

Policy

Building Consent Applications Involving Alterations to Existing Buildings

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Commencement and Review

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1.0 Introduction

Building Consents for alteration to existing buildings can create difficulties where the alteration relies on the existing structure for part of its structural support.

The existing building may or may not have a Code Compliance Certificate and hence the structural integrity of the total building, or part of the building, may be in doubt.

In the event that the building being altered has requirements in respect to;

- i. means of escape from fire, or
- ii. access and facilities for persons with disabilities,

the Building Consent needs to be checked for compliance with Section 112 of the Building Act 2004.

Section 112 of the Building Act 2004 specifies the assessment requirements of buildings undergoing alteration, and the required extent of Building Code Compliance.

This policy has been prepared to provide guidance, clarity and consistency to building owners, designers, builders, and building control officials on the requirements in relation to alterations to existing buildings, and to ensure that all decisions made are fair and reasonable.

Any references to files or documents in this policy are deemed to include either electronic or hard-copy versions, or both.

2.0 Scope

This policy sets out the protocol to be followed by Council in assessing the requirements for buildings undergoing alteration.

Council will assess buildings undergoing alteration in accordance with this policy, any other relevant Council policy, and any requirements of the Department of Building and Housing (DBH) and relevant legislation.

3.0 Principles

The following principles underpin this policy:

1. The policy shall provide a process that enables the effective and lawful assessment of buildings undergoing alteration.
2. The Council, in performing the functions of a BCA and TA, is committed to taking responsible courses of action that will ensure that its requirements under the Act are met.

4.0 Legislation

Sections 17, 40, 44, 45, 112 and 113 of the Building Act 2004 contain the provisions for alterations to existing buildings.

These sections 112 and 113 define the building features that the Council shall assess before granting or refusing a building consent, and the circumstances in which a building consent may be granted where the features do not, or are unable to, comply with the Building Code.

Section 113 specifies the conditions to be attached to a building consent for a building undergoing alteration that has a specified life of 50 years or less.

Section 17 sets out the requirement that all building work must comply with the Building Code, Section 45(c) requires the applicant to provide information that the Building Consent Authority reasonably requires.

Section 112 relates to the altered building, which means the whole building as altered, not merely the alteration. Section 112 does not detract from the section 17 requirement that all building work must comply with the Building Code or the provisions of sections 67-70 as to waivers or modifications of the Building Code.

In other words, any new building work must comply with the Building Code, subject to any waiver or modification granted by Council, and after the alteration, the whole building must comply with the Building Code to the extent specified by section 112, if this Section is applicable.

5.0 Content

5.1 What is an Alteration?

An alteration is any alteration, renovation, addition, or demolition of any part of a building, regardless of size or complexity. An alteration does not include routine maintenance of a building, provided that the replacement of building elements is on a like-for-like basis.

5.2 Assessment Requirements

Council cannot grant a building consent until it is satisfied that the building undergoing alteration will comply, as nearly as is reasonably practicable, with the provisions of the Building Code that relate to:

- means of escape from fire,
- access and facilities for persons with disabilities, and
- continuing to comply with the other provisions of the Building Code, at least to the same extent as before the alteration.

The accessibility provisions only apply to buildings to which members of the public are to be admitted, whether freely or on payment of a charge.

The terms "as nearly as is reasonably practical" and "to the same extent as before" are defined in Appendix 1.

5.3 Exceptions

Council may, by written notice to the building owner, allow the alteration of an existing building without the building complying with the provisions, specified by the Council, of the Building Code provided the Council is satisfied that:

- If the building was required to comply with the relevant provisions of the Building Code, the alteration would not take place, and
- The alteration will result in improvements to features of the building that relate to the means of escape from fire and/or access and facilities for persons with disabilities, and
- The improvements outweigh any detriment that is likely to arise as a result of the building not complying with the other relevant provisions of the Building Code.

5.4 Compliance with the Building Code

Except for the requirements as to the means of escape and accessibility, there are no requirements for upgrading the existing buildings to meet the current Building Code.

The exception to this statement is where the building is classified as an earthquake risk building, in which case, depending on its classification, it may be required to be upgraded. For guidance you will need to refer to Council policy on Earthquake Prone, Dangerous and Unsanitary Buildings BCP101.

In respect to the building work involved in the alteration to an existing building, the Building Processing Officer needs to assess:

1. If the alteration relies in whole or in part on the existing structure for its structural stability
2. If the alteration weakens the existing structure
3. If any other Building Code requirements are affected by the addition, for example:
 - Plumbing and Drainlaying
 - Wastewater Disposal systems
 - Subfloor Ventilation

Whether or not the existing structure has, or has not, got a Code Compliance Certificate is irrelevant. What is important is that, in the event the alteration is attached to and alters the existing structure that:

1. A report be received assessing the structural integrity of the proposed alteration and the effect on the existing structure. This means that, for a Residential building, the bracing calculation will need to include a bracing analysis of the whole building.
2. In the event that the existing structure has not been issued with a CCC, the report should identify if a parallel amendment application is required for the existing structure
3. If the existing structure predates the Building Act 1991, item 1 will be sufficient in order to process the Building Consent application for the proposed alteration.

For the purpose of this section, the requirement is to ensure that the building will comply with the Building Code at least to the same extent as before the alteration. The alteration cannot make compliance worse; any new, significant, addition must fully comply with the new requirement.

5.5 Escape from Fire and Accessibility

Clearly the intent of Section 112 is that buildings are, overtime, upgraded to meet the escape from Fire and Accessibility requirements of the current Building Code.

The test in Section 112 is that the building does not need to be in full compliance with the current Code, however, it should be “as near as is reasonably practicable”. Thus, this assessment involves a weighting exercise which gives consideration to:

1. The scale of the alteration
2. The practicality of providing full compliance
3. The historic nature of the building and the architectural implication of full compliance

4. The need to ensure public safety and the level of risk with the current situation
5. The need to improve accessibility, where practicable

If the cost of providing full compliance will result in the alteration not proceeding, little benefit would have resulted. It is better to moderate the need for full compliance in order to achieve improvements to public safety and accessibility.

The terms “as nearly as is reasonably practical” and “to the same extent as before” are defined in Appendix 1.

5.7 Recording Decision

It is essential that full details of the decision-making process is recorded. The decision record shall include:

- The basis of the decision.
- The reason for the decision.
- Reference material used in arriving at the decision.
- Any additional information requested from the building consent applicant.
- Details of any third party, including legal, advice used.
- Details of any tests or modelling used.
- The outcome of the decision.

The decision record shall be retained on the relevant building consent file.

6.0 Matters of Doubt or Dispute

A party, in terms of section 176 of the Building Act 2004, may apply to the DBH for a Determination in relation to the Council's exercise of its powers in respect of one or more of the following matters in relation to alterations to existing buildings:

- Council's decision to refuse to grant a building consent.
- Council's interpretation of “as nearly as is practicable” and “to the same extent as before”.

Should there be some doubt or dispute that cannot be resolved by negotiation between the parties, either of the parties involved, provided they are a party in terms of section 176 of the Building Act 2004, may apply to the DBH for a Determination in terms of section 177 of the Building Act 2004.

Application for a Determination must be made in writing and on the prescribed form¹, contain the prescribed information (if any) and be accompanied by the prescribed fee.

During the period a Determination is being considered, all matters in relation to the building consent application shall be suspended. The suspension may include any other building work in relation to the application.

7.0 Risk Assessment

The steps in the assessment process are:

1. Identify what is needed to provide full compliance
2. Compare with what is proposed
3. The difference between these two is therefore what is proposed to be sacrificed. Analyse what this means in terms of public safety and accessibility
4. Analyse the justification presented by the applicant, why the additional requirement to bring the building to full compliance with the Building Code, are not proposed to be implemented.
5. The owner's fire and/or accessibility reports should identify the option to achieve full Code compliance
6. Consider if it is likely that further upgrading of the building may occur and, if so, is there some benefit in any requirements making allowance for the ability to extend safety or accessibility features in the future.

Having considered the above, the judgement that needs to be applied is:

Whether the sacrifice is acceptable, given the circumstances involved as compared to the benefits achieved by full compliance.

Appendix 1

Meaning of Key Phrases

Meaning of “as nearly as is reasonably practicable”

The words “as nearly as is reasonably practicable to the same extent as if it were a new building” in the Building Act 1991 were considered in *Auckland City Council v NZ Fire Service* 19/10/95, Gallen J, HC Wellington AP336/93, [1996] 1 NZLR 330. This was an appeal against Determination 1993/4. It was held that:

“The question as to whether a building complied with a particular requirement of the building code [as nearly as is reasonably practicable to the same extent as if it were a new building] must be considered in relation to the purpose of the requirement and the problems involved in complying with it, sometimes referred to as ‘the sacrifice’. A weighing exercise is involved. The weight of the considerations will vary according to the circumstances and it is generally accepted that where considerations of human safety are involved, factors which impinge upon those considerations must be given an appropriate weight.”

The “as nearly as is reasonably practicable” test was also applied by the BIA in Determinations 1993/2, 1993/3, 1993/4, 1994/2, 1994/5, 1995/2, 1995/6, 1996/1, 1996/5, 1997/1, 1997/2, 1997/9, 1999/1, 1999/15, 2001/4, 2002/2, 2002/5 and 2002/8. It is suggested that those determinations remain good examples of how the test is to be applied in practice.

Meaning of “to the same extent as before”

Existing buildings will rarely comply with the current Building Code. The words “continue to comply to at least the same extent as before” can be taken to mean that alterations must not detract from the actual performance of the building in any respect.

It is suggested that section 112(1)(b) is not satisfied simply because the alteration has not made any change to the structural elements or the sanitary facilities of the building. For example, if:

- A wing is added to the building, it might need to include new sanitary facilities to keep the ratio of facilities to numbers of people the same as before.
- The alteration consisted of the relocation of the building from a lower to a higher wind or earthquake zone, then the building’s structural elements might need to be strengthened to keep the ratio of strength to design load the same as before.