

Regulatory impact statement

Licensed Building Practitioners Scheme: Streamlining measures and enhancing accountability of Licensed Building Practitioners

Executive summary

1. The Licensed Building Practitioners (LBP) Scheme was introduced in November 2007 under the Building Act 2004 (the Act). The LBP Scheme has recently been reviewed for opportunities to streamline and simplify it. A number of issues were identified. In addition, a number of areas where the accountability of LBPs could be enhanced were identified.
2. It is proposed that the issues will be addressed by either amending the Act, regulations or rules to:
 - simplifying the three Site and three Design licensing classes into one Site and one Design licensing class, based on simplified building categories;
 - establishing a new Foundations licensing class and appropriate licensing fees for the class;
 - not proceeding with licensing groups of practitioners where the costs outweigh the benefits;
 - recognising practitioners operating under other statutory registration systems;
 - amending the Act to reinforce the importance of a LBP working within their individual competency;
 - amending the Act to include a grounds for disciplinary action where an LBP's actions bring the LBP Scheme into disrepute to cover poor (non-competency related) behaviour by LBPs; and
 - allowing the Building Practitioners Board (the Board) to appoint subcommittees, for example to deal with licensing appeals and complaints.

Adequacy statement

3. The Department of Building and Housing (the Department) confirms that the principles of the *Code of Good Regulatory Practice* and the regulatory impact analysis requirements, including the consultation requirements, have been complied with.
4. The Department considers this regulatory impact statement is adequate. The draft statement was circulated with the Cabinet paper for departmental consultation.

Status quo

5. The LBP Scheme was launched in November 2007 and covers 'all of building' work such as design and site management, as well as individual trades such as carpentry and roofing.
6. The Department anticipates around 20,000 people will become LBPs (about 19% of the current building sector workforce). The cost to the sector of 20,000 people being licensed is estimated at about \$9 million, with an ongoing annual renewal cost of just under \$4 million. There will also be indirect costs associated with the time required to maintain skills and to complete licensing and licensing renewal forms. The direct cost to the sector is estimated at less than 0.02 percent of the \$4 billion of building work affected by restricted building work. This might add \$300, or about 0.1 percent to the average cost of building a house.

Problems

7. The LBP Scheme has been reviewed to identify opportunities to streamline and simplify it and enhance accountability consistent with the Government's focus on quality regulation in a cost effective way. Subsequently, the following issues have been identified where the cost and complexity of the LBP Scheme can be reduced for applicants, and accountability enhanced.

Streamline and simplify LBP Scheme

The building categories for the Site and Design licensing classes are too complex

8. Feedback from the sector is that the current building categories need to be simplified due to them being too complex, insufficiently aligned with business practice and lack of consideration of variation to building work. The lack of alignment with business practice means that some businesses may have to either change their operating model or employ new (appropriately licensed) people to design a building or oversee construction, which would cause additional compliance costs.

Additional costs where a project changes building category

9. An example of where additional costs are incurred is where a project starts as a Design 1 licensing class project but progresses to a Design 2 licensing class. In these circumstances it is not practical for the designer to be changed, however, the designer could seek assistance (be supervised or mentored) if they are not competent to undertake the work. The current regime (with three separate licences for Site, and three for Design) does not provide this flexibility.

Not proceeding with licensing of groups of practitioners where the costs outweigh the benefits

10. The LBP Scheme currently provides for a Building Services licensing class covering the coordination or oversight of some or all of the construction of active building services e.g. emergency lighting, lifts, escalators, fire systems, sprinklers, and air conditioning systems.
11. The Act currently requires that a group of practitioners (known as 'independently qualified persons' or IQPs) be licensed under the LBP Scheme by 30 November 2010. IQPs are persons (or firms) who inspect and maintain specified systems (such as automatic systems for fire suppression) and issue formal certificates

certifying that a particular system has been maintained in accordance with the applicable compliance schedule.

12. The definition of Restricted Building Work (CAB Min (09) 29/5 refers) does not include work undertaken by the Building Services licensing class or IQPs. Therefore, any licensing of these groups under the LBP Scheme would be voluntary with limited incentives to encourage licensing participants. This means that the benefits from having this group in the LBP Scheme are expected to be much lower than if they were licensed or registered under a mandatory scheme.
13. To licence all IQPs and the practitioners who would fall under the Building Services licensing class would involve developing around 20 new licensing classes, at an estimated direct cost to the Crown of approximately \$2 million.
14. The decision not to provide licensing classes for IQPs does not mean that there are no reasons to regulate this group but rather that the LBP Scheme is not the appropriate Scheme to use.
15. IQPs are currently registered by territorial authorities and therefore if the requirement to licence IQPs is removed, they will continue to be registered. Building services licensing groups are not currently licensed or regulated.

Foundations licensing class

16. Foundations and re-piling building work is critical to the integrity of a building. Therefore, Cabinet has agreed that it should be considered Restricted Building Work (Cabinet [CAB Min (09) 29/5 refers). From 1 March 2012 Restricted Building Work only LBPs will be able to do this type of building work.
17. The last Minister for Building and Construction under the previous Government agreed to the development of a Foundations licensing class because of the building relocation sector's concerns that it was likely that timber piling/foundation work would fall into the definition of Restricted Building Work.
18. An estimated 4,050 buildings were moved by relocation companies in 2006. The Heavy Haulage Association estimates that there are 100 companies that relocate from 1 or 2 buildings a year to 250 buildings a year. It estimates that each company would have at least one person that takes responsibility and many would have two or three foreman type roles with three or four workman working for them. The introduction of Restricted Building Work applying to foundation work would mean that at least one LBP would be required to supervise each relocation.
19. Most personnel in the building relocation sector would not meet the requirements of the licensing class that undertakes construction of foundations (i.e. the Carpentry licensing class). If the current participants in the sector cannot be licensed it means the sector will need to employ at least one LBP per house relocation. Based on a ratio of one LBP to 5 workers¹, it is estimated that the sector would need between 150 and 200 LBPs. This is expected to increase the cost of building relocation for clients because LBPs are likely to earn more than existing workers and they are in short supply.

¹ Based on estimates by the Heavy Haulage Association Incorporated.

Duplication of other statutory registration systems

20. The Act allows for the automatic licensing where there are equivalent statutory registration systems. The Department has found two statutory regimes, (chartered professional engineers and registered plumbers, gasfitters and drainlayers) where there is unnecessary duplication for practitioners operating under other statutory registration systems and the LBP Scheme. Retaining dual registration systems imposes unnecessary costs on these practitioners to become licensed as an LBP.

Enhancing the accountability of LBPs

No overarching requirement for a LBP to work within their individual competency

21. The Act does not provide any overarching requirement for an LBP to work within their individual competency, nor abide by any Code of Ethics. This means that the only way of dealing with LBPs that work outside of their individual competency is once a poor building outcome has occurred (where work is carried out in a negligent or incompetent way) or if they have undertaken work they are not licensed to do, through doing Restricted Building Work when not holding the appropriate licensing class.

22. It is important for LBPs to operate within the scope of their individual competency, and to recognise when other expertise is required. Currently, an applicant for a licensing class is assessed as meeting the minimum standards of competency for that class. This does not necessarily mean that they are competent to carry out or supervise all building work within the scope of their class. For example, an LBP holding a carpentry licensing class may be competent to construct timber stairs but not be fully competent to carry out roof work.

LBPs bringing the Scheme into disrepute

23. The LBP Scheme does not allow for the Board to take disciplinary action where poor (non-competence related) behaviour on the part of an LBP could bring the LBP Scheme into disrepute. For example, the 'Fair-go' type complaints where a builder had a pattern of taking deposits for the elderly for building work but never turns up to complete the job. The clients of the builder can take action to recover the costs from the builder, however, at present there is no mechanism to remove these builders from the LBP Scheme. The public are likely to expect, with the LBP Scheme being Government run, that LBPs that exhibit poor behaviour can be removed or sanctioned.

Delays in hearing licensing appeals and complaints

24. During the implementation phase of the LBP Scheme, there are likely to be a large number of licensing appeals and complaints. There are expected to be individuals that will be declined a licence and as this affects their livelihood, they are likely to appeal. If the current procedures are used, with a full meeting of the Board is needed to consider each complaint or appeal.

25. A large number of Board hearings would be a significant imposition on all eight members to be available, and it is unlikely most are able to do this. Currently the Act does not empower the Board to delegate any of its functions, including dealing with appeals to a subcommittee.

26. The Board, must currently travel to the area where a complaint is made about an LBP or for a licensing appeal. If all eight or the majority of members travel to hear a complaint or licensing appeal it will:
- significantly increases administrative costs;
 - limit the amount of hearings that can be held in any one year; and
 - due to logistics, may cause a backlog of hearings to accumulate due to the Board's inability to consider all hearings in a timely manner. Subsequently, this will significantly impact on LBP applicants. For example, they will not be able to carry out or supervise Restricted Building Work in the interim.

Objectives

27. The objectives of streamlining the LBP Scheme are to reduce the cost and complexity of the licensing system for applicants while maintaining an appropriate level of assurance that the licensing system requires.
28. The ultimate objective of the LBP scheme is to improve sector capability, to create sufficient conditions for the development of a more capable, responsible and productive core of practitioners in the building sector.
29. The LBP Scheme is an enabler, and in many circumstances a precondition to many of the outcomes sought from the Building Act review. For example, moving to a risk-based consenting and inspection system, with improved allocation of risk and liability, and improved incentives for practitioners to perform.

Alternative options (aside from maintaining status quo)

Retaining three Site and three Design licensing classes but with simplified building categories

30. This option involves retaining three Design and three Site licensing classes but reducing the number of variables needed to determine each category to:
- intended use of the building;
 - the height of the building; and
 - the external envelope risk score of the building.
31. The benefit of this option is that it is streamlined from the current categories and is likely to be easier to understand than the current regime. In addition it does not:
- require transitional arrangements;
 - better aligns with business operating practices;
 - provides applicants with a reference point as to what work they need to be competent in when they apply to hold a licensing class;
 - provides licensing assessors with a reference point as to what level of competence they should be seeking an applicant to demonstrate; and
 - provides consumers (e.g. potential home owners) with more information as to who they should engage to design their house or oversee construction.

32. The costs of this option would be mainly imposed on the Department, in terms of updating advice and publications. However, the Department already updates publications on a regular basis, therefore, limited additional costs are expected.
33. Consultation with the building sector showed individuals generally supported this option but key sector groups in both the construction and design areas have identified that further benefits could be gained through combining the three Site and three Design licences into a single Site and a single Design licence (see preferred options section below for details on this).

Preferred options

34. This section details the preferred option to address each of the issues outlined earlier.

Simplifying the building categories for the Site and Design licensing classes and moving to a single licensing class for Site and one for Design

35. This option would involve moving to a single licensing class for Design and a single licensing class for Site, with applicants submitting project records relevant to their area of practice, and then subsequently working within their area of competency. Changes to the following regulations would be needed:

- Licensed Building Practitioners Rules 2007;
- Building (Designation of Building Work License Classes) Order 2007; and
- Building Practitioners (Licensing Fees and Levy) Regulations 2007.

Costs and benefits and of simplifying the Building Categories for the Site and Design licensing classes and moving to a single licensing class for Site and one for Design

| Benefits | Costs |
|--|---|
| <ul style="list-style-type: none"> • Better aligned with business operating practices. • Provides a reference point for LBPs and assessors to determine competency. • Improved clarity as complexity is reduced. • Reduced compliance costs if project moves from 1 category to another midway through. • Allows practitioners (especially self-employed) to gradually gain experience. • Practitioners could undertake simple | <ul style="list-style-type: none"> • Updating the licensing class of existing licence holders (can be done at renewal of licence for no additional cost). • Amending the current assessment system (expected to be minimal and can be done within existing baseline resources). • Renegotiating Assessment Services Limited contract for mini-assessment (no additional costs as the Department expects to negotiate with Assessment Services Limited anyway). • Updating publications (can be done within existing baselines). |

| | |
|--|--|
| work on otherwise complete buildings, and complex work on otherwise simple buildings, without needing to obtain a different licence. | |
|--|--|

36. There is a risk that a LBP with Site 2 licensing class will undertake work that is Site 3. To counter this risk it is proposed to require LBPs to work within their area of individual competency and make it an offence if they do not.
37. Another risk this regime is that the public do not understand the concept of areas of practice and that an LBP will misrepresent themselves as having a licence for a Site 3 when they are only licensed for Site 1. This will be managed by placing the obligation on them to work within their area of individual competency, and for the area of practice to be on the on-line register and the practitioner's ID card.

Not proceeding with licensing of Independently Qualified Persons (IQPs) and removal of the Building Services Licensing class

38. The preferred option is to remove the requirement to licence IQPs and remove the Building Services licensing class from the LBP Scheme. This would mean retaining the current requirement for IQPs to be approved and registered by territorial authorities, and leaving the co-ordination and oversight of construction of active building systems unregulated for the time being. The primary reasons for these changes are:

- the costs of licensing exceed the benefits; and
- there may be better ways to regulate these diverse groups.

39. To remove the Building services licensing class an amendment is required to the *Building (Designation of Building Work License Classes) Order 2007*. To remove the requirement to licence IQPs from November 2010, an amendment is required to the Act.

Costs and benefits of not licensing where costs outweigh benefits

| • Benefits | • Costs |
|---|---|
| <ul style="list-style-type: none"> • Simplifies the LBP Scheme. • Savings of an estimated \$2 million to develop 20 new licensing classes concerning IQPs and building services (which outweighs any perceived benefit provided for by the numerous classes). | <ul style="list-style-type: none"> • No costs as this change can be made as part the update of publications generally. |

40. The decision not to provide licensing for persons undertaking this work does not mean that there are no reasons to regulate these groups but rather that the LBP Scheme is not the appropriate Scheme to use. The recommendation is that these groups are considered as part of the review of occupational regulation the Department is expected to conduct next year.

Foundations licensing class

41. The preferred option is to establish a Foundations licensing class. This would allow the building relocation sector specialist who carries out piling or re-piling work to be licensed, if they meet the appropriate competencies.
42. There are expected to be about 200 licence holders in the Foundations class. The licence holders are likely to be re-pilers or new concrete foundation contractors who have a narrow scope of work. Generally, if there are few applicants, it is not cost beneficial to regulate the sector because of the high cost of developing a licensing system. However, in the case of the Foundations licensing class, much of the licensing overhead costs have been incurred because of the decision by the previous Minister to develop a such a licensing class.

Costs and benefits of establishing a Foundations licensing class

| • Benefits | • Costs |
|---|--|
| <ul style="list-style-type: none"> • Savings of an estimated \$648,000² per annum for the building relocation sector by not needing to employ licensed carpenters • Greater accountability requirements on building relocation sector workers. For example, they can be subject to disciplinary proceeding and loss of licence if they fail to undertake competent work • LBP Scheme requires ongoing skills maintenance however this is not expected to be greater than the current maintenance requirements for the sector • No need to for the sector to employ or contract personnel from another licensing class, for example, a carpentry licensing class. • Most of the licensing overhead costs to develop the class have already been incurred to date | <ul style="list-style-type: none"> • \$25,000 for the Department to finish developing the class (will fund within existing baselines) • An initial one-off licensing cost of \$74,900³ to the sector to licence 200 applicants. • Ongoing annual licensing costs⁴ and new entrant application fees of \$46,490 for the sector. • Cost to the Department of \$25,000 to finalise the assessment process for the Foundations licensing class (will be funded from licensing fees). |

43. Changes to the *Licensed Building Practitioner Rules 2007, Building Practitioners (Licensing Fees and Levy) Regulations 2007* and the *Building (Designation of Building work Licence Classes) Order 2007* are needed to implement the Foundations licensing class. The proposal does not make any regulations redundant.

² Based on a wage differential between a qualified tradesperson and a labourer of \$20 per hour², it would cost an additional \$160 minimum per day to use a qualified tradesperson that was a LBP compared to using a labourer. If each relocation (4,050 per year) involved at least one day increase in cost of \$160 this would increase costs by \$648,000 per annum.

³ Assumes that 10% of applicants will require a face-to-face assessment fee.

⁴ \$170 annual administration fee and \$25 Board levy.

Recognition of other statutory registration systems

44. It is proposed to use the provision in the Act to allow the recognition of the following statutory registration systems to treat the following as holding specific licences under the LBP Scheme:

- Chartered Professional Engineers (under the Chartered Professional Engineers Act 2002) in respect of Site 3 licensing class; and
- registered plumbers and gasfitters under the Plumbers, Gasfitters and Drainlayers Act 1976 in respect of a Roofing licensing class, External plastering licensing, and Bricklaying and blocklaying licensing class depending of the nature of the flashings and penetration work being undertaken.

45. To recognise these statutory registration systems, changes to the *Building (Designation of Building Work License Classes) Order 2007* are required.

46. No change to the level of building outcomes is expected from this automatic licensing because the statutory registration systems provide sufficient assurance that these regimes have equivalency with the LBP Scheme.

Costs and benefits of recognising other registration systems

| • Benefits | • Costs |
|--|---|
| <ul style="list-style-type: none"> • No duplication between licensing/registration regimes • Savings in one-off licensing fees of \$852,000 for estimated 8000 licensed plumbers and gasfitters, and 2,500 Chartered Professional Engineers • Annual savings in licensing fees of \$468,000 (annual administration fee of \$170 and Board fee of \$25 per person) • Savings for people registered under the proposed registration systems as they will be exempted applying to be licensed, and paying the LBP fees. | <ul style="list-style-type: none"> • Costs may be incurred by the Board in taking disciplinary action against an automatic licensed LBP (based on one meeting per year involving three members, the cost is estimated at \$3,000). |

Enhancing the accountability of LBPs

Reinforcing the importance of a LBP working within their individual competence

47. The preferred option is to amend the Act to place a specific obligation on LBPs to work within their individual competency. The Act does not provide any overarching requirement for an LBP to work within their individual competency, nor abide by any Code of Ethics.

48. This proposal aligns with the objectives of the current Review of the Act to improve the way that risk is allocated across parties in the sector by making it clear LBPs have an obligation to work within their competency.

Costs and benefits of LBP working within competence

| Benefits | Costs |
|--|---|
| <ul style="list-style-type: none"> • LBPs are clear they have an obligation to operate within their competency. • Aligns with Building Act allocation of risk between parties. • Reduces the risk of poor building outcomes from LBPs working outside their competency. | <ul style="list-style-type: none"> • May limit the progression of LBPs (e.g. they can't give something a go). • May increase the number of disciplinary cases the Board deals with. If there are an estimated 15 extra complaints a year would be an estimated increase in costs of \$90,000 per year. • May inhibit LBPs from stretching their skills and experience. |

LBPs bringing the Scheme into disrepute

49. This option involves the Act being amended to allow the Board be able to take disciplinary action where an LBP's behaviour may bring the LBP Scheme into disrepute. In addition, this option also includes a proposal to amend the Act to provide a regulation-making power to allow the development of a Code of Ethics for the LBP Scheme, should this be necessary in the future.

Costs and benefits of the Board taking disciplinary action where an LBP is considered to have brought the Scheme into disrepute

| Benefits | Costs |
|---|---|
| <ul style="list-style-type: none"> • Deals with LBPs poor behaviour • Maintains the credibility of the Scheme | <ul style="list-style-type: none"> • May increase the number of disciplinary cases the Board deals with. If there are an estimated 5 extra complaints a year would be an estimated increase in costs of \$30,000 per year. |

Power for the Building Practitioners Board to appoint sub-committees to prevent hearing delays

50. The preferred option is to amend the Act to provide the Board the power to appoint a sub-committee for the purposes of deciding on licensing appeals and complaints.

51. A sub-committee may be better able to deal with more complaints than the entire Board if the members of the subcommittee are willing to put in some extra time to hear appeals. It may be hard for 6 to 8 members to find sufficient time to hear a substantial number of appeals but a smaller group of member may be able to undertake more appeals and complaints hearings.

52. The Department expects the large number of applications received prior to Restricted Building Work coming into force in March 2012 to remain relative to the number of appeals and complaints. It is difficult to estimate how many applicants may be refused a licensed. To date 29 licensing class applicants (excluding those

that applied for a higher class of licence but only receive a lower licensing class) have been declined out of 1,457 applications. This is an 0.02% failure rate.

53. In the peak period of licensing appeals (2011 to 2013) up to four extra meeting days (12 appeals) may be needed a month.

Costs and benefits of appointing a sub-committee

| • Benefits | • Costs |
|---|---|
| <ul style="list-style-type: none"> • Reduced time delay to process licensing appeals. This is significant if an LBP application is declined and the applicant can only undertake Restricted Building Work if they are supervised by a LBP. • Prevents loss in income for builders due to delays in the hearing of a licensing appeal (estimated at \$3.6⁵ million for a six month delay). • Provides for prompt disciplinary action to deter offenders. If the punishment is delayed due to it taking significant time for complaints to be heard, LBPs may have less regard for the process). • Enhances public credibility of the LBP Scheme due to ability to hear complaints in a timely way. • Saves an estimated \$278,000⁶ per annum by having fewer Board members hear licensing appeals and complaints. | <ul style="list-style-type: none"> • None. |

54. The risk with this option is that the sub-committee may make a decision that the wider Board does not agree with, and the Board are bound by this decision. In practice, this risk is minimal because it is the Board can delegate responsibility to the sub-committee and if it has concerns about the operation of the subcommittee it can revoke this delegation. In addition, it is expected that the Board will have a monitoring and benchmarking role in relation to licensing appeals and dealing with complaints. While the Board would not be able to intervene in individual decisions of the committee as this would breach natural justice requirements, it would be able to set direction to the committee about the types of disciplinary consequences that may be imposed for different types of offending. This approach is similar to how judges set sentencing benchmarks to ensure that sentences are reasonably in line between different judges.

⁵ Based on 150 builders delayed an additional 6 months in hearing of their appeals, at a loss of \$4,000 a month each, the cost to licence applications of a delay of 6 months would be \$3.6 million.

⁶ Based on an estimated cost of \$1,000 per Board member per day (\$500 in board fees and \$500 in travel costs) it is estimated that the difference for 7 members attending 54 additional meetings is \$278,000 for the year.

55. There is also a risk that hiring an LBP to oversee work while waiting for a hearing about having a LBP license declined may not be practical given LBPs are in short supply.

Implementation and review

56. The preferred options involve a number of legislative changes. Changes would be needed to:

- *Licensed Building Practitioners Rules 2007* for the simplification of building categories for the Site and Design Licensing Classes and moving to a single Site and single Design licensing class;
- *Building (Designation of Building Work License Classes) Order 2007* for the simplification of building categories for the Site and Design Licensing Classes and to provide for the recognition of other statutory registration schemes above; and
- *Building Practitioners (Licensing Fees and Levy) Regulations 2007*.

57. Department notes the importance of disciplinary action being prompt to deter effect than if the punishment is delayed. For example, if an LBP considered it may take significant time for complaints to be heard, they may have less regard for the process than if they knew complaints would be dealt with quickly. The public credibility of the LBP Scheme may also be undermined if it takes a significant time to process complaints. This benefit has not been quantified but is expected to be significant.

58. An amendment to the Act 2004 would be needed to remove the requirement to licensed IQPs. It is recommended that the next time the Act is amended that this change is included.

59. Implementing the necessary legislative changes will occur in two stages. As the fast-tracking of qualified applicants, with reduced fees, will significantly boost uptake, these will be implemented first, in February 2010.

60. The remainder of the changes will follow in March/April 2010 as follows:

- Parliamentary Counsel drafts changes to Order and Fee regulations – February 2010;
- Cabinet Legislation Committee approves Building Practitioners (Licensing Fees and Levy) Regulations 2007 March 2010; and
- Order changes and regulations come into form March/April 2010.

61. The Department is preparing a communications strategy to ensure that affected parties are notified of the new requirements.

62. A monitoring and evaluation strategy for the LBPs has been developed, with an implementation plan currently being developed.

Consultation

63. Cabinet agreed [CAB Min (09) 29/5 refers] for the Department to consult the building and construction sector on opportunities to streamline the LBP Scheme. The Department released on:

- 27 August 2009, a consultation document setting out proposals to streamline the LBP Scheme 2009; and
- 11 September 2009, a consultation document regarding the proposed minimum standards for Foundations licensing class.

64. The Department disseminated the consultation documents to sector representatives whose members are likely to be affected by the proposals. Submissions from the general public including key stakeholders –Registered Master Builders Federation New Zealand (RMBF), Certified Builders Association New Zealand (CBANZ), Roofing Association New Zealand, Architectural Design New Zealand (ADNZ), Institution of Professional Engineers New Zealand, and several councils/council officers.
65. The Department has further held discussions with RMBF and CBANZ and have talked about the proposals in several public forums, including a meeting of 150 builders in Auckland.
66. The Department of Building and Housing consulted with the Treasury, Department of Internal Affairs, Department of Labour, Department of Prime Minister and Cabinet, Ministry of Justice, Ministry of Economic Development and Ministry of Consumer Affairs and their comments have been taken into account.

APPENDIX FOUR: REGULATORY IMPACT ANALYSIS AND BUSINESS COMPLIANCE COST STATEMENT

EXECUTIVE SUMMARY

A levy and certain fees need to be prescribed in regulations under the Building Act 2004 to provide funding for the licensed building practitioner scheme. The only other mechanism for funding the scheme is through general taxation. The preferred option is that the levy and fees be set on a cost recovery basis. This option will mainly impact on individual building practitioners who apply to be licensed. However, the benefits of being licensed outweigh the costs incurred by individual applicants.

ADEQUACY STATEMENT

The Department of Building and Housing has reviewed this RIS and considers the RIS is adequate according to the adequacy criteria.

STATUS QUO AND PROBLEM

The Building Act 2004 (“the Act”) establishes a licensing scheme for building practitioners. The scheme is administered by a Registrar (employee of the Department of Building and Housing) and a Board (appointed by the Governor-General on the recommendation of the Minister for Building and Construction). A levy is charged, under the Act, to all applicants for building consents. The levy funds the functions of the Chief Executive of the Department of Building and Housing under the Act. The levy does not fund the functions of the Registrar or Board.

The Act provides for regulations to be made prescribing fees that can be charged to cover the costs of the Registrar’s functions. The Act also provides for a separate levy to be paid by licensed building practitioners (LBPs) to cover the costs of the Board’s functions. Unless regulations are made prescribing the fees and levy, the Registrar and Board will not be funded to carry out their functions under the Act and the licensing scheme will not be able to be implemented.

OBJECTIVES

The objective is to ensure the Registrar and Board are adequately funded to enable the licensing scheme to be implemented.

ALTERNATIVE OPTIONS

Status Quo

The status quo is that no fees or levy is prescribed under the Act. This option does not meet the objective as it does not provide the necessary funding for the licensing scheme to be implemented. While the status quo has no costs associated with it, it also gives no benefits. As described in the “Preferred Option” below, the benefits of the licensing scheme outweigh the proposed costs.

Regulatory Option – Part cost recovery/Part other funding

Under this option the amounts of the levy and fees would be reduced from those stated for the Preferred Option. The amounts could be discounted based on the public benefit obtained from the licensing scheme. The discount could be funded by revenue

generated through general taxation. However, the public benefit from individual LBPs is small and would not support a significant discount, so there would be a minimal reduction in cost to LBPs.

If the discount was not funded from general taxation, the scheme could not operate efficiently and effectively. It is possible some of the functions described in the Preferred Option would not be provided at all, e.g: promotion and marketing of the scheme. There would be delays processing applications due to the Department being unable to afford to employ sufficient staff. Assessment of applications would similarly be delayed as less assessors would be able to be contracted to do the work. Resolution of complaints and appeals by the Board would also be subject to delays as there would be insufficient funds to pay for the required number of Board meetings.

This option would have fiscal impacts on the Government if the discount was funded from general taxation. The minimal reduction in costs to building practitioners and consumers would result in a major decrease in the benefits of the licensing scheme.

PREFERRED OPTION

Regulatory Option – Cost recovery only

Under this option regulations would be made to prescribe the following (all amounts are inclusive of GST).

- Board levy of \$25 per LBP
- Registrar's fees and charges:
 - Application fee of \$80 per application
 - Assessment fees of \$275 - \$990 depending on licensing class being assessed
 - Annual charge of \$170 per LBP
 - Late fee of \$25
 - Replacement identification card fee of \$30
 - Application for voluntary suspension fee of \$50

The amounts of the levy and fees have been calculated on a cost recovery basis to provide the following main functions of the Registrar and Board:

- appointing, training and supporting assessors to evaluate applicants
- creating and maintaining a processing centre for applications
- creating and maintaining a public register of all LBPs
- running a freephone telephone service, managed by knowledgeable operators, to help potential and current LBPs
- providing a free electronic newsletter and other information materials to help the different industry sectors understand the licensing scheme
- producing application forms and practical guidance for applicants
- a fair, impartial and transparent process for dealing with appeals from licensing decisions and complaints against LBPs
- marketing and promotion of the licensing scheme to consumers.

This option is consistent with The Treasury Guidelines and meets the objective. This option does not impact on existing regulations.

Costs and benefits

Central and local government will benefit from the LBP scheme being funded on a cost recovery basis and not incur any costs to receive those benefits. The scheme will not require funding through general taxation or rates or charges. Local government will particularly benefit from the operation of the scheme as building work carried out by LBPs will have a lower risk of failure. Local government liability from certifying compliance of building work will be able to be better managed where LBPs carry out the building work.

Building practitioners will incur all the costs for funding the scheme, but will gain the following benefits from being licensed:

- Recognition as a competent, skilled person in their chosen field.
- Ability to use the LBP logo and messaging as a 'mark of quality' in their work.
- Listing on a public register so future clients can choose them in preference to people who are not licensed.
- Access to updated information crucial to their work that only licensed people will receive.
- Support from an advertising and promotional programme to the New Zealand public, to tell consumers why they should use licensed practitioners.
- Support, if any complaints are made against them as a LBP, from a fair and impartial complaints process.

These benefits outweigh the costs. The fees and levy represent a very small proportion of a LBPs income. Most LBPs will earn more than the amount they pay in levy and fees in one day's work or less.

Consumers are likely to incur a small increase in the cost of having building work done. This cost will be the result of LBPs passing onto their customers the costs of licensing. The total costs incurred by LBPs will be spread over all their customers, so individual customers will pay a very small proportion of the total costs. The small cost increase will be outweighed by the benefits to customers of:

- being able to choose competent people to do building work
- having access to a free complaints process if they are dissatisfied with the work of a LBP
- confidence the building work has been completed competently.

IMPLEMENTATION AND REVIEW

The Department of Building and Housing plans to begin licensing in November 2007. Therefore, regulations setting the levy and fees need to be in force before November 2007. Potential licensing applicants will be sent information about the licensing scheme from July onwards. This information will include the fees and levy agreed to by Cabinet before the regulations are made.

The amounts of the levy and fees have been calculated on forecast numbers of applications. Any significant deviation in actual applications from the forecast numbers will affect whether the fees meet actual costs. Notwithstanding the uncertainties in forecasting, the proposed levy and fees are at a level intended to ensure no change to the amounts is required before the end of 2010. Accordingly, the amounts of the levy and fees will be first reviewed in 2010.

While the levy and fees are direct costs of the licensing scheme, practitioners will incur other costs to become licensed, e.g: time taken to fill in application forms. These costs were described in the Business Compliance Cost statement of the Regulatory Impact Statement that accompanied EDC (06) 43⁷. In addition to monitoring and reviewing the levy and fees, the Department of Building and Housing will monitor compliance costs. Compliance cost mitigation strategies will be changed or updated if compliance costs become unreasonable.

CONSULTATION

The Department consulted with the sector and general public on the design and content of the licensing scheme. During that consultation and during subsequent communications on the scheme, the Department has provided information on the indicative costs for licensing. All people likely to be affected by the licensing scheme accept they will incur some costs near or within the indicative costs. The proposed fees and levy are within the realms of the indicative costs. Accordingly, public consultation on the exact amounts of the fees and levy has not been carried out. Such consultation is not required by the Act and is unlikely to provide meaningful feedback on fees and a levy set on a cost recovery basis.

The Department of Building and Housing consulted with The Treasury, Department of Prime Minister and Cabinet, Ministry of Economic Development and Ministry of Consumer Affairs on the proposed fees and levy. All comments received have been addressed in the content of the attached Cabinet paper and this RIS.

⁷ This paper proposed establishing licensing classes and associated matters necessary for implementing the licensing scheme from November 2007 onwards.