consistent with the policy intent of affirming accountability and responsibility within the building industry, particularly given the special role of LBPs in relation to building work carried out under a low-risk or simple residential building consent.</p>
10	14C	Outlines the responsibilities of an owner-builder	
10	14D	Outlines the responsibilities of a designer	
10	14E	Outlines the responsibilities of a builder	
10	14F	Outlines the responsibilities of a BCA	
13	36	Changes the term 'code compliance certificate' to 'consent completion certificate' in relation to development contribution notices	In order to avoid any uncertainty, WCC considers that a transitional provision should be inserted deeming references to a 'code compliance certificate' in a development contribution policy adopted under the Local Government Act 2002 (LGA 2002) to be equivalent to references to a 'consent completion certificate', until the development contribution policy is next amended under section 102(4) of the LGA 2002.

Clause (Bill)	Section (Act)	Nature of amendment	Comment
15	47	Sets out the different types of building consent application that can be made, relative to the type of building work proposed	<p>WCC is concerned that the provision does not specify whether an owner can apply for different types of consent in respect of different components of a project: i.e. as a type of staging. Whether this is practically possible may depend on the definitions of each type of building work, which are to be defined in regulations.</p> <p>If this is not how the stepped consenting process is intended to work, a provision confirming that BCAs can apply standard building consent requirements to an application for building work that doesn't fall wholly into one of the new categories would pre-empt any uncertainty about this issue.</p> <p>Similar issues may arise where proposed building work involves different aspects that span different classes of building consent: the Bill is silent as to whether an owner can break the project into different consents that cover the different pieces of qualifying building work.</p> <p>WCC anticipates that some consent applicants will seek to stratify proposed building work into different categories in order to expedite the regulatory treatment of construction projects.</p>
15	49	Equates to current section 46 of the Act: copies of certain building consent applications must be provided to the New Zealand Fire Service for review and comment	<p>WCC considers that plans and specification for proposed building work should be provided to the New Zealand Fire Service as soon as possible, to maximise the efficiency of the review process.</p> <p>Consequently, WCC suggests that new section 49 be expanded to include a requirement to forward applications for the approval or risk profiles and/or quality assurance systems for commercial building work to the New Zealand Fire Service.</p>
15	51	Establishes processing requirements for building consents: broadly similar to current section 48, but reflects new classes of consent	<p>WCC considers that the 5 working day processing timeframe for low-risk and simple residential building consents is unfeasibly short (particularly for simple residential building consents, which entail more onerous processing requirements). A 10 working day processing timeframe is suggested instead, which marries with existing arrangements for NMUA approvals.</p>

Clause (Bill)	Section (Act)	Nature of amendment	Comment
15	52F	Allows for the redesignation of low-risk, simple residential, or commercial building consents as standard building consents	<p>WCC has a number of concerns about this provision:</p> <ul style="list-style-type: none"> • is paragraph (b) intended to apply where a person who is not a LBP supervises the carrying out of building work by someone who <i>is</i> a LBP (that is how the current draft of the provision appears to operate)? • is paragraph (c) intended to apply to 'minor variations', as well as 'amendments' to building consents? • is paragraph (c) intended to apply where additional building work will exceed the scope of the original consent, but will nevertheless remain within the scope of the relevant building work class (e.g. low-risk building work)? • what are the processing, inspection, and cost-recovery expectations where a BCA re-designates a consent: e.g. where a low-risk building consent is redesignated, is the BCA supposed to go back to square one and to review plans/specifications that it has not sighted before? New section 96(1)(e) needs to be considered in this context too.
15	52G	Application for low-risk building consent must comply with Schedule 1A	<p>Clause 1(c) of Schedule 1A refers to National Multi-use Approvals (NMUAs). This seemingly anticipates that a low-risk building consent and a NMUA may intermingle. This has the potential to confuse the appropriate processing path from a building consent authority's point of view, particularly as different timeframes apply to low-risk and NMUA applications under new section 51.</p> <p>The point may be moot, as WCC anticipates that only a limited range of building work covered by a NMUA is likely to qualify as 'low-risk' or 'simple residential' building work (subject to the scope of those terms, as determined in regulations). Nevertheless, WCC would welcome some clarification through the Bill as to how an NMUA approval is intended to work in the context of low-risk, simple residential, and commercial building consents.</p>
15	52H	Requirements for the grant of a low-risk building consent	<p>Section 52H(1)(b)(ii): WCC queries whether the language here should be refined to confirm that a person must not only be a licensed building practitioner, but also that the proposed low-risk building work comes within the scope of his/her licence?</p>

Clause (Bill)	Section (Act)	Nature of amendment	Comment
			<p>Section 52H(2)(a): WCC considers that this provision leaves room for an argument that the BCAs are required to consider code compliance. Paragraph (a) can be read to imply an expectation that a BCA will consider <i>some</i> aspects of code compliance. WCC understands that paragraph (a) has been drafted to be consistent with section 52L(2)(a), however the language does not fit comfortably with a BCA's functions in relation to a low-risk building consent. WCC considers that the words 'all aspects of' in paragraph (a) should be deleted.</p> <p>Section 52H(2)(b): paragraph (b) also practically requires BCAs to review plans and specifications (albeit at a high level) to determine whether a safety issue may arise. If the intention of section 52H is that BCAs will only assess the matters set out in subsection (1)(b), this does not appear to be achieved by the current drafting.</p> <p>Finally, WCC considers that the reference to 'significant building quality failure' in section 52H(2)(b) is inappropriate: it is unclear what this actually means, and the reference to <i>quality</i> is inconsistent with the Act's general focus on <i>code compliance</i>. Quality and code compliance have traditionally been regarded as quite separate concepts in the context of building control, with regulatory interest being limited to the latter.</p>
15	52I	BCA responsibilities in relation to building work carried out under a low-risk building consent	<p>Subsection (1)(a): The intent of this provision appears to be that BCAs will not need to conduct inspections of low-risk building work. However, WCC considers that the provision can be read to imply an expectation that BCAs will conduct a final inspection, especially when read in conjunction with subsection (2).</p> <p>WCC considers that this potential problem could be address by deleting the words '<i>... before the issue of a consent completion certificate for the building work</i>' from subsection (1)(a).</p>
15	52K	Application for simple residential building consent must comply with Schedule 1B	Comments as per section 52G above.
15	52L	Requirements for the grant of a simple residential building consent	Section 52L(1)(b)(ii): WCC observes that the language of this provision does not include the familiar ' <i>... if it is completed in accordance with the plans and specifications accompanying the application</i> ' (compare

Clause (Bill)	Section (Act)	Nature of amendment	Comment
			<p>new section 52O(b), or current section 49(1) of the Act). WCC considers that these words should be included in section 52L(1)(b)(ii), in the interests of consistency.</p> <p>Section 52L(1)(b)(iii): comments as per section 52H(1)(b)(ii) above.</p> <p>Section 52L(2)(b): comments as per section 52H(2)(b) above.</p>
15	52M	BCA responsibilities in relation to building work carried out under a simple residential building consent	Section 52M(1)(a): requires BCAs to inspect 'building work to which the consent relates', which is arguably broader than all building work relevant to the 'prescribed aspects' that a BCA is required to assess when determining whether or not to grant consent. WCC queries whether this is the intent of the provision, or whether it should be limited to requiring BCAs to inspect only building work that correlates with the 'prescribed aspects'?
15	52P	Imposes a requirement on an owner to obtain an approved risk profile and an approved quality assurance system before applying for a commercial building consent	<p>No processing timeframe is specified for the giving of these approvals.</p> <p>WCC considers that some processing timeframe should be specified, in the interests of certainty for all parties. The length of the processing time will logically depend on the scope of the information necessary to comprehend and verify a risk profile and quality assurance system, which will in turn be contingent on the definition of those terms in regulations.</p>
15	52Q	Requirements for approved risk profiles	WCC considers that subsection (3) is not clear about who the 'parties' are. It is assumed, from the context of the provision, that it is intended to capture the owner and the relevant BCA. However, the use of the word parties invites a wider reading, particularly given the wide range of people typically involved in commercial construction projects. WCC considers that this provision would benefit from more certainty around who the intended 'parties' are.
15	52R	Requirements for approved quality assurance systems	Comments as per section 52Q above.
15	52S	Application for commercial building consent must comply with Schedule 1D	Comments as per section 52G above.

Clause (Bill)	Section (Act)	Nature of amendment	Comment
15	52T	Requirements for the grant of a commercial building consent	WCC notes that the requirement for a BCA to be <i>satisfied</i> for the purposes of this provision is not qualified by the usual word 'on reasonable grounds', which appear elsewhere in the Act. WCC queries whether this is higher threshold is intentional.
15	52X	BCAs' ancillary inspection powers for work carried out under a commercial building consent	<p>Section 52X appears to empower BCAs to carry out invasive inspection: i.e. 'sampling' and 'testing'. This is a significant departure from inspection practice under the Act and the Building Act 1991, which limits regulatory inspections to non-invasive, visual investigations. There are significant implications for BCAs in terms of: appropriate officer training for invasive inspections; and what the implications of invasive testing might be in terms of damage to building fabric. The very act of carrying out "sampling and testing" will increase potential BCA liability.</p> <p>It is also difficult to appreciate, on a practical level, how sampling may assist a BCA to determine whether a quality assurance system is being complied with. If the BCA's task is to determine whether necessary processes are being carried out, reverse engineering a conclusion on the basis of samples taken from the end product (i.e. the building work) involves a significant causative assumption - in other words, it does not necessarily follow from the detection of a building performance issue that quality assurance processes are not being carried out correctly.</p>
25	90B and 90C	Definitions of 'owner-builder' and 'relevant interest'	<p>The scope of the 'relevant interest' definition is very broad. This does not pose any particular problem, as it is merely one element of the 'owner-builder' definition which is quite restrictive in other respects. However, there is a question as to why the 'owner' definition in section 7 hasn't been used (?). WCC considers that there is potential for confusion where someone who qualifies as an owner-builder, but not as an owner, applies for a building consent for restricted building work.</p> <p>WCC also considers that there should be a central register for notices provided under new section 87A, so that people cannot circumvent the 3-year restriction in section 90B(1)(d) by carrying out restricted building work under the owner-builder exemption in different BCA districts.</p>

Clause (Bill)	Section (Act)	Nature of amendment	Comment
30	93	Time in which BCA must determine whether to issue consent completion certificate	<p>WCC observes that a request for a consent completion certificate under Schedule 1H may include a request for a BCA to conduct a 'safety systems review' (see Schedule 1H, clause 1(b)(i)). The 20 working day time period in section 93 does not take account of the possibility that such a review may not have been carried out: the statutory clock should arguably stop (or not start) until a safety systems review has been carried out.</p>
31	94C	Issue of consent completion certificate for work carried out under a commercial building consent	<p>Section 94C(1)(b): the language of this provision appears to make sampling, testing, and inspection by a BCA mandatory: notwithstanding new section 90(4).</p> <p>WCC considers that this provision should be amended to indicate that sampling, testing, and inspection by a BCA is discretionary. This could be achieved by:</p> <ul style="list-style-type: none"> • deleting the words '<i>has carried out sampling, testing, and inspection that satisfies it</i>'; and • replacing them with '<i>is satisfied</i>' <p>WCC also notes that there is no requirement in new section 94C for a BCA to be satisfied on reasonable grounds that any specified systems installed as part of the building work will comply with the performance standards identified in a commercial building consent. The absence of this requirement contrasts with the consent completion certificate tests for low-risk, simple residential, and standard building consents (see sections 94(1)(c), 94A(1)(d), and 94B(1)(c) respectively). WCC queries whether this omission is intentional. In practical terms, it means that the performance of specified systems installed under a commercial building consent will be presumed if the quality assurance systems for the project have been complied with.</p>
57	314A	Enables the creation of a Code of Ethics for LBPs	<p>WCC strongly supports the development of a Code of Ethics for LBPs.</p> <p>WCC considers that the significance of the Code of Ethics would be enhanced by the inclusion of a clear requirement for LBPs to comply with it. As framed, the Bill does not contain such an obligation. Instead, it requires compliance indirectly by providing disciplinary sanctions for breaches of the Code of Ethics.</p>