

House of Representatives

Supplementary Order Paper

Tuesday, 6 March 2012

Building Amendment Bill (No 3)

Proposed amendments

Hon Maurice Williamson, in Committee, to move the following amendments:

Clause 2

Subclause (1)(b): to omit “**6(2A)**” (line 7 on page 7) and substitute “**6(2A) to 5**
(2C)”.

Subclause (1)(d): to omit “section **12A**” (line 9 on page 7) and substitute “sec-
tions **12A and 12B**”.

Subclause (1)(e): to omit “**and**” (line 10 on page 7) and substitute “**to**”.

Subclause (1)(h): to omit “**35**” (line 13 on page 7) and substitute “**32(3) and 10**
34A”.

Subclause (1)(l): to omit “**52 and 53(2)**” (line 17 on page 7) and substitute
“**50B, 52, 53(2), and 53A to 53C**”.

Subclause (1)(o): to omit “**69 and 70**” (line 20 on page 7) and substitute “**69,**
69A, and 70”:

Subclause (1)(q): to omit “**77 and 78(5)**” (line 22 on page 7) and substitute “**77 15**
to 77B, 78(5), and 78A”.

Clause 6

To insert the following subclauses after *subclause (2A)* (after line 18 on page
11):

(2B) Section 7 is amended by repealing the definition of **restricted 20**
building work and substituting the following definition:

“**restricted building work** means any building work that is—

“(a) building work of a kind declared by the Governor-Gen-
eral by Order in Council to be restricted building work;

or 25

“(b) design work of a kind declared by the Governor-Gen-
eral by Order in Council to be restricted building work”.

- (2C) Section 7 is amended by repealing the definition of **territorial authority** and substituting the following definition:
- “**territorial authority**—
- “(a) means a city council or district council named in Part 2 of Schedule 2 of the Local Government Act 2002; and,— 5
- “(i) 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 10
- “(ii) 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; and 15
- “(b) includes the Minister of Conservation or the Minister of Local Government, as the case may be, in any case in which the Minister of Conservation or the Minister of Local Government is the territorial authority under section 22 of the Local Government Act 2002”. 20

New clause 12B

To insert the following clause after *clause 12A* (after line 11 on page 15):

12B Content of application 25

Section 33(1) is amended by repealing paragraph (a) and substituting the following paragraph:

- “(a) any fees and charges imposed by the territorial authority under section 219; and”.

Clause 15 30

New section 52(2)(a): to insert “or fee” after “charge” (line 34 on page 20).

New section 52H(2): to omit “in all aspects of the plans and specifications accompanying the application” (lines 27 and 28 on page 24).

Clause 15A

To add the following subclause as *subclause (2)* (after line 3 on page 32): 35

- (2) Section 45(1) is amended by repealing paragraph (d) and substituting the following paragraph:

- “(d) be accompanied by any fees and charges imposed by the building consent authority under section 240; and”.

Clause 15B

To insert the following clause above *clause 16* (before line 4 on page 32):

15B Grant of building consent

Section 49(2)(a) is amended by inserting “or fee” after “charge”.

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Clause 32

To add the following subclause (after line 15 on page 48):

(3) Section 95 is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) on payment of any fees and charges imposed by the building consent authority under section 240.”

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New clause 34A

To insert the following clause after *clause 34* (after line 31 on page 48):

34A How to apply for certificate of acceptance

Section 97 is amended by repealing paragraph (d) and substituting the following paragraph:

“(d) be accompanied by any fees and charges imposed by the territorial authority under section 219; and”.

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Clause 36

To omit new section 102(4) (lines 28 and 29 on page 49).

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Clause 40

To add the following subclause as *subclause (2)* (after line 22 on page 51):

(2) Section 106(3) is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) pay any fees and charges imposed by the territorial authority under section 219.”

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New clause 40A

To insert the following clause above *clause 41* (before line 23 on page 51):

40A Territorial authority may amend compliance schedule on own initiative

Section 107 is amended by repealing subsection (5).

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New clause 43A

To insert the following clause after *clause 43* (after line 8 on page 52):

43A Inspections by territorial authority

Section 111 is amended by repealing subsection (2).

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New clause 50B

To insert the following clause after *clause 50A* (after line 9 on page 55):

50B Territorial authority may impose fee or charge and must collect levy

Section 219(1)(a) is amended by omitting “charge” and substituting “charge (or both)”. 5

New clauses 53A to 53C

To insert the following clauses after *clause 53* (after line 6 on page 57):

53A Building consent authority may impose fee or charge and must collect levy 10

Section 240(1)(a) is amended by omitting “charge” and substituting “charge (or both)”.

53B Regional authorities may impose fee or charge and recover costs, and must collect levy 15

Section 243(1)(a) is amended by omitting “charge” and substituting “charge (or both)”.

53C New subpart 9 of Part 3 added

Part 3 is amended by adding the following subpart:

“Subpart 9—Fees, charges, and additional costs

“281A What fees and charges may be imposed 20

“(1) This section applies when a territorial authority, building consent authority, or a regional authority (in this section and in **sections 281B to 281D** called the **authority**) imposes a fee or charge (or both) under section 219, 240, or 243 for a function or service performed by the authority under this Act. 25

“(2) Each authority has a discretion as to how the fee or charge is charged or set and how it may be paid or collected, and may (by way of example and without limiting an authority’s discretion)—

“(a) charge a fixed or variable fee: 30

“(b) require a deposit and then further payment:

“(c) require full payment at the outset:

“(d) charge on the basis of an hourly rate or any other rate or method of charging.

“(3) An authority may impose a fee or charge whether or not the function or service in question is performed on the application of another person or on the initiative of the authority itself. 35

“281B Authority may increase fee or charge to meet additional cost

- “(1) If a fee or a charge imposed by an authority for a function or service performed by the authority under this Act is, in any particular case, inadequate to meet the authority’s actual and reasonable costs in performing that function or service, the authority may increase the amount of the fee or charge to meet the additional cost. 5
- “(2) The authority must, on request by the person liable to pay the increased fee or charge, provide an estimate of the increase in the fee or charge. 10

“281C Authority may waive or refund fee or charge

An authority may, in its discretion, waive or refund, in whole or in part, any fee or charge imposed by it for a function or service performed by it under this Act. 15

“281D Validity of previous fees, charges, and additional costs

- “(1) This section applies to a fee, charge, or additional cost that was imposed by, paid to, or collected by an authority before the commencement of this section.
- “(2) Any question relating to the validity of the fee, charge, or additional cost must be determined as if **sections 281A and 281B** were in force at the time of the imposition, payment, or collection of the fee, charge, or additional cost. 20
- “(3) Nothing in this section affects the validity of a fee, charge, or additional cost that is the subject of a proceeding that was commenced before the commencement of this section.” 25

New clause 69A

To insert the following clauses above *clause 70* (before line 32 on page 61):

69A New section 401B inserted

The following section is inserted above section 402: 30

“401B Order in Council declaring work to be restricted building work

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare any kind of building work (other than building work for which a building consent is not required) or any kind of design work to be restricted building work. 35
- “(2) An order under **subsection (1)** may apply to any kind of building work or design work generally, or may apply to building work or design work in relation to particular types or categories of buildings or to particular parts of buildings. 40
- “(3) The Minister may recommend the making of an order under this section only if the Minister is satisfied that the kind of

- building work or design work in question is (or is likely to be) critical to the integrity of a building or part of a building.
- “(4) Building work or design work is not restricted building work if it relates to an application for a building consent made before the commencement of an order under **subsection (1)** declaring building work or design work of the same kind to be restricted building work.” 5

Clause 70

To insert the following subsection (after line 5 on page 62):

- (3A) Section 402(1) is amended by repealing paragraph (n). 10

New clauses 77A and 77B

To insert the following clauses above *clause 78* (before line 27 on page 63):

77A Amendment to Local Government Act 2002

- (1) This section amends the Local Government Act 2002.
- (2) Section 22 is amended by repealing subsection (2) and substituting the following subsections: 15

“(2) Subsection (1)—

“(a) does not apply at all in relation to any of the following:

“(i) the territorial sea; or

“(ii) the Kermadec Islands; or 20

“(iii) the Sub-Antarctic Islands (which include the Antipodes Islands, Auckland Islands, the Bounty Islands, Campbell Island and the islands adjacent to Campbell Island, and the Snares Islands); and

“(b) does not apply in relation to the Three Kings Islands (which include Great Island, South West Island, West Island, North East Island, and several islets and rock stacks) for the purposes of the Building Act 2004. 25

“(3) For the purposes of the Building Act 2004,—

“(a) the Minister of Local Government is the territorial authority for any part of New Zealand referred to in **subsection (1)**; and 30

“(b) the Minister of Conservation is the territorial authority for the islands referred to in **subsection (2)**.”

77B Transitional provisions for section 77A 35

(1) In this section, **transition period** means—

(a) the period of 18 months from the commencement of this section; or

(b) a shorter period than 18 months from the commencement of this section ending on a date determined by the Minister of Conservation (the **Minister**) and notified in the *Gazette*. 40

(2) During the transition period, the following provisions of the Building Act 2004 do not apply to the Minister in his or her capacity as a territorial authority under section 22 of the Local Government Act 2002:	5
(a) section 212:	
(b) section 215.	
(3) During the transition period, none of the following persons is liable, and no proceeding may be brought against any of them, for any thing done or omitted to be done under the Building Act 2004 from the commencement of that Act until the close of the transition period on or in relation to the islands referred to in section 22(2) of the Local Government Act 2002 after amendment by this Act:	10
(a) the Minister:	
(b) the Minister of Local Government:	15
(c) the Department of Conservation:	
(d) any employee or agent of the Department of Conservation.	
 <i>New clause 78A</i>	
To insert the following clause after <i>clause 78</i> (after line 7 on page 64):	20
78A Local Government (Auckland Transitional Provisions) Fees and Charges Regulations 2010 amended	
(1) This section amends the Local Government (Auckland Transitional Provisions) Fees and Charges Regulations 2010.	
(2) Regulation 6(2) is amended by omitting “(as amended by regulation 14)”.	25
(3) Regulation 6 is amended by revoking subclause (3).	
(4) Regulation 10 is amended by revoking subclause (2).	
(5) Regulation 11 is amended by revoking subclause (2).	
(6) Regulation 12(3) is amended by revoking paragraph (a).	30
(7) Regulation 14 is revoked.	
 <i>Schedule</i>	
<i>New Schedule 1A, clause 1(e):</i> to omit this paragraph (lines 23 and 24 on page 65) and substitute the following paragraph:	
“(e) be accompanied by any fees and charges imposed by the building consent authority under section 240; and”.	35
<i>New Schedule 1B, clause 1(e):</i> to omit this paragraph (lines 21 and 22 on page 68) and substitute the following paragraph:	
“(e) be accompanied by any fees and charges imposed by the building consent authority under section 240; and”.	40

New Schedule 1C, clause 1(e): to omit this paragraph (lines 21 and 22 on page 70) and substitute the following paragraph:

“(e) be accompanied by any fees and charges imposed by the building consent authority under section 240; and”.

New Schedule 1D, clause 1(f): to omit this paragraph (lines 23 and 24 on page 73) and substitute the following paragraph: 5

“(f) be accompanied by any fees and charges imposed by the building consent authority under section 240; and”.

Explanatory note

This Supplementary Order Paper amends the Building Amendment Bill (No 3) to make provision for the following:

- the definition of **restricted building work** and the procedure for declaring building work or design work to be restricted building work; and
 - clarification of the power of a local authority or a building consent authority to impose a fee or charge for performance of a service or function under the Building Act 2004; and
 - clarification of the territorial authority for the purposes of the Building Act 2004 in respect of certain off-shore islands.
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