

**Subject:** Changes to the Building Act – Effects on the Gisborne District Council

**Prepared by:** Ian Petty (Construction/Consents Administrator)

**Meeting Date:** 15 September 2010

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## Report to ENVIRONMENT & POLICY Committee for decision

### SUMMARY

The Minister of Building and Housing had signalled his intention to overhaul the Building Act 2004 to make it less bureaucratic and more cost effective.

A discussion document published in February 2010 outlined the proposed changes and invited submissions by 23 April 2010. Three hundred and eighty submissions were received by the Department of Building and Housing (DBH).

The Minister issued a press statement on 12 August 2010 outlining the changes that will be made in the short term and his view of the possible changes in the future. The Department of Building and Housing (DBH) also published the proposed changes to Schedule 1 (exempt building work) at that time. The new Schedule 1 will come into force before Christmas this year.

The changes as detailed by the DBH will not greatly affect the operation or the budget of this Building Consent Authority. However compliance with the Combined Regional and District Plan will become an issue if and when the requirements of the Building Act 2004 are relaxed.

### RECOMMENDATIONS

That the Committee

1. receives the report
2. Recommends that Council
  - a. promotes a change to the District Plan to make building an extension or an ancillary building of over 15 square metres a controlled activity in land use overlay 2 or 3.

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## **1. BACKGROUND**

- 1.1 The Minister for Building and Housing had indicated when appointed that he wished to see the acceptance and issuing of building consents become more streamlined and cost effective.
- 1.2 In February 2010 a discussion document was published by the Department of Building and Housing (DBH) outlining the proposed changes to the Building Act 2004 (the Act) that would implement the Minister's vision. The proposed changes were also outlined in a road show undertaken by the DBH. Staff from this Building Consent Authority attended the meeting in Napier to hear the proposals.
- 1.3 The discussion document was open for submissions until 23 April 2010. This Building Consent Authority (BCA) put in a submission but due to the timing was unable to get it endorsed by council before the closing date.
- 1.4 The Minister has now issued a press statement (attached as Appendix 1) on the proposed changes and the implementation schedule for those changes.

## **2. DISCUSSION AND OPTIONS**

- 2.1 The Environment and Policy Committee endorsed the submission that the Gisborne Building Consent Authority had made to the Department of Building and Housing on the proposed changes to the Building Act 2004 after a presentation at a deliberative in May 2010. This council's submission was one of 380 received by the DBH.
- 2.2 The proposed changes that were promulgated in the discussion document included stream lining the process for simple houses, a lesser involvement in complex multi storied buildings, no building consent required for garages and carports up to a certain size as long as they were built by an Licensed Building Practitioner, and a much larger list of building work that would be included in Schedule 1 of the Act (exempted work).
- 2.3 The BCAs submission generally opposed the changes stating that we didn't believe that the building industry had the capacity to be self certifying for anything above minor building projects at this stage.
- 2.4 At a cluster group meeting at the Napier City Council on 22 July representatives of the DBH gave an overview of the submissions received and the resulting possible changes. The DBH staff members commented that well over 100 submissions had been received from the 74 councils. These included submissions from the Council as an elected body, submissions from BCA managers, and submissions from individual officers. As they expected these submissions supported some parts of the proposals but the overall thrust was that the industry was not ready to assume the proposed level of self certification. Our submission followed this trend.
- 2.5 However the DBH commented that they were surprised that the industry supported this contention and that consequently there had been a rethink regarding the implementation timeframe which they now said obviously had to be a generational change, not a quick fix. By generational they mean 10 or more years.

- 2.6 The Minister of Building and Housing released a press statement on 12 August outlining the changes that were occurring in the short term. These included a clarification of the liability status of builders for their projects, a requirement for them to prove that they have the financial resources or insurance to backup this liability, and the aforementioned expansion of the Schedule 1 (attached as Appendix 2). There are other changes that are being considered for mid 2012.
- 2.7 The changes to the Schedule 1 will not affect this Building Consent Authority. The items in blue are things that we already considered didn't require a building consent. While most of the rest of the Schedule 1 list is of no real concern there are two notable exceptions.
- 2.8 The increase of the height of an exempt deck, from 1 to 1.5 metres is in direct contradiction to the requirements in clause F4 of the New Zealand Building Code which requires a complying safety from falling balustrade on all decks over 1 metre. The experience of the Building Control Officers is that there are many issues with deck balustrades and expecting a builder, whether licensed or not, to build in accordance with the New Zealand Building Code without the overview of a building consent is short sighted, to say the least.
- 2.9 The other issue is the apparent contradiction between item 5, which appears to allow penetrations through firewalls of up to 300mm without the need for a building consent, and the clarification detailed in item 13, which states that the exemption doesn't apply to fire rated walls.
- 2.10 While not a real concern for the building control section of the council the increase in the exempt fence height from 2 to 2.5 metres may require more enforcement of the District Plan rules in regard to fences. In the past these have been aligned, with the plan stating fences that are less than two metres from original ground level do not require a building consent and the Building Act with a similar rule. It is an unfortunate fact that people understand the Building Act rules more than the plan rules. It is my opinion that this divergence will lead to more neighbourhood disputes on fence height and more need for Resource Management Act enforcement action.
- 2.11 The proposal to allow carports of up to 20 m<sup>2</sup> without the need for a building consent may also lead to District Plan problems. While an open sided carport that is over 200mm off the boundary does not require any fire rated walls or other specific building features at may well compromise the bulk yard or height recession plane provisions of the Plan.
- 2.12 Notwithstanding the Plan issues the building section has concerns in regard to storm water control from this type of structure on a hill slope section. This council has a blanket prohibition of soak pits or uncontrolled storm water on this type of property. The ability to erect structures without consent has the potential to exacerbate scour and/or mud deposition on the subject property or a neighbours.
- 2.13 This potential problem can be mitigated by a plan change to make erection of structures with roofs on hill slope properties to be a controlled activity under the Plan and this action is recommended.

### **3. SIGNIFICANCE**

The proposal is not considered significant in terms of Council's significance policy at this stage.

### **4. CONSULTATION**

No consultation by Council is required. The Department of Building and Housing has conducted consultation on the proposals to this stage. They are now subject to the usual legislative change process that governs changes to an Act of Parliament.

### **5. COMMUNITY OUTCOMES**

There may be negative community outcomes from the proposed changes. The building consent process serves as a trigger for checks for compliance with the District Plan. Exempt buildings will circumvent this check and problems arise as buildings are constructed without the requisite yard distance or height infringement plane checks.

### **6. LEVELS OF SERVICE**

The proposals will have no impact on the Building Consent Authority's level of service at this stage.

### **7. FINANCIAL**

Only a limited financial impact would occur. The proposed exemptions are only a very small part of the work of the Building Consent Authority and only a small decrease in budgeted income is forecast.

### **8. LEGAL**

There may be an increased enforcement role required to ensure the provisions of the District plan are met. As discussed above the trigger of a building consent application may be lost for some ancillary structures.

### **9. POLICY**

No apparent issues apart from a possible plan change in the future.

### **10. OTHER CONSIDERATIONS**

None.

### **11. APPENDICES**

Appendix I – Press release from the Minister for Building and Housing.

Appendix II – Possible changes to Schedule 1 of the Building Act 2004 from the Department of Building and Housing.

## Next generation of building laws on the way

by [Hon Maurice Williamson](#), Building and Construction

05 August 2010

The Government will introduce amendments to the Building Act 2004 that will help cut red-tape and bureaucracy and make builders more accountable, Building and Construction Minister Maurice Williamson announced today.

Mr Williamson says Cabinet has agreed to introduce a range of amendments to the Act that will provide more incentive for builders to 'build it right first time'.

"Without compromising quality and safety, these amendments will help drive a more efficient and productive sector that stands behind the quality of its work," he says.

The planned changes to the Act will be phased in over time. Some of the incentives to 'build it right first time' to be introduced this year include:

- Explicitly stating that builders and designers are accountable for meeting Building Code requirements;
- Mandatory written contracts for building work above \$20,000 that set out expectations, warranties and remedies, and how any disputes will be resolved;
- Requiring those doing the work to explain what, if any, financial back-up or insurance they have to remedy any faults.

"I expect these measures will lead to fewer disputes and see most arguments sorted out quickly and relatively cheaply."

Mr Williamson says these changes are part of the Government's Better Building Blueprint, a series of measures to make it easier and cheaper for New Zealanders to build good quality homes and buildings.

"We want to make it easier for homeowners commissioning building work to hold contractors to account for fixing any defects that do arise," he says.

The planned amendments to the Act will also see some minor, low-risk work, such as building a carport or veranda, exempted from the need for a building consent.

Mr Williamson says the Government can only make changes to the building consent process to reduce costs once it has confidence in the quality of what is being built.

The Government is proposing to introduce a 'stepped' approach to building consents and inspections after mid-2012 once the other improvements are in place to drive quality, including the licensing of building practitioners.

"Under this stepped approach, the amount of checking and inspection will be directly aligned to the complexity and risk of the work, and the skills and capability of the people doing the work," Mr Williamson says.

"For example, when building a stand-alone garage, the only check that may be required is that the work is being done by a licensed building practitioner. For building a simple, one-storey house using proven methods and products, it would be quicker to get consent and would require fewer inspections with the local authority only focusing on the critical elements."

Longer term, the Government is also looking at how it could make the building consent system more nationally consistent and efficient.

"This could be done through centralising some of the functions of building consent authorities, supported by an online consenting system," he says.

"This has the potential to reduce costs significantly, but we need to balance that against the cost of change. We need to look at this area in more detail and will be discussing it with local authorities."

The planned changes to the Building Act are the result of a year-long review, which included consultation with interested parties.

More than 380 written submissions were received during the public consultation process earlier this year on the Government's proposals to change the way the building industry was regulated.

For more information on the detail of the proposed changes to the Building Act visit:

[www.dbh.govt.nz/buildingactreview](http://www.dbh.govt.nz/buildingactreview)

### Proposed Changes to Schedule 1 – Exempt Building Work

The planned exemptions include:

1. **Replacement or alteration of internal wall and floor linings and finishes in a dwelling.**
2. **Adding lightweight stalls (e.g., used at fairs and exhibitions) to the current exemption for tents and marquees.**
3. Fabric shade sails and associated structural supports that do not exceed 50 square metres in area (with limitations on matters such as the level on which the sails are installed and distance from a legal boundary).
4. **Installation, replacement or alteration of thermal insulation in existing buildings (excluding exterior walls and fire walls). This clarifies that retrofitting ceiling and under floor insulation will not need a consent.**
5. Penetrations with a maximum diameter of 300mm (including associated weatherproofing, fireproofing and any other finishings) to enable the passage of pipes, cables, ducts, wires, hoses and the like through any existing building. This clarifies that for example a heat pump can be installed without needing a consent, although the wiring must be done by a registered electrician.
6. Signs and associated structural supports where the sign is no more than 3 metres high and the face area of the sign does not exceed 6 square metres.
7. **Height restriction gantries (e.g. a vehicle height warning in a car park).**
8. **Private playground equipment used in association with a single household where no part of the equipment extends more than 3 metres above the ground.**

Exempt if carried out in accordance with the Plumbers, Gasfitters and Drainlayers Act 2006

9. Replacement (including repositioning) of most water heaters.

Exempt if carried out if designed by a Chartered Professional Engineer (CPEng)

10. Signs and plinths.

11. Retaining walls in a rural zone that retain not more than 3 metres depth of ground with limitations on matters such as the distance from any legal boundary or any existing building.
12. **Playground equipment installed in a public place for a government department, Crown entity (including a school), licensed early childhood centre or a local authority.**

In addition, Schedule 1 will be amended to clarify the following existing exemptions.

13. Additions to clarify that the current exemption relating to internal walls does not include load-bearing or bracing element walls (i.e., as originally approved by Cabinet in May 2008) or any part of a wall that is fire-rated or part of a specified system.
14. Increasing the height of exempted fences and hoardings from 2m to 2.5m.
15. Adding to the exemption for tanks and pools to allow a wider range of volume-height configurations than are currently provided for.
16. Increasing the size of marquees and tents for public events to 100 square metres (i.e., the same as is currently allowed for private events).
17. Increasing the height of exempted platforms and bridges from 1m to 1.5m and adding the term 'boardwalks' and 'decks'.
18. Increasing the floor area of exempted porches and verandahs from 15 square metres to 20 square metres, adding carports to the same exemption and removing the requirement that the structure be over a deck or a patio.
19. Increasing the area of exempted awnings from 15 square metres to 20 square metres and adding the term 'canopies' to the same exemption.

Exempt if carried out in accordance with the Plumbers, Gasfitters and Drainlayers Act 2006

20. Adding to the existing exemption allowing alterations to sanitary plumbing the clarification that the exemption excludes water heaters (which are now covered by a separate exemption) and does not permit the total number of sanitary fixtures in a dwelling to be increased.