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# **Enforcement under the Building Act 2011**

**LGPA Breakfast Seminar**

**21 June 2012**

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# Building Orders

- Section 110 of the Act
  - Can be given to the owner or the person named as the builder on the building permit or demolition permit.
  - What if the builder is not the person named on the building permit?

# Building Orders (cont)

- Can require some of the things previously provided for by the Local Government (Miscellaneous Provisions) Act 1960 (**LGMPA**) as well as many new things, including:
  - Stop work (LGMPA s.401A)
  - Demolish and remove (LGMPA s.401)
  - Alter (LGMPA s.401)
  - Evacuate and remain unoccupied (New)
  - Take or not take specified action (New)
  - Finish the outward facing side of a boundary wall in a specified way (New)

# Building Orders (cont)

- Additional powers in relation to buildings in a dangerous state or unfit for human occupation including:
  - the power to require a survey of the building to be carried out; and
  - requiring the building to be shored up, fenced or otherwise secured.

# Building Orders (cont)

- BUT
  - No power to require the demolition of an uncompleted building (LGMPA s.409A).
  - The power to require building or demolition work to stop is limited by section 111 of the Act.
  - Section 111 should be repealed.

## Building Orders (cont)

- Failing to comply with a building order is an offence (s.115).
  - BUT
    - Can have a 'reasonable excuse' for failing to comply.
    - No daily penalties.
- It is also an offence to hinder or obstruct a person who is complying or attempting to comply with a building order (s.116).

# Building Orders (cont)

- Building orders must be in an ‘approved form’ .
  - That means a form approved by the Building Commissioner.
  - When bringing a prosecution alleging a failure to comply with a building order, the local government must prove the building order was in the approved form.

# Compliance with Permits

- Section 29 of the Act
- The person named as the builder on a building permit or demolition permit is the person who must ensure the building work or demolition work is carried out in accordance with the plans and specification and any conditions.
  - No obligation on the owner.
  - What if the person named as the builder on the building permit didn't do the work?
  - What if the owner of the property won't allow the builder access to comply with the condition?



# Compliance with standards

- Section 37 of the Act.
- Where a building permit has been issued, the person named as the builder on the permit must ensure compliance.
- Where no building permit has been issued, owner must ensure compliance.

# The Ministerial Order

- As of 16 June 2012, a building permit is not required for Class 1 and Class 10 buildings or incidental structures provided an application for a building licence or building permit for that building or incidental structure was made between 1 January 2012 and 30 June 2012.

# The Ministerial Order (cont)

- What is the status of building work done under the exemption?
  - Where a permit is granted
    - To the extent that the permit authorises the work, the work is taken to have been done in accordance with the permit.
    - To the extent that the permit did not authorise the work, the Act, ***other than section 9(a)***, applies to the work as if the work was not done in accordance with a permit.

# The Ministerial Order (cont)

- Where no building permit is issued
  - The same situation applies. That is, the Act, ***other than section 9(a)***, applies.
  - Accordingly, even if the permit is refused, a local government will not be able to commence proceedings under section 9(a) for building without a permit.

# Good Stuff

- Building work defined to include site works.
- A more precise definition of works that do not require a building permit.
- Extension of limitation periods for commencing prosecution proceedings.

