

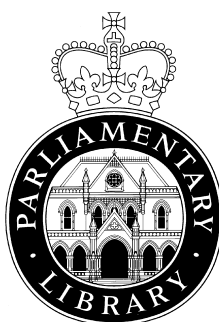
BILLS DIGEST

**BUILDING (LATE CONSENT IS A FREE CONSENT) AMENDMENT BILL
2006**

(Member's Bill – Hon Dr Nick Smith)

Date of Introduction: 27 July 2006

Bills Digest No. 1405



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**BUILDING (LATE CONSENT IS A FREE CONSENT) AMENDMENT BILL
2006**

Date of introduction: 27 July 2006
Member: Hon Dr Nick Smith
Select Committee: As at 01 August, 1st reading not held

PURPOSE

The aim of the Bill is to amend the Building Act 2004 (the Act) “ to prevent a territorial authority from charging fees to building consent applicants where the territorial authority has processed the consent in breach of a statutory timeframe” (*Clause 4, the “Purpose” clause of the Bill*).

BACKGROUND

“The Bill is necessary in order to reduce delays in building management processes”¹.

MAIN PROVISIONS**No charge for overdue consents**

The Bill provides that a territorial authority must remit the whole of any charge or charges fixed under Section 219² of the Building Act 2004 that would otherwise be payable in respect of all functions carried out in relation to the building consent

¹ Building (Late Consent is a Free Consent) Amendment Bill, 2006 No 70-1, Explanatory note, p. 1.

² Section 219(1) of the Building Act 2004 provides that a territorial authority may impose a fee or charge in relation to a building consent and for the performance of any other function or service under the Building Act 2004 and must collect the levy which an applicant is liable to pay to the chief executive under Section 53 of the Building Act 2004 (see below). Section 219(2) of the Building Act 2004 provides that if a fee, charge, or levy is payable to a territorial authority for the performance of a function or service under the Building Act 2004, the territorial authority may refuse to perform the function or service, unless the fee, charge, or levy is paid (*Section 219 of the Building Act 2004*).

Section 7 of the Building Act 2004 defines the term “territorial authority” which means a city council or district council named in Part 2 of Schedule 2 of the Local Government Act 2002; and, in relation to land within the district of a territorial authority, or a building on or proposed to be built on any such land, means that territorial authority and in relation to any part of a coastal marine area (within the meaning of the Resource Management Act 1991) that is not within the district of a territorial authority, or a building on or proposed to be built on any such part, means the territorial authority whose district is adjacent to that part (*Section 7 of the Building Act 2004, definition of “territorial authority”*).

Section 53 of the Building Act 2004 provides that an applicant for a building consent is liable to pay to the chief executive a levy for, or in connection with, the performance of the chief executive’s functions under the Building Act 2004 if the building consent is granted. That levy must be calculated in relation to the estimated value of the building work to which the building consent relates, at the prescribed rate, and must be paid to the building consent authority as the agent of the chief executive, and at the time the building consent is granted (*Section 53 of the Building Act 2004*).

application “that was the subject of the breach or breaches” where a territorial authority, or a territorial authority acting in its capacity as a building consent authority breaches one or more of specified time periods (in Sections 34(1)³, 34(3)⁴, 48(1)⁵, 93(1)(a)⁶ and 98(1)⁷ of the Building Act 2004 in the course of carrying out its functions in relation to receiving, processing, or granting building consents (including certificates of acceptance) (*Clause 5, inserting New Section 219A into the Building Act 2004*).

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³ Section 34(1) of the Building Act 2004 provides that a territorial authority must issue a project information memorandum within twenty working days after receiving an application under Sections 31(1)(a) (“Building consent authority must apply for project information memorandum”) or Section 32 (“Owner may apply for project information memorandum”) of the Building Act 2004. Section 34(2) provides that if the territorial authority requires any information under Section 33(1)(b) or (c) (relating to the content of such an application), the period specified in Section 34(1) is suspended until the territorial authority receives the information (*Section 34(1) of the Building Act 2004*).

⁴ Section 34(3) of the Building Act 2004 provides that the territorial authority must issue the project information memorandum within ten working days after receiving that information (*Section 34(3) of the Building Act 2004*).

⁵ Section 48(1) of the Building Act 2004 provides that a building consent authority must, within twenty working days after receiving an application for a building consent that complies with Section 45 of the Building Act 2004 (“How to apply for building consent”) grant the application or refuse the application. Section 48(2) of the Building Act 2004 provides that a building consent authority may, within the period specified in Section 48(1) of the Building Act 2004, require further reasonable information in respect of the application, and, if it does so, the period is suspended until it receives that information (*Section 48(1) of the Building Act 2004*).

⁶ Section 93(1) of the Building Act 2004 provides that a building consent authority must decide whether to issue a code compliance certificate for building work to which a building consent relates within:

- twenty working days after the date specified in Section 93(2) of the Building Act 2004 (*Section 93(1)(a) of the Building Act 2004*); or
- any further period after the date specified in Section 93(2) that may be agreed between the owner and the building consent authority concerned (*Section 93(1)(b) of the Building Act 2004*).

Section 93(2) of the Building Act 2004 provides that the date referred to above is the date on which an application for a code compliance certificate is made under Section 92 of the Building Act 2004 (Section 92 obliges an owner to apply to a building consent authority for a code compliance certificate after all building work to be carried out under a building consent granted to that owner is completed) or, if no application is made, the expiry of two years after the date on which the building consent for the building work was granted, or any further period that may be agreed between the owner and the building consent authority concerned (*Section 93(2) of the building Act 2004*).

⁷ Section 98(1) of the Building Act 2004 provides that a territorial authority must, within twenty working days after receiving an application for a certificate of acceptance, grant the application or refuse the application. Section 98(2) provides that a territorial authority may, within the period specified in Section 98(1) of the Building Act 2004 require further reasonable information in respect of the application, and, if it does so, the period is suspended until it receives the information (*Section 98(1) of the Building Act 2004*).