



# Building (Late Consent is a Free Consent) Amendment Bill

70—1

Report of the Local Government and  
Environment Committee

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# Building (Late Consent is a Free Consent) Amendment Bill

## Recommendation

The Local Government and Environment Committee has examined the Building (Late Consent is a Free Consent) Amendment Bill and recommends that the bill not proceed.

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## Introduction

The Building (Late Consent is Free Consent) Amendment Bill is a Member's Bill in the name of the Hon Dr Nick Smith. The bill amends the Building Act 2004 by requiring territorial authorities to waive all building consent processing fees for consent applications granted after more than 20 working days, and seeks to address the problem of delays to a significant number of consents.

While the majority of us do not believe that a negative financial incentive is the appropriate mechanism for addressing these matters, our consideration of this bill has highlighted various issues in the processing of building consents which are of concern. Our report explains why we believe this bill should not be passed and discusses the key issues regarding the timeliness and quality of the consent process.

## Context for the bill

Under the Building Act 2004, all building consent applications must be dealt with within 20 working days. If a consent authority requires further information from the applicant, it may suspend the 20-day period until the information is received. This is known as "stopping the clock". There is no limit on the number of times an authority may stop the clock.

Each building consent application must be assessed on its merits, and a high level of expertise is required to ascertain that the building in question will be built to a standard that will ensure its amenity value over many years. The Building Act 2004 introduced requirements for buildings to be designed and built correctly first time, recognising that the actual costs of buildings are "whole of life", rather than just the initial outlay. The changes in the Act responded to major building failures in New Zealand from the mid-1990s to 2001, and aimed to improve the capability, capacity, and efficiency of building consent authorities, through accreditation, recognition, and audit processes.

The Department of Building and Housing estimated (on the basis of a survey conducted in November 2006) that approximately 20 percent of consents are not issued within 20 working days. The submission of the Registered Master Builders Federation contended that the situation is worse:

While [building consent authorities] might contend that, on average, they are processing consents within 20 days (as required by the Building Act), the truth for building industry practitioners is that consents are taking much, much longer. As we have noted publicly, with some BCAs it takes longer to sort out consent issues than it actually takes to build the house.

These delays impose significant costs on applicants and related parties, such as builders, architects, contractors, and developers. We recognise that this is an important issue.

### **Submissions**

We received 24 submissions on the bill, 19 of which opposed the bill. Fourteen submissions were from territorial authorities; all opposed the bill. Opponents of the bill made the following arguments:

- Delays in processing consents occur as a result of a combination of factors, and it is unfair to penalise territorial authorities for matters (such as increased demand as a result of a strong economy and an expanding construction industry, and widespread skills and labour shortages) that are outside their control.
- The bill risks promoting speed in the consent process at the expense of quality, which is contrary to the intent of recent reforms in building policy.
- The bill raises various equity issues—for instance, territorial authorities are likely to prioritise large (high-fee) building projects over small (low-fee) applicants in order to minimise losses; good applications (processed on time) would incur fees for the consents granted, whereas poor applications that run over time would incur no fee.
- It covers only territorial authorities, rather than all possible building consent authorities.
- Territorial authorities will seek to make up the shortfall from lost building consent fees from other sources, the most likely being rates increases.
- The bill sets an undesirable precedent for other user-pays council services.
- Measures have already been taken to address the problem of late consents, but they need time to take effect.

Supporters of the bill or its intent argued that

- some territorial authorities achieve close to 100 percent compliance with the 20-day rule, regardless of the factors cited by other authorities to explain lower compliance rates
- progress towards reducing delays in the consent process has been too slow, and would be accelerated by a financial incentive.

Some of those in favour of the bill or its intent believed that, as drafted, it would be too easily circumvented, for example by authorities “stopping the clock” more often.

In general, submitters acknowledged that more delays are occurring in the processing of building consents than is acceptable. The principal causes of delay, and what is being done to address them, are discussed below.

### **Capability of building consent authorities**

We heard that there is considerable concern in the sector regarding the lack of qualified building consent processors and building inspectors, and that this is a major factor in the present difficulties in processing consent applications in good time. There is a nationwide shortage of qualified and experienced staff for this work in both the public and private sectors, and territorial authorities confirmed that they have problems with recruiting and retaining staff. Were the bill to be passed, there is a risk that this issue would be exploited

by some applicants, who would lodge applications at peak periods or when there were known to be staff shortages, to increase the possibility of obtaining a free consent.

We understand that the Society of Local Government Managers recently commissioned research into shortages in the building officials' employment market, which revealed a poor knowledge amongst the general public about employment and career opportunities in local government. Subsequently, the society developed a staff recruitment and retention project, which included the launch of a careers website in March 2007 to promote career options in local government. Some building consent authorities are implementing cadetship schemes to train new staff, and some are attempting to recruit staff internationally. We support the development of an alliance between local government and appropriate independent training organisations to improve the numbers of capable staff. We regard the development of a qualifications framework for building officials as a matter of urgency, and draw this to the attention of the Tertiary Education Commission and the New Zealand Qualifications Authority.

The Building Act 2004 requires building consent authorities to be accredited and registered by 30 November 2007. Accreditation should help authorities to improve the systems and processes used for inspection, and processing and approving consents. These improvements should in turn improve consent processing times without compromising the quality of the process or the subsequent building work.

### **Quality of building consent process and applications**

Council submitters said that the largest cause of consent delays is inadequate applications. We understand that a number of initiatives have been taken to address this issue. For example, the Licensed Building Practitioners Scheme, which will be operating by November 2007, is intended to improve the ability of building practitioners to prepare good-quality consent applications.

Some authorities make a fast-tracking process available at a premium. We recommend that other authorities consider offering a fast-track option.

Some information for applicants for building consent is available on the Department of Building and Housing website, and on the ConsumerBuild website. The department has published a guide to applying for building consent for simple residential buildings. We believe a user-friendly website could usefully be developed, with checklists, and models and examples of best practice for applicants.

The possibility of allowing more time for the processing of complex applications was raised. The Department of Building and Housing told us that this would be considered in a current review of the statutory timeframes for processing building and resource consents.

### **Conclusion**

We acknowledge that delays in the building consent process have caused frustration and increased costs for the building industry in recent years. However, the majority of us do not believe that making late consent a free consent is an effective solution.

Many of the factors that cause delays in the consent process are not entirely under the control of local authorities. The most significant of these is the ability to recruit and retain qualified, experienced staff at a time of expansion in the sector and low unemployment.

The majority of us are satisfied that initiatives planned or operating will reduce the problem of consent delays, but they must be given time to work. These initiatives include the

accreditation of building consent authorities and the recruitment drives being undertaken by some authorities.

The majority of us are concerned about the equity issues raised by the negative financial incentive set out in this bill. Poor applications, which take longer to process, would be more likely to be free than well-prepared applications, thus rewarding poor practice. Small (low-fee) applications would be disadvantaged as authorities would give priority to high-fee applications. The consent process might be hurried in some cases, with poor-quality buildings being constructed as a result. This would negate the intention of the Building Act 2004, which was to improve the quality of New Zealand's building stock.

### **New Zealand National Party minority view**

It is ridiculous that, as Master Builders told the committee, it now takes longer to get a building consent in many parts of New Zealand than it actually takes to build the house. This bill will focus consent authorities on the huge costs to families, the industry and New Zealand of the current tedious delays in processing consents.

The bill needs to be considered in the context of soaring house prices and record low home affordability. Since the passage of the Building Act 2004, home affordability (the ratio of average disposable household income to average house price) has deteriorated by 33 percent. These huge issues are forcing up interest rates and driving the dollar to dangerously high rates. Parliament needs to look at every possible initiative that will help reduce the costs of housing.

The bill addresses a basic inequity. If a citizen or building owner does not meet statutory requirements within a fixed time, councils are entitled to charge penalties. Most councils charge penalties for late rate payments. It seems only fair that councils face a penalty when they fail to meet statutory timeframes.

The current provisions requiring consents to be processed within 20 working days are meaningless when there is no practical consequence of non-compliance. Despite there being over 16,000 cases of non-compliance in the last year, the chief executive did not use the powers of section 203 in any case. This illustrates that Section 203 is not an adequate safeguard to homeowners and builders that consents are processed in a timely way.

National is not satisfied that the initiatives proposed by the department address the issue adequately. Its first proposal is to extend the statutory timeframe beyond 20 working days. The new 2004 Act already extended the period from ten to 20 days. The department also proposes providing greater guidance and direction to councils, but this is unlikely to change behaviour. Financial incentives will be far more effective.

Criticism of the bill that it does not cover non-council consenting authorities is rather academic as no such authorities exist. A small amendment will fix this issue. Nor does National believe the bill would result in increases in costs to ratepayers, as the Hamilton City Council has shown that the policy works and results in near 100 percent compliance.

The bill is a much needed reform to reduce delays and costs in the building industry by ensuring that consent authorities meet their statutory timeframes. This is an issue on which Parliament should side with the homeowner and builder over the interests of council and departmental officials.

## Appendix

### Committee procedure

The Building (Late Consent is a Free Consent) Amendment Bill was referred to the Local Government and Environment Committee on 11 October 2006. Submissions closed on 27 November 2006. We received and considered 24 submissions, and heard 14 submissions. Hearings of evidence were held in Wellington in May 2007.

We received advice from the Department of Building and Housing.

### Committee members

Steve Chadwick (Chairperson)  
Mark Blumsky  
John Carter (Deputy Chairperson)  
Jacqui Dean  
Russell Fairbrother  
Martin Gallagher  
Hon Marian Hobbs  
Hon Dr Nick Smith  
Mētīria Tūrei