

straight up

THE MAGAZINE OF THE BUILDING OFFICIALS INSTITUTE OF NEW ZEALAND

SEPTEMBER 2016

In this month's issue:

BOINZ SBCO Forum a success in Marlborough
Training Challenges in Construction by Warwick Quinn
Glass Barrier Requirements –
“Make Sure You Have the Right Information” says MBIE



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IN THIS ISSUE

From The President	2
Prefab Top 5	4
BCITO Update	6
Regulation	8
LBP Board News	10
Spotlight on Member	12
SBCO Forum 2016	14
PGD Board Update	16
Membership & Branches	17
Branch Focus	18
Regulation	20
BOINZ Training Academy	24



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From the President

I have to say my first few months in the role have been rewarding, and made more so knowing that we as an organisation are about to hit a significant milestone – our 50th Anniversary.

At our August Board meeting our 50th Anniversary celebrations were an agenda topic, and one of the first initiatives of the Board to celebrate our longevity was to temporarily waive the joining fee on applications received from the period 1st September 2016 to 31st December 2017. We believe this is a great start to our celebrations and one that we hope will attract new membership to the benefits of being a BOINZ member. Member participation is all about growing your careers and ability. In today's fast moving design and build environment nothing is more important than keeping abreast of technology, regulation and general industry knowledge. So if you know colleagues who will benefit from membership encourage their participation and send them to our website.

Talking about the fast pace of our sector, anyone who attended our SBCO Forum in

Blenheim earlier in August would not have missed the key messages and statistics that now drive the very frantic world we work in. I have to admit there was a strong level of solidarity for taking a principled, pragmatic and structured approach to dealing with the resourcing issues ahead of us. Unfortunately, I can't say the same for some politicians as the local body elections loom. Where some of the candidates get their information from when they talk about streamlining the Building Consenting process and making it "faster" is very perplexing. Surely they have not read the recent newspaper articles around non-compliant products, skill shortages, underfunded training budgets, or the number of RFI's most consent applications need completing prior to consents being issued. Making rash promises to the public on issues that are very complex and if implemented are likely to cost the building owner more in the long term is irresponsible.

As mentioned one of the key issues that will face Building Surveyors more and more will be around establishing product assurance and compliance – particularly in respect to imported products. We already know about the issues around steel (steel mesh, Huntly Bypass, and the Waterview Tunnel Project), but now we are getting news of product containing asbestos and very likely tomorrow there will be another issue. I cannot stress enough that product compliance and the need to have exacting evidence is important to both you as a building surveyor, your employer and the final end user – the public. Leaving evidential proof to the manufacturers and importer or local country certifiers in respect of critical building material products

is not a safe or wise practice. Independent 3rd party certification should be designed into the consent application for structural and cladding products and not left to those that may be impartial via links to the manufacturing or supply chain. As we know too well what is appraised or certified at the factory isn't always what arrives at your door. Equally I believe the subject of product substitution also needs to be considered carefully as competition for product placement in a rapidly escalating building market continues. More often than not replacements are not "like for like" and as a result risks in area of tolerance, design intent, and consumer expectation present themselves.

Another great outcome of the SBCO Forum was that our Chief Executive Nick Hill announced that BOINZ is to launch a work programme around skill shortages and a national cadetship scheme. You will be hearing more about this shortly, but in essence BOINZ believes a collaborative approach to both issues will bring to our profession a conduit to guarantee an attractive career proposition, supported by our qualifications and importantly linked to consistency in the workplace to allow skill sharing and public confidence. To all of you who are working hard at keeping your customers happy, well done and I salute you. The reality is it is likely to get a bit worse before it gets better, but at least you have your Institute working on your behalf.

Kerry Walsh
President

Here's a top deck solution

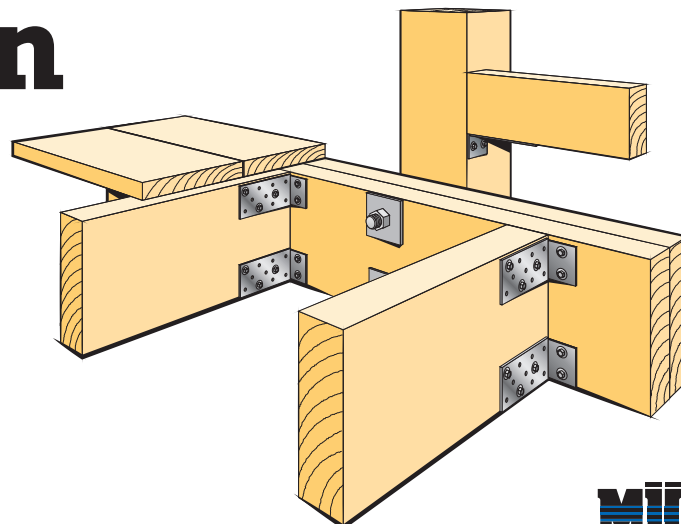
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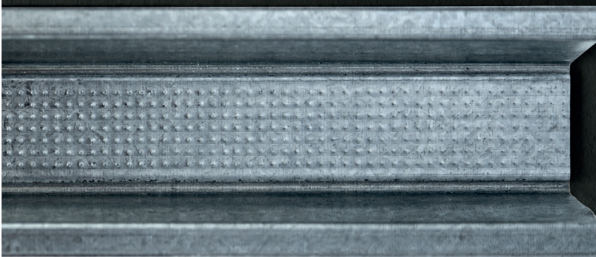
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PrefabNZ Top 5

1. INNOVATION ACROSS THE NATION

PrefabNZ are coming down south this month to run the Innovation across the Nation seminar series – FREE seminars especially for building professionals. Learn about the latest innovations in digital business, building systems guidance, technical window installation and prebuilt construction systems.

The presenters are a mix of central government, non-profit, start-up organisations and commercial enterprise: PrefabNZ, Insiteful, Smartfit (by Fletcher Window and Door Systems) and the Ministry of Business, Innovation and Employment. The seminars will be held in:

DUNEDIN	Tuesday 6 September 7.00-9.00am, PlaceMakers Dunedin (Portsmouth Drive)
INVERCARGILL	Tuesday 6 September 5.30-7.00pm, PlaceMakers Invercargill
QUEENSTOWN	Wednesday 7 September 5.30-7.00pm, PlaceMakers Queenstown

Licensed Building Practitioner (LBP) points are available. Join us to innovate in the south – register with Jenny.Pascoe@masterbuilder.org.nz.



3. ARCHITECTURE WEEK IS HERE!

Architecture Week 2016 is on in Auckland, Wellington and Christchurch from 19-26 September. What are your plans that week? Look out for talks from local and international speakers, open-studios, coffee with an architect, exhibitions and competitions.

PrefabNZ will be running a number of FREE public events in Wellington - hope you can join us! Find out more at

www.architectureweek.co.nz

4. UNIPOD – PREBUILT, STACKABLE SERVICE POD

Are you interested in an open-source bathroom / kitchen pod? Free to download for manufacturers – free to specify for architects / designers / engineers – easy to assemble at site for builders.

Prebuilt chunks like the UNIPod can help the industry build smarter and faster. It's a one-piece bathroom / kitchen pod that is stackable, making it ideal for multi-unit housing developments. Although pods aren't a new idea, the fact that it's open-source is and potentially a first in New Zealand and the world. Anyone will be able to freely access the design (we'll keep you posted!). It's all about sharing information collaboratively – potentially a way forward for the construction industry in the future.



2. WHAT IS ENGINEERED TIMBER? WHAT'S THE DIFFERENCE BETWEEN LVL AND CLT?

Join us to find out at the PrefabNZ Geometry at Play event in Christchurch, brought to you by PlaceMakers and Pryda, on Tuesday 13 September 12-6.00pm. It's the perfect opportunity to learn about engineered timber and panel technologies. The event starts at the fabulous new Community Centre in Mount Pleasant - its wave-like folded surfaces are made from triangular laminated veneer lumber billets – there is not a square in sight! Next stop is Welhaus' Alpine Abode - achieving an impressive 6+ Homestar rating, it was manufactured off-site, assembled and watertight on-site within an impressive two days.

Welhaus is the first manufacturer to combine recycled New Zealand wool insulation with cross-laminated timber 'Twin Skin' panels in ceilings and under cross-laminated timber (XLam) floors.

Find out more and register at www.prefabnz.com/events



5. JOIN PREFABNZ TODAY

PrefabNZ members span the design and construction sector, from builders to engineers, manufacturers and researchers. The organisation delivers strategy, policies and outputs on behalf of the prefabricated building industry. Benefit from events, news, research and development initiatives and connect with potential collaborators. Make sure you're up-to-date with everything prefab – join PrefabNZ, visit

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Training Challenges in Construction

It was great to be able to present at the recent BOINZ SBCO Forum in Blenheim. I have spoken at this event in the past and having worked on several occasions for local authorities, can appreciate the many issues facing this part of the sector. While construction has not been as strong for many years, which we are all very happy about, it brings with it other challenges that need to be managed.

Everyone knows the boom/bust nature of the construction industry and quite a lot of energy has gone into trying to resolve this, or at least smooth the peaks and troughs as much as possible. But, given the high level of investment that property requires it is understandable our fortunes will closely mirror the country's economic conditions. This roller coaster is something we have to live with I'm afraid.

And things are never the same after a recession. As the landscape changes different issues are brought to the fore and so is the case this time round. The global financial crisis (GFC) of 2008 lasted for a considerable amount of time and construction plummeted to its lowest levels since records began (in the 1960s) and stayed extremely low for several years. As a result, the construction sector effectively 'restructured' itself to accommodate this change at circa 15,000 new residential builds per annum. NZ's long run build rate for new homes is 6.58 homes per 1,000 of population, which means our average new build rate today (based on a population of 4.6mil) is over 30,000 per annum. We will get close to that this year and have to get used to this being the new norm. But given the extremely low base we are coming off we are struggling to cope with

this pick-up in activity and not surprisingly we now have a skills shortage, which, while felt across New Zealand, is most acute in Auckland, Waikato and BOP – our fastest growing regions.

From 1996 to 2005 Auckland built a tad under 97,000 new homes (7.9 per 1,000 people) but only 56,000 in the last 10 years (3.85 per 1,000 people) while the population grew by nearly 200,000. That is why, based in its population of 1.57m, Auckland needs some 13,000 new homes per annum going forward in addition to the shortfall of the last 10 years. It is currently consenting about 9,500 new homes per year and feels stretched – and it would feel stretched when only a few years ago it was consenting around 3,500 new homes per annum. So, it is still a long way short of where it needs to be.

The growth in the last few years has brought not only capacity issues (not enough skilled workers) but also capability concerns (poor workmanship and rework in Auckland and Canterbury) as firms are stretched for skills and quality control comes under pressure. While apprentice numbers are on the rise again, there is an 18 months to 2 years lag on apprentice training as tradees need certainty of work before they employ them. So, we chase our tails on supplying the market and estimate we are about 3,000 apprentices short of what we need. While we have exceeded 10,000 in training for the first time – that's still a 30% shortfall. Some pundits are saying the Auckland demand will last for years, but I am not so sure. Perhaps I am a bit long in the tooth and have seen it all before, but the housing market can 'turn on a dime'. The market is so closely linked to our country's

fortunes that, housing shortages or not, we will not build new homes in the face of tough times. By the way, Auckland and the Queenstown Lakes District are traditionally the most volatile residential markets in NZ so what this means, when things eventually recover after a slump, is we come under even more pressure to supply a skilled workforce as we fall further and further behind the equilibrium.

It follows that one of the key challenges for BCITO is to try and predict our skills demand at any given time, and as best we can minimise the over and under supply of apprentices. I call it the 4 R's: Right Skills, Right Place, Right Number, Right Time. This is no easy task so the work we are doing around workforce development is critical to getting clarity around this. Our workforce development plans are specific to each trade we cover and while they won't be perfect, they can be refined over time. They will also be of great benefit to the wider sector to help plan for forecast expansion or retraction. This initiative will hopefully help us manage our way through the boom/bust cycles with more confidence and control.

Another key challenge for us is the traditional source of our trainees is coming under increasing competition, and the changing nature of our population requires us to look carefully at the make-up of our apprentices and where we attract them from. One just needs to look at the population mix in a couple of decade's time – our training and development must reflect this structure if we are going to be successful. Amongst other things we have to broaden our recruitment base, have more women in the trades and greater

Asian, Maori/Pacifica representation while improving our qualification completion rates along the way.

Also we need to look at what the market values in the way of skills. With firm specialisation occurring at an ever increasing pace (the number of those in construction who classify themselves as "self employed" has risen from 34,000 in 2013 to 42,300 in 2015, and most of those are in Auckland) we need to consider whether our current suite of qualifications are enough and whether we need to be more nimble to reflect this specialisation. If so, it may help us access a greater labour market that we so desperately need by appealing to individuals who would never contemplate a four year apprenticeship but a short bite of specialised learning might just do the trick and perhaps help address the quality concerns to boot.

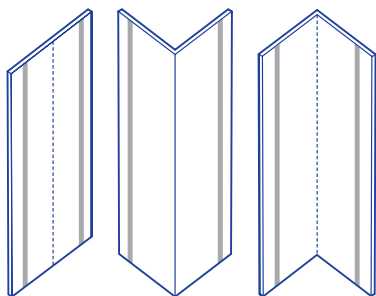
We also believe we have to produce more than just apprentices who are



technically competent. While that is a prerequisite, these days workers need to be resilient, adaptable, dynamic and critical/creative thinkers to be successful. The Auckland and Canterbury problems are today's problems. There will be others and more GFCs in the future. It is our job to help develop our young learners as best we can to cope with these uncertainties.

Warwick Quinn
Chief Executive
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Be sure you understand recent changes to glass barrier requirements

By Nick Locke, Senior Advisor, Building System Performance, MBIE

Recent changes to glass barrier requirements, intended to add a 'second line of defence', have been misreported in some quarters, so make sure you have the right information.

THE CHANGES ARE HIGHLIGHTED HERE:

- Amendment 13 to acceptable solution B1/AS1 (effective 1 June 2016) only picks up clause 22 of the updated Standard NZS 4223.3:2016 Glazing in buildings – Part 3: 'Human impact safety requirements'. Other clauses of NZS 4223.3:2016 are not part of Amendment 13, but may be used as part of an alternative solution. All other acceptable solutions still cite the 1999 version of NZS 4223.3.
- The new requirements are primarily aimed at introducing a 'second line of defence' when glass in a structural glass barrier breaks. If glass provides the only load path to resist barrier loads, as has typically been the case for structural glass barriers, its brittle failure results in an unexpected and total loss of structural capacity. Changes to B1/AS1, through Amendment 13, are intended to provide a secondary load path to help stop people falling, should the primary load path (through the structural glass) disappear. In NZS 4223.3:2016, this secondary load path is provided by either an interlinking rail or a laminated glass interlayer that is suitably restrained. It is worth noting that this secondary load path is not intended to resist the full barrier loads specified in Verification Method B1/VM1, but should prevent someone who is leaning on a barrier from falling, should it break.
- Interlinking rails or suitable laminated glass systems are only required for glass balustrade that protect people from falling more than 1 m. Other glass balustrades, such as screens or swimming pool fences, not protecting a fall, do not require interlinking rails or a suitably restrained laminated glass system.
- We are aware that the load and deflection criteria needed to specify an appropriate interlinking rail or laminated glass interlayer, are poorly defined in clause 22.4.3 of NZS 4223.3:2016. Consultation is currently underway and we are coming to a view that NZS 4223.3 may need to be modified to clarify the load and deflection criteria in the amended acceptable solution, B1/AS1, when it is published later this year.
- NZS 4223.3:2016 allows the glass in balustrades (including glass barriers) to be sized / specified. The Standard does not provide details of any supporting structure, connections to the building/foundations or interlinking rails, which must be specifically designed. Suitable information should be included in building consent applications (e.g. sufficiently detailed producer statement (PS1)) that cover the site specific details for each glass balustrade.
- MBIE consulted during July-August on proposals to amend a number of acceptable solutions, including citing the latest versions of NZS 4223, Parts 1 – 4. See Consultation: Amending Acceptable Solutions and Verification Methods 2016 on the MBIE Corporate website. We are considering all the feedback and finalising the details now, with plans to publish the amendments shortly.
- Building consent applications for glass barriers:
 - Accepted before 1 June 2016 may use the old version of B1/AS1 (Amendment 12)
 - Made on or after 1 June 2016 must comply with the new barrier requirements in Amendment 13 if B1/AS1 is used, or achieve an equivalent level of performance using an alternative solution
 - Should include appropriate documentation, showing compliance with the barrier requirements in B1/AS1 Amendment 13, and sourced from barrier suppliers or suitably qualified engineers.



Structural glass barrier example

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Another Cowboy Bites the Dust...for 3 Years

By Janine Bidmead

A complaint was made about Cecil Sinclair to the LBP Board which has resulted in Mr Sinclair losing his LBP License for 3 years, the longest period of time a person has been banned from relicensing.

"GROUNDS FOR DISCIPLINE OF LICENSED BUILDING PRACTITIONERS

1. The Board may (in relation to a matter raised by a complaint or by its own inquiries) take any of the actions referred to in section 318 (Disciplinary penalties) if it is satisfied that—

(a) both of the following matters apply:

(i) a licensed building practitioner has been convicted, whether before or after he or she is licensed, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more; and

(ii) the commission of the offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work; or

(b) a licensed building practitioner has carried out or supervised building work or building inspection work in a negligent or incompetent manner; or

...

(i) a licensed building practitioner has conducted himself or herself in a manner that brings, or is likely to bring, the regime under this Act for licensed building practitioners into disrepute." (s 317(1)) of the Building Act 2004

It was this section of the Building Act 2004 that was used to remove Cecil Sinclair's license to build.

The complaint against Cecil Sinclair was an unusual one for the LBP Board to hear. Mr Sinclair had not received a complaint about his competency with his construction, but it was instead about his handling of money – he had 91 convictions for evading tax spanning a period of 10 years from 2001 to 2011. He was sentenced to 8 months home detention and 150 hours of community service on all of the charges. There were other criminal offences on his record dating back to 1967, many of the offences relating to dishonesty. None of these offences were disclosed by Mr Sinclair when he applied to become an LBP in May 2014. Registrar of Building Practitioner Licensing Paul Hobbs says that the charge Mr Sinclair was held to account for was the first one of its kind to be heard by the Board. And they have not taken it lightly. "It's important consumers are able to feel confident in the integrity of their licensed builder, and decisions such as this one help protect the strength and reputation of the industry as it grows"¹ adds Mr Hobbs.

It was another LBP who lodged the complaint against Mr Sinclair and on 7 December 2015 Mr Hobbs prepared a report in accordance with the Regulations. The purpose of this report is to assist the Board to decide whether or not it wishes to proceed with the complaint. On 21 December 2015 the Board considered Mr Hobbs' report and decided to proceed with the complaint that Mr Sinclair has been convicted in the past.

At the hearing, accompanying Mr Hobbs' document showing that Mr Sinclair did not disclose any previous convictions in his License application, was a criminal conviction history from the Ministry of Justice. These 2 pieces of evidence proved that Mr Sinclair did indeed have many previous convictions and he did not disclose any of them during his application to become licensed. This showed that Mr Sinclair did have grounds for discipline based on section 317(1) (a) as according to the Tax Administration Act of 1994, Tax evasion under section 143B(4) is punishable by imprisonment and/or a fine not exceeding \$50,000. Given this maximum penalty of five years' imprisonment the convictions were considered as serious in nature by the Board.

Tax evasion is also considered a dishonesty

offence. "Carrying out or supervising building work is an undertaking which often involves the handling of client funds or entering into credit arrangements and as such there is a correlation between the nature of the charges and fitness to be licensed."² "The Board also considers a person with a long criminal history and a sustained pattern of dishonesty and tax evasion could have an effect on public confidence in the licensing regime."² Both of these statements from the Board's Complaint Decision refer to Mr Sinclair having grounds for discipline as described in section 317(1) (a(ii)) and (i) of the Building Act.

Based on these conclusions the Board decided to cancel Mr Sinclair's license and prevent him from licensing for 3 years, as according to Mr Hobbs "The Board wanted to send out a stern warning...it's not a slap on the wrist". He was also ordered to pay \$2,500 to contribute towards the costs of and incidental to the inquiry. These penalties are in accordance of Section 318 of the Building Act.³ Section 318 also permits that Mr Sinclair's name be released to the public "to give effects to its order"².

So have the public found out? There was an article in Code Words which according to Mr Hobbs goes out to around 30,000 people - mostly other LBPs, and a media release on the Ministry of Business, Innovation & Employment's website which is more for a consumer facing audience. A lot of other trade magazines have picked up the story, but it doesn't seem that the local or national papers have picked up on this story so far. Mr Hobbs says that other stories where penalties have been imposed on LBPs generally get some coverage. Mr Hobbs refers to the media release on Yordan Michael Militch from Nelson who was based in Hawkes Bay, where they received many calls of appreciation from the public and the added advantage of media exposure is that it can help to bring other complaints out of the woodwork, which can help to "strengthen the case" against a particular person making the job of the Board easier.

CONCLUSIONS

It is vital that when LBPs – or any others in the industry - act with dishonesty and/or incompetency are found out and given penalties. It is our duty as honest members in the industry to publicise these names as much as possible and ensure that

consumers who are not regularly exposed to what's happening in the industry have the best chance possible of avoiding becoming a victim.

It is equally important that if you know of any dishonest or incompetent work happening around you, you register your complaint. To do this, please click the link at the bottom of this article. Mr Hobbs believes that out of over 25,000 individual LBPs, to receive only around 200 complaints last year is pretty good: "There are a lot of proud LBPs out there. They [like anyone else] like to see people receive natural justice".

However, there are concerns for the future. As the construction industry gets busier and busier, the quality of work produced can decrease and as Mr Hobbs puts it "people's competency is spread a lot thinner". Addressing this pressure that has been put on the industry and ensuring adequate training is provided to all those who do enter the industry is something that needs to be addressed to help keep the number of complaints down. The recent BOINZ Senior Building Control Officers' Forum addressed these issues in their programme, and is working alongside other organisations to help encourage people into the industry and ensure the best possible training is available to them.

INFORMATION ON HOW TO MAKE A COMPLAINT TO THE LBP BOARD:

<http://www.business.govt.nz/lbp/complaints/complaints-to-the-building-practitioners-board>

TO LEARN MORE ABOUT THE BOINZ TRAINING ACADEMY AND WHAT COURSES IT PROVIDES:

<http://www.boinz.org.nz/Site/education/default.aspx>

¹ <http://www.mbie.govt.nz/about/whats-happening/news/2016/lbp-convicted-tax-evasion-licence-cancelled>

² <http://www.business.govt.nz/lbp/complaints/view-past-complaint-decisions/decisions/bpb-complaint-no.-c2-01244-penalty/C2-01244%20Redacted%20Penalty%20Decision.pdf>

³ <http://www.legislation.govt.nz/act/public/2004/0072/latest/whole.html#DLM308642>

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Spotlight on a Member

By Janine Bidmead

Starting from this September's issue of Straight Up, in each addition moving forward we are going to focus on one of our members to learn more about their background, what brought them into Building Surveying and how they feel about it. Each member will be asked the same nine questions. If you have a story to tell, or think you might know someone who does, please email events@boinz.org.nz.

Here's our first entry for "Spotlight on a Member":

Name: Bill East

Official job title: Building Control Group Manager

Region: Marlborough District Council

It was a sunny Thursday afternoon in Marlborough and Bill earlier that day had given one of the more entertaining talks of the day at the BOINZ Senior Building Control Officers' Forum at the Marlborough Convention Centre in Blenheim. His presentation started with comedic value, as he jokingly described the many transport options available to him to access building sites in Marlborough with some presentation slides that showed his face with a dead-pan expression photo-shopped onto sky-divers and rock-climbers. It worked perfectly and helped to put the audience at ease.

Bill then went on to discuss the slightly more serious side of his job where he was asked to do site inspections after the council received complaints and found severe overcrowding in accommodation for those who had come over to Marlborough as part of the RSE (Recognised Seasonal Employer) scheme to work on the vineyards. Marlborough wasn't ready for such an influx of people, and didn't have the structures to accommodate these temporary workers leaving many of them sleeping on small sections of floor, usually in spaces not designed for accommodation such as an empty indoor swimming pool!

Bill then went on to discuss the solutions the Council had tried to find for this problem as he'd heard that other Councils were going through similar issues in other regional areas. So it is fair to say that having done his presentation for the day, Bill was relaxed, but with thoughts of what being a Building Control Officer in Marlborough was like fresh on his mind.

JB: So Bill, what was your first full-time job?

BE: I started at 17 years old as a commercial apprentice carpenter. I soon moved on to being a residential apprentice builder and completed my four years of apprenticeship qualifying with trade certificate. I continued to a carpenter, a leading hand, then foreman & eventually self-employed in Wanganui. For many years I specialised in erecting Lockwood homes and ended up with my own franchise for Interlock homes. I moved to Tauranga where I founded East Homes Ltd, but in 1994 an injury to my back meant I had to "down tools" and endure two major back operations and a triple spinal fusion. This forced me into reviewing my whole life, so I became a frame & truss detail manager in Taupo. Then I headed to Marlborough with PlaceMakers, and after a few years I was offered a job as Project Manager which I took.

JB: How did you get into the industry?

BE: It was in 2003 that working in Building Control came about. Back when I was having my back problems ACC allowed me to complete six papers in management. These papers helped me transition into the building control environment, especially in use of computers and communication. I found that everything I'd done in my life moulded into giving a really good understanding of the industry from a compliance point of view. I've strived to be an integral part of the industry, not against it.

JB: What do you think has changed about the industry since you first started working in it?

BE: We keep trying to reinvent the wheel. And the problems are always changing.

JB: What job did you do before the job you have now?

BE: I was a Building Control Officer when I first came to the council in 2003, and was promoted to Building Control Group Manager in 2012.

JB: What is the most interesting part of your job?

BE: The changing environment that occurs all the time. Seeing Building Control moving into a more professional realm is very satisfying, and being able to be a part of that. I'm really enjoying involving technology into the business. We brought in a digital tool for inspections we designed



ourselves with excellent assistance from our IT team and external contractor. We won the BOINZ Excellence Award for "Innovator of the Year" last year at the Annual Conference & Expo because of it. We digitised all property files, setting them up to create efficiencies that saved time and money for both council and customers. After the release of the innovative tool, it was predicted that the administration time for officers completing inspections had been reduced by approximately 70 – 75%. It's been incredibly successful so far.

JB: Do you believe that there should be more regulation in this area?

BE: Well, I just find that as central government ease things up, for example with schedule 1, it just creates more grey areas which the council has to deal with. It may not affect us when that work's done, but properties go for sale and all of a sudden people say "Oh, that actually needed a building consent". I've noticed it's not Building Control driving the compliance in; it's actually insurance companies, real estate companies, loan institutions and lawyers. They're the ones who are driving it. Even if the project can be completed under an exemption, the property owner really needs to think about what the effect of that work is going to be further down the track. This is particularly important for when they're going to sell. The old days where people thought "I'll get one over on the council, I'll do this and I'll never get caught", are gone because too many times now when it comes up for sale or there's an insurance claim or something like that we find out. Next thing, a Certificate of Acceptance is required. It's the same thing with the fire code. Section 112 of the Act requires certain things to be addressed. But section 112-2 allows digression. This puts all the pressure back on the BCA to deem what does or does not comply. I don't mind this so much but we get a lot of criticism from designers going

The area demands a wide range of transport types to access building sites...



Only Marlborough

MARLBOROUGH DISTRICT COUNCIL

through this process. Decisions made at the time for a one-off situation are often used against the BCA further down the track.

JB: What do you consider to be the biggest challenge in your role?

BE: Right now, it's coping with the influx of work. We're having to look at smarter, better ways of doing things so our hours are more productive.

The other frustration with building control is all the new regulations we're having to deal with. For example, the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. It's added a lot of work for the planning side of building consents, but that's nothing compared to what it's doing to the developers and builders. They think they're going to a simple site, then the next minute they're paying \$20 – \$30,000 for an assessment and then they've got to figure

out whether they're going to mediate or manage it. With this and the new Worksafe requirements, you start adding it all up and you can see why the Government only wants the big players, as they're the only ones who can afford it. I think that's part of the big changes and challenges the Built environment faces. If it's life threatening then fair enough, but from the cases I've seen it's been far from it.

JB: What do you think is different about being in Building Control in Marlborough versus other regions?

BE: We get to inspect in the most beautiful places. You can have the worst day inspecting, but you find yourself sitting in the back of a boat cruising down the sounds; dolphins swimming next to you, the scenery's fantastic, and you think "Hell, I'm being paid to do this". Some poor buggers pay thousands of dollars to go on

SPOTLIGHT ON A MEMBER

that same boat, and here I am being paid and I'm going to do a job. And we've got 4-wheel drive vehicles, so we might go to a real remote place in Port Ligar and the scenery's unbelievable. And you just think "Wow, I've just been paid 3 hours to drive out here and look at it!" Our district has a great variety of regions - we've got ski fields, the sounds, Molesworth and Wairau Valley, it's all different scenery. Also, the way the industry and council works together here is pretty good.

JB: What do you see as the future of Building Control?

BE: We're always going to need to be there, I really do believe this. I don't think that's going to change. The biggest thing for building control heading into the future is adapting quickly to the changes that are occurring that we have no control over. This means adding in more technology too as I talked about earlier to help cut down on administration time and help us work more efficiently.

JB: Thank you for your time Bill and welcoming us so warmly to your beautiful region.

If you would like Straight Up to spotlight on you or someone you know, please send your suggestion to events@boinz.org.nz. We look forward to hearing from you!



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BOINZ Senior Building Control Officers' Forum Review and Feedback Survey Results 2016



Thank you to everyone who attended this year's SBCO Forum – as usual it was great to see you and enjoy some thought provoking and educational presentations from our speakers.

We started off the Forum with a Welcome Function – a chance to see the exhibition space and catch up with old acquaintances. We also had a wine tasting with Jen Beullens from the Yealands Wine Estate and sampled 3 different wines; their Sauvignon Blanc, PGR (mix of Pinot Gris, Riesling & Gewurztraminer) & Tempranillo.

Day 1 of the Forum soon followed and highlights of this day were Warwick Quinn's presentation on the Construction Sector and BCITO Challenges, where his facts and figures on the Construction Industry gave us all food for thought and awareness of how difficult the situation currently is. We also had international delegate Dr Darryl O'Brien talk about the Challenge of Non-Conforming Building Products. Another highlight was the "Addressing our Future" session where we heard from Scott Tulloch and Odyssey Posimani on their experiences in Building Surveying Educational Pathways and then from Rose McLaughlan and Nick Hill about the skills shortages we're facing, what we're currently doing and what we're going to do to help to solve the problem. Our final session for the day focused on a local perspective, where Bill East entertained us with his photoshopped images and we heard about the challenges and advantages to those who work in Building Control in the



Nelson/Marlborough region. We then set off on 2 site tours – the brand new ASB theatre Marlborough and the Marlborough Precut factory.

After the site tours it was time for "A Dinner to Remember" and guests were treated to pre-dinner drinks at the Omas Aviation Heritage Centre WW1 exhibition with guides to provide information where needed. Next it was time to head to the brand new WW2 exhibition space – which was so new it wasn't even open to the public yet! Diners sat amongst the aircraft and enjoyed some live music and a talk from Ron Crosby who had some fascinating tales from his adventures in the Urewera (See top right Page 15). Those who had unheeded the warnings of the venue being cold were left glued to the heaters, but the view was still spectacular.



The final day of this year's Forum saw a panel discussion from Dave Kelly, Dianne Johnson, Paul Hobbs and Denise Whelan; a separate presentation from Dave Kelly and a very popular presentation from Jeff Fahrensohn who looked at Auckland Council's Regulatory Challenges in a Building Boom, which at the end showed an entertaining film Auckland council staff had compiled. The second session that day was a long legislative one, with MBIE representatives and a focus on Notices to Fix from Rice + Co and thoughts on G6 with Heaney & Partners and Bob Russel, an acoustics engineer. Our final session of the day focused on "Hot Topics" with another presentation from Dr Darryl O'Brien on Stair Designs and Rose McLaughlan with Glass Barriers. We ended in a "blaze" of glory with a fire review from MBIE.

For those who stayed on for the Social Programme on the Saturday it was an incredibly enjoyable day of wine tasting at some of Marlborough's finest wineries, combined with beer and chocolate tasting in the afternoon. It was great to socialise more with our members in a more relaxed and informal setting.



FEEDBACK SURVEY RESULTS

During and after the Forum we asked those who attended to fill out a feedback survey so that we could ensure that future events deliver on what our members want. For this year's Forum, we had a record number of people provide us with their feedback – so a wholehearted thank you to those of you who took the time to let us know how you felt. The more people who provide us with their feedback, the more we can cater to your needs and know that our results represent all our members and not just a small portion.

Our results showed that our members found that many of our speakers at the Forum were a particular highlight for them – showing a wide range in what our members look for in speakers at our Forum. We also received some good feedback on those speakers who you strongly felt weren't relevant to the Forum, which has been taken on board.

In response to the question of what topics our members would like to see at future Forums, the most common answers were:

- IT systems or computer programmes that assist the BCO/BCA
- Legal process and persecution
- More on training/cadetships
- Collaboration between councils
- More local flavour
- Management training/workshops
- More risk based consenting

For our trade area, which this year featured





new products and innovations from James Hardie, Sovereign Windows, Tracklok and ACRS; our members mostly rated the usefulness and relevance of the stands to be 3 or 4 out of 5 (where 5 is the highest).

When asked what organisations in the innovative building space our members would like to see exhibit at next year's Forum, our members' most common answers were:

- Smart building technology supplier
- Passive fire
- Fire safety
- New products
- Timber laminate products

The next question asked members to rate on a scale of 1 – 5 where 1 is the lowest, 3 is neutral and 5 is the highest the Thursday site tours to Marlborough Precut Factory and the ASB Theatre Marlborough. The majority of our members selected 4 out of 5 for this option, with 3 and 5 out of 5 being the next most common responses.



We next asked our members what a particular highlight was from the whole Forum. It turns out that "A Dinner to Remember" really was a memorable occasion as the Ombaka Aviation Heritage Centre Dinner was the top answer by far. Other popular responses were the networking opportunities and the technical programme.

Our penultimate question asked members what they thought we could improve on for future Forums. It's important to us that we are continually improving our events so responding to this question was very valuable to us. Here were some of our most common answers:

- More of the same
- More time for feedback and questions at the end of the presentation
- More local themes

The final question asked our members whether they would rather attend a Forum in a regional area or a major city like Christchurch, Wellington and Auckland. 48% said they would be happy to attend an event in both a major city and regional area, but 52% said they would prefer to attend a Forum held in a regional area. Nobody selected that they would prefer to attend a future Forum if it was in a major New Zealand city.

The BOINZ National Office has taken on all your feedback and will work with the Technical Events Committee to find people and organisations who can deliver on the suggestions you have given us and will endeavour to use this information to ensure the continued growth and development of our annual Senior Building Control Officers' Forum to make it the best possible event for our Senior Building

Control Officers. Thank you once again to those of you who took the time to fill out our survey. If you didn't fill out the survey but would still like to share your thoughts on our events, please email events@boinz.org.nz.



Plumbers, Gasfitters and Drainlayers Board Update

PGDB closes in on registration fraud

Continuing its focus on improving key business processes, amongst the number of changes and new initiatives being introduced by the PGDB this year has been the implementation of stronger security measures around their public register.

Complaints received through the Board's investigations unit have highlighted instances where practitioner registration numbers had been taken from the public register and used fraudulently to sign off work not completed by that person. The Board has closed the gap.



Plumbers,
Gasfitters and
Drainlayers Board

WHAT YOU NEED TO KNOW

There have been two changes made to the appearance of the PGDB public register;

- Authorisation numbers are no longer visible – they have been masked with "XXXXX"
- A Certifier's public register page now lists all of their supervisees (including Limited Certificate Trainees and Exemption Under Supervision holders).

What hasn't changed is the search function. Building inspectors are still able to search by a practitioner's authorisation number.

The authorisation number is obtained either from compliance documents, or on-site by viewing the licence card all authorised people must carry with them and produce when asked.

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Letter Sent To Branch, Chairs & Secretaries Regarding Boinz Membership Joining Fee

30 August 2016

Dear Branch Chair or Secretary,

RE: BOINZ 50th Anniversary Celebrations Announcement - Joining Fee

At the recent August Board meeting your Board discussed the lead up to our 50th Anniversary Celebrations in 2017, and activities that would engage members during our 50th celebrations.

One of the key discussions areas was around attracting new members and allowing the benefits of membership to reach a wider building surveying and associate membership.

It was decided to send an early signal to members and potential members that next year 2017 will be an important one for the Institute. Accordingly, the Board has recommended a temporary waiver of the Joining Fee for applications received from 1st September 2016 to 31 December 2017. It is hoped this membership window of opportunity will encourage member growth.

The history behind the Joining Fee being; it was put in place following the 2011 AGM as the Special Levy (\$150.00 ex GST) and subsequently became the Joining Fee to ensure individuals didn't avoid a contribution to assisting the organisation back on its feet. Following its financial problem, and as time moved on, the likelihood of former member's levy avoidance became less, however the cost of administering the joining and debt collection processes increased. So it was therefore deemed appropriate to continue with the Joining Fee, especially as the Institute has not increased its annual subscription since 2011. This has been deemed a sensible approach by your Board and many other peak bodies operate similar systems, particularly to deter individuals joining an organisation just to take its Intellectual Property.

The Board looks at the Joining Fee from time to time and currently supports its continuation (for the reasons above). However, we felt we also wanted to promote the 50th Anniversary celebrations early and encourage the advantages of membership while also growing our numbers. One way to do this is to offer this limited time incentive (September 2016 to December 2017). We also considered the potential financial implications and were satisfied a celebratory promotion leading up to our 50th Anniversary year wouldn't adversely impact on our membership.

I would encourage you to promote this incentive amongst your branch members and ask them to do the same amongst their peers and colleagues with a view to growing membership in your area.

Kind Regards,

Kerry Walsh
BOINZ President

BOINZ BOARD MEMBER – BRANCH APPOINTMENT 2016/2017

Rob Tierney	Northland Branch
Ian McCormick	Auckland Branch
Cory Lang	Waikato/Bay of Plenty Branch
Cory Lang	Central Branch
Peter Laurenson	East Coast Branch
Bruce Symon	Wellington Branch
Phil Roberts	Nelson/Marlborough Branch
Kerry Walsh	Canterbury/Westland Branch
Peter Laurenson	Southern Branch

Canterbury/Westland Branch Meeting at Christchurch Justice and Emergency Services Precinct

By Jennifer Clarke, Senior Building Consent Officer, Christchurch City Council

On a chilly afternoon in August, a group of BOINZ members gathered with a sense of anticipation outside one of the biggest building sites in Christchurch. We were about to get an insight into the complexities and innovation of the largest multi-agency project in New Zealand's history.

The Christchurch Justice and Emergency Services Precinct is strategically and centrally located on the block defined by Lichfield, Colombo, Tuam and Durham streets on a site that was originally more than 20 different lots. An important part of the Christchurch rebuild, it brings together all justice and emergency services in one purpose-built precinct in central Christchurch. The precinct is made up of three buildings – the Justice Building, the Emergency Services Building and a car park for operational vehicles.

When completed it will be the central base for the Ministry of Justice, NZ Police, Department of Corrections, St John, New Zealand Fire Service and will also have a dedicated Emergency Operations Centre for Civil Defence. With its own power, water and waste disposal, the Emergency Operations Centre will be able to operate for at least three days during national emergencies such as a flood or earthquake.

Suitably attired in full protective equipment we were led into what will be the Maori Land Court where we were briefed on what we were going to see by the Fletcher's design manager Duncan Craig. He informed us that the precinct will be five levels with 42,000 square metres of floor space. It will house 19 courtrooms servicing the High Court, District Courts, Family Courts, Youth Court, Maori

Land Court and Environment Court.

It will be home to 1100 staff with an expected 900 daily visitors.

After the obligatory safety briefing, we were guided upstairs to a third floor Courtroom, where Hugh Adin from Fletcher construction, gave us a virtual tour of the precinct using Building Information Modeling (BIM). The model has multiple layers of information, such as the structural design, services, fire engineering, etc. The consolidated information allows the production of detailed and accurate drawings that identify any potential clashes before that area of the building is built. It is intended that this information will be used by the precinct owners for operational management.

The buildings are designed to importance level 4 with base isolation at first floor level. The ground was remediated and improved by cement stabilisation of the on-site soil material to a depth of up to 3.5m below the existing ground surface. A compacted granular fill layer was laid before the 1.2m thick concrete slab was poured. Steel columns stand 18m tall. However, most of the design innovation is in the services.

UTILISING THE AQUIFER

The underground water layer in Christchurch, known as the aquifer, is a reasonably consistent temperature year round. The buildings' system allows the groundwater to be extracted and pumped through heat exchangers. This allows the gaining of heat from, or the loss of heat to, the ground.

The precinct will be heated and cooled by a reverse cycle chiller in the form of giant heat pumps. In the summer, the chilled water produced by these heat pumps will



Atrium 'floating' stairs

be distributed throughout in the building by Chilled Beams, which is a type of convection HVAC system. There will also be selectable fresh air source for the courtrooms which will draw fresh air either from outside or the atrium, whichever is best to suit the required conditions. The Precinct will also set a standard for energy efficient heat recovery, with over 90 per cent of exhaust air passed through heat recovery systems. The public atrium area will be naturally ventilated.

QUALITY ASSURANCE (QA) CONSENTING

The way Christchurch City Council processed the building consent for such a complex development was also innovative. It was one of a number of consents in a pilot of a Commercial Building Consent type that will be enacted by the Government in the future following the Building Amendment Act 2012. A quality assurance system was maintained throughout the pre-application, building consent and inspection processes. This quality assurance system included ensuring early on that all key design and construction supervision participants had the appropriate experience and capability.

A risk profile matrix outlined the breakdown of the building work proposed, the code clause that applied to that work and a nominated method to show how those clauses would be satisfied. The Council used this QA system to be satisfied on reasonable grounds that the work would comply with the building code, and a full review of the detailed plans and specifications was not carried out. Because the legislation is not yet in place, normal inspections were carried out by the Council in addition to audit inspections for viewing evidence that the agreed construction monitoring by the designers was



Artist impression of completed precinct



Base isolators

being done.

The Precinct was accepted for the pilot due to the high calibre of the key designers from Holmes, Warren & Mahoney/Opus/Cox, Tonkin & Taylor and BECA and the quality assurance that is in place by the team at Fletchers.

The intention of the Christchurch Justice and Emergency Services Precinct is to provide for more effective operations and inter-agency collaboration in a high quality public facility which will also be an attractive and

comfortable place for the public to use.

The design of the building breaks with traditional intimidating justice architecture and provides an open and transparent environment from the layout of the large indoor and outdoor spaces to the glazed facades.

The internal atrium is a light-filled, dynamic and open public space and the airy feeling is emphasised by a floating staircase. The external facades have a mixture of different materials, with the use of glazing overlaid with art installations and punctuated by vertical fins and louvres.

While the Precinct is still a building site, you can already sense the gravitas that such an important civic building will bring to the city.

It is scheduled for completion by early 2017 and to be in use by mid-2017.



Bim Presentation



Bim Presentation



View from the roof to the Christchurch bus interchange



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Notices to fix – An important tool to be used with care



Nathan Speir is a Senior Associate at Rice + Co Lawyers and specialises in providing judicial review and enforcement advice to local authorities across New Zealand.

Notices to fix are an important part of a council's regulatory and enforcement toolbox. However, questions of when, why and how notices to fix ought to be used often arise. This article is a reminder of some of the basic structures around the notice to fix procedure as well as some more novel issues that Rice + Co has encountered recently.

WHEN TO ISSUE A NOTICE TO FIX?

Notices to fix are a product of section 164 of the Building Act 2004 (the Act). A council must issue a notice to fix if it considers on reasonable grounds that a specified person is contravening or failing to comply with the Act or the regulations (for example the requirement to obtain a building consent). If this threshold is met the council must require the person to remedy the contravention, or to comply with, the Act or the regulations. The law is somewhat murky on how mandatory the council's obligations are in this regard. There are no cases that specifically deal with the issue. The authors of Building Law in New Zealand suggest that although s 164(2) of the Act says that a council "must" issue a notice to fix if s 164 applies, in reality the power to issue notices to fix will be discretionary because it depends on the authority's assessment of "reasonable grounds". Importantly there is no time limit on the council issuing a notice to fix.

TO WHOM SHOULD A NOTICE TO FIX BE ISSUED?

A notice to fix should be issued to the building owner and, if applicable, the person who carried out the building work and any other person who supervised the building work. Unlike a building consent or a dangerous building notice, which is specific to a building, a notice to fix is focused on the person and the ability for that person to be prosecuted for non-compliance with the notice.

WHAT SHOULD A NOTICE TO FIX SAY (AND NOT SAY)?

The Act is silent on what a notice to fix should say (or not say) and there is little guidance on what it should look like aside from the fact it must be in the prescribed form. Section 165 of the Act sets out some mandatory requirements and these should be reviewed before any decision is made on issuing a notice to fix.

The question of what should (and should not) be included in a notice to fix has been discussed at various times by the Court and MBIE. In Determination 2015 "the issuing of a building consent and a code compliance certificate for a 14-year-old house at 220 Ocean Road, Whangamata", dated 7 October 2015, John Gardiner determined that:

Any notice should identify the defects listed in this determination, and also refer to any further defects that might be discovered in the course of rectification. It is not for the notice to fix to specify how the defects are to be fixed. That is a matter for the applicants to propose and for the authority to accept or reject. It is important to note that the Building Code allows for more than one method of achieving compliance.

Moreover the authors of Building Law in New Zealand suggest that Andrew Housing Ltd v Southland District Council illustrates the appropriate approach to wording a notice to rectify (now a notice to fix). In that case Tipping J said:

What is crucial, however, is that the particulars must fairly tell the recipient of the notice what provision of the Act or the code has allegedly not been complied with.

Sometimes including too much detail can be counter productive and can place a higher onus on the council when it comes to proving non-compliance; such was the case in Seymour.

In our assessment a notice to fix should be drafted with care. It ought to be as general as possible while still enabling the recipient to identify the provision of the Act or Code that

has allegedly not been complied with and the particulars of the defective building work so that the recipient can identify what is required to remedy it.

WHAT HAPPENS IF SOMEONE DOESN'T COMPLY WITH A NOTICE?

A person can be prosecuted if they fail to comply with a notice to fix. While the judicial standpoint is somewhat unclear, it appears that the six month time limit for filing charging documents does not commence until the council becomes aware of non-compliance with the notice to fix.

TAKE HOME POINT

Before deciding to issue a notice to fix we recommend a council officer re-reads sections 163 to 168 of the Act. The Act has been drafted in a logical way and sets out clearly when, why and how the notice to fix regime should be approached. Once satisfied on reasonable grounds that there has been a contravention of the Act, the council must issue a notice to fix. Before doing so, consider what needs to be said and what doesn't. The best way to draft a notice to fix is to put yourself in the shoes of a Judge who might look at the notice in two years time. Does it clearly set out who the recipient is and has he or she been given a specific and reasonable timeframe to comply with it? Is the contravention of the Act made clear and is it easily identifiable what remedial work needs to be done to comply?

If in doubt, speak to a lawyer because it can save a lot of time, effort, adverse publicity and cost down the track.



1. The Act, s 164(1).
2. Building Law in New Zealand, at BL164.03.
3. MBIE Determination 2014/051, 20 October 2014 The issue of a notice to fix for the construction of a deck without building consent.
4. Building Law in New Zealand, BL163.01.
5. MBIE Determination 2014/2015 The issue of a notice to fix for weathertightness remedial work carried out by a previous owner, 15 August 2014.
6. Form 13 of the Building (Forms) Regulations 2004.
7. At BL165.06.
8. Andrew Housing Ltd v Southland District Council [1996] 1 NZLR 589 (HC).
9. Seymour v Auckland Council [2015] NZHC 10 743 [17 April 2015], at [17]-[20].
10. The Act, s 378.
11. MBIE Determination 2014/051.

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G6 of the NZ Building Code (Soundproofing)

INTRODUCTION

Bob Russell (acoustic engineer) and Frana Divich (lawyer) met at the end of 2015. Bob had noticed an increase in the number of sound proofing issues on building sites. Frana had noticed a trend in claims against councils for claimants to include multiple building code breaches (including sound proofing). Together they resolved to write a teaching resource for their mutual clients, councils. That teaching resource can be found at www.regulatorynoise.nz

After writing the teaching resource Frana and Bob spoke on the topic of soundproofing at Senior BOINZ. This article summarises what they spoke about.

THE HISTORY OF G6 OF THE BUILDING CODE

G6 was last amended over 20 years ago in 1994. Since 1994 we have witnessed a proliferation in apartment living. Has the Code kept pace with what is happening? We suspect not.

MBIE is currently undertaking a review of G6.

WHAT DOES G6 SAY?

Objective:

The objective of G6 is safeguard people from illness or loss of amenity as a result of undue noise being transmitted between abutting occupancies.

Functional Requirement:

Building elements which are common between occupancies shall be constructed to prevent undue noise transmission from other occupancies or common spaces to the habitable spaces of household units

Performance:

The Sound Transmission Class of walls, floors and ceilings shall be no less than STC 55 (although a 5 pt tolerance is allowed for field verification measurements made onsite).

The Impact Insulation Class of floors shall be no less than IIC 55 (although a 5pt tolerance is allowed for field verification measurements made onsite).

The determinations

Operational implementation of G6 has focussed on enforcement of the performance standards only, not on G6's wider stated objective of safeguarding people from illness or loss of amenity due to undue noise.

MBIE (and its predecessors) has issued determinations which have narrowed the

scope of the performance standards of G6. Determinations on G6 can be viewed at

<http://www.building.govt.nz/Utilities/Determinations/determinationsUI.aspx?CategoryId=4&SubCatId=14&SubCat1Id=22&SubCat2Id=207&ArticleId=280&Version=1.0>

There are three important principles that can be taken from the determinations:

1. Floor coverings can be changed (and their IIC performance rating reduced) in apartments without building consent, provided that they always comply with the minimum building code onsite performance requirement of IIC 50 (2013/052);
2. IIC and STC requirements do not apply between occupancies and common area corridors (building common corridors are not regarded as occupancies) (2015/004);
3. IIC performance requirements do not apply between horizontally or diagonally separated apartments. (2015/007).

Across the country, the enforcement of G6 by councils for new buildings has been inconsistent.

This creates potential downstream risk for building officials, councils, council insurers and ratepayers.

WHAT ARE THE RISKS?

In *Spencer on Byron* the Supreme Court articulated that the duty of care owed by councils to building owners extends to encompass bringing buildings up to the standard required by the code without the building having necessarily suffered any physical damage. Quite simply put – if the building has been consented and inspected by the council and it does not comply with the code then the council may be responsible for compensating the owner if the owner has to do work to bring it up to code standard.

The justification for the scope of the duty owed by the council is that in undertaking pre-emptive work, the claimant removes the potential for physical damage and the associated risk to health and loss of amenity that the code is in place to prevent.

Since *Spencer on Byron* was decided the High Court has followed that reasoning – most recently in *Fleetwood*, where the court expressed that the council's duty is to ensure that the entirety of the work is code compliant.

It is fair to say that councils do not generally have an employed acoustic engineer sitting down the corridor. When considering the

implementation of G6 the council will mostly be reliant upon private sector experts. The council should have good robust systems in place to check the qualifications, competence and honesty of the private sector acoustic engineers it relies upon and the scope of the documentation it receives from them.

For example there is little point in receiving a producer statement that:

1. Does not cover the entire building;
2. Attempts to limit the scope of the engineer's liability;
3. Is signed by an engineer that is not independent of the developer/builder;
4. Does not show the engineers tertiary qualifications in acoustics (and when they were awarded)
5. Is from an inappropriate engineer i.e. where the engineer is not competent and qualified to proffer the opinion;
6. Is from an engineer that does not hold insurance or holds inadequate insurance;
7. Has a signature on it that cannot be readily identified;
8. Is from an engineer who does not pay regard to long term liabilities; and
9. Is from a limited liability company.

The standard upon which the council will be judged is that of a reasonable council according to the standards of the time. It is not a defence that the standards were very bad at the particular time in question. The court will look at what should have happened.

As a side note – if something ends up in court it is always enormously helpful if the council had a policy or internal procedure in place, that policy or procedure was documented, followed and there is a paper trail.

We now go on to consider what the Building Act 2004 requires of the council for new buildings and existing buildings.

FOR NEW BUILDINGS:

We know that:

1. The council must not issue a building consent unless it is satisfied that the minimum design required STC and IIC ratings of STC 55 and IIC 55 between units can be achieved
2. The council must also be satisfied, that minimum required onsite STC and IIC ratings of STC 50 and IIC 50 have been achieved when the construction has been completed, - before it can properly issue a code compliance certificate (CCC); and
3. The minimum required onsite ratings of STC/IIC 50 must be maintained at all times after construction has been completed, as per MBIE ruling (2013/052)

The council has the power to issue a notice to fix if non-compliance with G6 of the code becomes apparent during the course of construction.

FOR EXISTING BUILDINGS

We consider two situations here, the first where there is a change of use in an existing building, the second where alterations take place.

Change of use - new residential occupancies in existing buildings

This is controlled by s 115 of the Building Act 2004. The council must not issue a building consent unless it is properly satisfied that the minimum onsite required STC and IIC ratings of STC 50 and IIC 50 between the units can be achieved (as nearly as reasonably practicable).

The council must not issue a CCC until it can be reasonably satisfied that the new units' inter-tenancy walls and inter-tenancy floor/ceilings have achieved code compliance at construction completion (again as nearly as reasonably practicable)

The minimum required ratings must be maintained at all times after construction has been completed, as per MBIE ruling (2013/0052).

When a new apartment is proposed under another existing unit, particular care needs to be taken.

IIC ratings between units are controlled primarily by the floor coverings on the upstairs floor. The proposed new downstairs unit owner is unlikely to have any control over the floor coverings upstairs. In this situation: how can a council officer be reasonably satisfied that the building element between the existing and the proposed new occupancy will achieve IIC 55/50?

Alternatively, the council might allow a new unit to be created under the "best practicable" clause with an IIC rating of say IIC 40.

However then, we know from (2013/052), that a new common inter-tenancy element has been created. At that point, it is reasonably practicable (in engineering terms) for the upstairs owner to put carpet down (for example on their polished black marble floors).

The downstairs owner might demand this on the grounds that minimum required ratings must be maintained at all times after construction has completed, as per MBIE ruling (2013/052).

Council officers need to take care in this situation for two reasons:

1. The upstairs owner with a black marble floor (or a polished wooden floor for that matter) may be most unhappy about having to cover that floor with carpet;

and

2. The council may have very little (if any) control over the upstairs owner and if that is the situation it is difficult to comprehend how the council could be reasonably satisfied the building work will comply with G6 of the Code.

ALTERATIONS

The other situation where there is potential to come unstuck with G6 is when alterations are done to an existing building. That is governed by s 112 of the Building Act 2004.

In this situation the alterations cannot make the building less code compliant than it was to start with. So if sound could be a potential problem (say for example in a cross lease situation) then a pre-renovation soundproofing test would be useful and is recommended.

CONCLUSION

The Building Act offers council employees and agents protection from personal liability unless they do things in bad faith. However, officers should be mindful that there might be employment issues if council officers do not follow council policy or their own internal procedures. Council officers should ensure that there is a paper trail and if you are relying upon instructions from a manager, make sure that those instructions are in writing and are current.

To protect the council (and themselves), council officers should always keep in mind that buildings must be designed, checked and maintained to meet the minimum (G6) building code requirements. Building officers should additionally always check any acoustic design or certification documentation against the checklist we have prepared:

1. Does it cover the entire building;
2. Does it attempt to limit the scope of the engineer's liability?
3. Is it signed by an engineer that is independent of the developer/builder?
4. Does it show the engineer's tertiary qualifications in acoustics (and when they were awarded)?
5. Is it from an appropriate engineer i.e. is the engineer competent and qualified to proffer the opinion?
6. Is it from an engineer that holds insurance or holds adequate insurance?
7. Can the signature on it be readily identified?
8. Is it from an engineer who pays regard to long term liabilities? and
9. Is it from a limited liability company?

Obviously councils and BOINZ members are not equipped to assess the qualifications, competence and honesty of individual acoustic engineers. But this may not protect

the council from an adverse judgment if the court is asked to consider whether it was reasonable to accept certification from an unsuitable person - and the court finds it was not.

About the authors:

Bob Russell has held a specialist acoustics warrant with Auckland Council since 2004, - as an external neutral party consultant. In 2012, Bob was also one of 39 students worldwide to successfully undertake the UK Institute of Acoustics Regulatory Noise study paper. In 2016, Bob commissioned development of www.record-situation.com



Frana Divich is a partner at Heaney & Partners a boutique litigation firm specialising in professional and public liability claims brought against councils and professionals. For more information about Frana and her partners please visit www.heaneypartners.com



BOINZ Training Academy Training Calendar

September - October 2016 Training Schedule

SEPTEMBER		
1 September 2016	NZIOB Workshop - BIM101 - An Insight	Christchurch
1 September 2016	NZIOB Workshop - BIM101 - An Insight	Christchurch
5 - 9 September 2016	TA019 Plumbing and Drainage Compliance - FULLY BOOKED	Wellington
5 September 2016	BRANZ Answers - Membrane Roofing Seminar	Nelson
6 September 2016	BRANZ Answers - Membrane Roofing Seminar	Hokitika
7 September 2016	BRANZ Answers - Membrane Roofing Seminar	Christchurch
12 September 2016	BRANZ Answers - Membrane Roofing Seminar	Napier
12 - 14 September 2016	TA002 Building Controls - Filling Fast	Dunedin
12 - 14 September 2016	Accredited Building Surveyors Training Programme	Christchurch
13 September 2016	BRANZ Answers - Membrane Roofing Seminar	Palmerston North
14 September 2016	BRANZ Answers - Membrane Roofing Seminar	Upper Hutt
19 September 2016	BRANZ Answers - Membrane Roofing Seminar	Rotorua
20 September 2016	BRANZ Answers - Membrane Roofing Seminar	Tauranga
20 September 2016	PRYA Prefab Technical Workshop Beyond 3604 2 x 1.5 hrs seminars	New Plymouth
21 September 2016	BRANZ Answers - Membrane Roofing Seminar	Auckland
26 September 2016	BRANZ Answers - Membrane Roofing Seminar	New Plymouth
27 September 2016	BRANZ Answers - Membrane Roofing Seminar	Hamilton
27 September 2016	PRYA Prefab Technical Workshop Beyond 3604 2 x 1.5 hrs seminars	Palmerston North
27 - 28 September 2016	TA013 E2 Weathertightness	Christchurch
27 - 29 September 2016	TA022 BWoF and Specified Systems	Hawera
28 September 2016	BRANZ Answers - Membrane Roofing Seminar	Auckland Central
OCTOBER		
3 October 2016	BRANZ Answers - Membrane Roofing Seminar	Invercargill
3 October 2016	TA001 Communication/TA003 Ethics	Wellington
4 October 2016	TA004 Accreditation	Hamilton
4 October 2016	BRANZ Answers - Membrane Roofing Seminar	Queenstown
5 October 2016	BRANZ Answers - Membrane Roofing Seminar	Dunedin
6 - 7 October 2016	TA012 H1 Energy Efficiency	Hamilton
10 October 2016	BRANZ Answers - Membrane Roofing Seminar	Blenheim
11 October 2016	BRANZ Answers - Membrane Roofing Seminar	Timaru
12 October 2016	BRANZ Answers - Membrane Roofing Seminar	Christchurch
17 October 2016	BRANZ Answers - Membrane Roofing Seminar	Whangarei
18 October 2016	BRANZ Answers - Membrane Roofing Seminar	Auckland North Shore
19 - 21 October 2016	TA022 BWoF and Specified Systems	Wellington
21 October 2016	BRANZ Answers - Membrane Roofing Seminar	Wellington
25 October 2016	PRYA Prefab Technical Workshop Beyond 3604 2 x 1.5 hrs seminars	Nelson

The Training Academy also provides an In-house training option for our courses, which has been utilised by individual councils, cluster groups and stakeholder organisations.

Please be aware that for various reasons we may have to change our dates, so check the BOINZ website for the most up to date information. For more information, course details and to register, please visit our website www.boinz.org.nz or contact the Training Academy via training@boinz.org.nz

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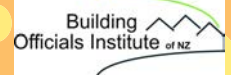
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