

Response by

Hamilton City Council Staff

TARGETED CONSULTATION - PROPOSED CHANGES TO THE LICENSED BUILDING PRACTITIONER (LBP) SCHEME

15 October 2020

It should be noted that the following response is from staff at Hamilton City Council and does not necessarily represent the views of the Council itself.

1.0 SUMMARY OF KEY POINTS

- 1.1 Overall support for the direction and intent of MBIE's targeted consultation on the Proposed Changes to the Licensed Building Practitioner (LBP) Scheme.
- 1.2 Agree with the proposal to introduce a code of ethics for LBPs, which is intended to provide mechanisms to manage poor conduct, and support license holders to clearly understand the level of professional behaviour expected of them.
- 1.3 Agree that the proposed changes to the licensing administration processes for LBPs will increase the efficiency, flexibility and accountability of the licensing scheme (Proposals 2 to 7).
- 1.4 Agree that the proposed changes to the role of the Building Practitioners Board in the complaints and disciplinary process will increase the efficiency, flexibility and accountability of the licensing scheme (Proposal 8), although there needs to be an easier mechanism to make complaints.
- 1.5 Agree that the proposed changes to the role of the LBP Registrar in the complaints and disciplinary process will increase the efficiency, flexibility and accountability of the licensing scheme (Proposals 9 and 10) and that vexatious complaints and appeal rights should be given to allow natural justice to take place.
- 1.6 Agree that the proposed changes to the role of the Board and the LBP Registrar in the complaints and disciplinary process will help ensure the Board can implement the changes in Proposal 1 to strengthen the LBP scheme (Proposals 9 and 10), noting that this will give some context to the LBP license and set minimum standards for conduct.

2.0 INTRODUCTION

- 2.1 In general, staff from Hamilton City Council support the overall direction and intent of the Ministry of Business, Innovation and Employment's **Proposed Changes to the Licensed Building Practitioner (LBP) Scheme**. We have provided responses to the proposals that are of key concern to staff from Hamilton City Council's Building Control Unit.

3.0 FURTHER INFORMATION AND OPPORTUNITY TO DISCUSS OUR RESPONSE

- 3.1 Should the Ministry of Business, Innovation and Employment require clarification of the response provided, or additional information, please contact Alister Arcus (Senior Building Project Advisor) on 07 838 6681 or email alister.arcus@hcc.govt.nz in the first instance.

3.2 Hamilton City Council staff would welcome the opportunity to discuss the content of our response with the Ministry of Business, Innovation and Employment in more detail.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R. Briggs', written in a cursive style.

Richard Briggs
CHIEF EXECUTIVE

About you

1 Are you answering this as an individual, or on behalf of an organisation?

The following response is from staff at Hamilton City Council's Building Control Unit. As noted above, this feedback does not necessarily represent the views of the Council itself.

2 If you are submitting as an individual, please provide your occupation OR
If you are submitting on behalf of an organisation, please list which organisation and your position

Refer above - Hamilton City Council.

3 Where in New Zealand are you, or your organisation, based?

Hamilton City.

Introducing a code of ethics

Proposal 1: MBIE proposes introducing a code of ethics for LBPs, which is intended to provide mechanisms to manage poor conduct, and support license holders to clearly understand the level of professional behaviour expected of them.

4 Do you think the four key principles and the expected standards that could sit beneath these principles to form a code of ethics would help LBPs to lift performance and improve the credibility of the scheme?

We agree with this proposal i.e. that it will give some context to the LBP License Scheme. We note the following:

- Training provided to set expectations of the 4 key principles and what minimum standards are, as part of new license applications/renewals - continual professional development.
- Ongoing professional development to bed-in the 4 principles.
- Mentoring program to assist LBPs.

Changes to licensing administration processes for LBPs

Proposal 2: MBIE proposes to move the process for renewing licences from the Building Act to the LBP Rules. The purpose of this proposal is to increase flexibility if changes are necessary to respond to changing industry practices.

Proposal 3: MBIE proposes to set a maximum licence term of five years in the Building Act, and to provide for the licence term to be set in the LBP Rules.

The intent will be to set a two-year licence term in the LBP Rules to align with skills maintenance requirements.

The purpose of this proposal is also to increase flexibility, if changes are necessary to respond to changing industry practices.

Proposal 4: MBIE proposes that:

- licences that are not renewed by the due date become *expired* instead of *suspended*;
- LBPs whose licences have expired will not be able to carry out or supervise restricted building work; and
- an expired licence will be removed from the public register in the same manner as a cancelled license.

The purpose of these proposals is to provide clarity about the reason for an LBP not having a valid licence and reduce confusion that an LBP might have a suspended licence for disciplinary reasons.

Proposal 5: MBIE proposes that when an LBP's licence is eligible for suspension for not submitting skills maintenance requirements at the same time as the licence is due to expire, the licence is expired rather than suspended.

Proposal 6: MBIE proposes that:

- expired licences be subject to an '*expiry pending period*' in which the LBP may renew the licence, and that this period will be specified in the LBP Rules; and
- a license that is in the '*expiry pending period*' will be recorded as such on the public register in the same manner as a suspended licence, and that pending expiry period will stay recorded for three years.

The intent will be to set the expiry pending period at 90 days. This would capture the majority of late renewals, and provide a balance between having assurance about an LBP's competence, while giving the LBP an opportunity to rectify a missed renewal.

Proposal 7: MBIE proposes that the Board may take disciplinary action against LBPs who undertake restricted building work during the proposed '*expiry pending expiry period*'.

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Do you think the proposed changes to the licensing administration processes for LBPs will increase the efficiency, flexibility and accountability of the licensing scheme (Proposals 2 to 7)?

We agree with the proposals and structures.

Changing the Board's complaints and disciplinary process

Proposal 8: MBIE proposes to amend the complaints and disciplinary process in the Building Act to align with certain provisions in the Electricity Act, so that:

- a) complaints are to the Board, but must be made to the LBP Registrar
- b) the Registrar makes an initial determination on whether the complaint warrants investigation
- c) if the LBP Registrar determines the complaint should proceed, the Chief Executive of MBIE appoints an investigator to investigate the complaint
- d) the investigator must send particulars to the person complained against and give them reasonable opportunity to make written submissions and be heard
- e) the investigator must provide a report to the Board on the outcome of the investigation and determine whether the complaint should be considered by the Board

- f) the investigator must send a copy of the report to the Board to the person complained against and the complainant
- g) if the investigator reports that a complaint should be considered by the Board:
 - i. the Board must hold a hearing
 - ii. the investigator must prosecute the matter at the hearing, and may be represented by counsel or otherwise.

Proposal 9: MBIE proposes to allow the LBP Registrar to dismiss a complaint during the initial determination stage if it is satisfied the complaint is frivolous or vexatious, or if the subject matter of the complaint is trivial or inconsequential

Proposal 10: MBIE proposes to give complainants the right to appeal to the Board, if the LBP Registrar decides to not proceed with a complaint because the Registrar considers the subject matter to be trivial or inconsequential

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Do you think the proposed changes to the role of the Building Practitioners Board in the complaints and disciplinary process will increase the efficiency, flexibility and accountability of the licensing scheme (Proposal 8)?

We agree with the structure, but note the following:

- There needs to be an easier mechanism to make complaints.
- It needs to be clear as to the level of non-compliance and at what point a complaint can be triggered e.g. after 5 or more concerns raised, significant assistance from the BCA/industry to help the LBP with no improvement, multiple parties that have a concern, level of evidence etc. This could form part of a toolbox of information to assist complainants to make accurate complaints, reduce vexatious complaints etc.

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Do you think the proposed changes to the role of the LBP Registrar in the complaints and disciplinary process will increase the efficiency, flexibility and accountability of the licensing scheme (Proposals 9 and 10)?

We agree that vexatious complaints and appeal rights should be given to allow natural justice to take place, with the following note:

- Consideration be given to a pre-complaint process, so that a complainant can send in a simple submission to the registrar to gauge whether a 'full blown' complaint is warranted.
- The process of making a complaint is often difficult and gets put in the 'too hard basket', which can lead to unacceptable behaviour not being addressed until it is too late, or serious misconduct has taken place.

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Do you think that the proposed changes to the role of the Board and the LBP Registrar in the complaints and disciplinary process will help ensure the Board can implement the changes in Proposal 1 to strengthen the LBP scheme (Proposals 9 and 10)?

We agree with this proposal i.e. that this will give some context to the LBP license and set minimum standards for conduct.