

1991/11



BUILDING CONTROLS AND STANDARDS REGULATIONS 1991

A. P. Short.

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga, this 29th day of July 1991

Present:

HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE
IN EXECUTIVE COUNCIL

PURSUANT to section 5 of the Buildings Controls and Standards Act, 1991, His Excellency the Queen's Representative acting by and with the advice and consent of the Executive Council hereby makes the following Order:

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Price \$ 6.00

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REGULATIONS

1. Title - These regulations may be cited as the Building Controls and Standards Regulations 1991.

2. Application - (1) Subject to subsection (2) these Regulations shall apply within the Cook Islands.

(2) These Regulations shall not apply to buildings of less than 150 square meters total floor area when located in those islands where staff from the Building Controller's department are not normally stationed within a radius of 50 nautical miles.

3. Interpretation - The interpretation given in Section 3 of the Building Controls and Standards Act, 1991 shall apply to these Regulations. In addition, unless the context requires otherwise -

"Act" means the Building Controls and Standards Act, 1991.

"Applicant" means an Owner of a land or a Lessee or a person with authority to act on behalf of such Owner or Lessee, and who has requested the Building Controller for any permit or approval under these Regulations, such as a building permit.

"Lessee" means a person who has leased from an Owner or another Lessee a part or whole of an allotment of land including any buildings and other improvements thereon, and who has -

- (a) the right to erect or demolish buildings on the said allotment, or
- (b) the responsibility for the use or occupancy by anyone of buildings on the said allotment.

"Permitted work" means work for which a building permit has been issued under these Regulations.

"Section or subsection" refers to sections or subsections of these regulations.

"Served" in relation to a notice, order or other document initiated by the Building Controller or his delegate, means served -

- (a) personally or through an authorised agent;
- (b) by posting such notice, order or other document to the last known address of the person to be served;
- (c) by affixing such notice, order or other document on any conspicuous part of the subject land, building or premises;

- (d) by service upon the agent of the person to be served; or
- (e) by advertisement in a newspaper or any of the electronic media available in the Cook Islands.

4. Establishment of the National Building Code - For the purposes of Section 4 of the Act the Code shall be that document titled "The National Building Code for Cook Islands" which was printed in 1990 and circulated in the Cook Islands from the same year. A copy of the Code shall be available for reference in the office of the Building Controller.

5. Building Permit - (1) Subject to subsection (2) a person shall not erect or commence to erect a building unless a building permit in respect of the work has been issued by the Building Controller and remains valid.

- (2) A building permit is not required to erect -
 - (a) traditional Cook Islands Maori buildings such as kikau houses, limited to a plan area of not more than 25 square meters, and substantially using traditional methods and materials of construction;
 - (b) subject to section 23, any scaffolding, falsework, timbering or other temporary construction work in respect of building maintenance;
 - (c) a tent or marquee not exceeding 30 square meters in plan area, erected at a site for a period of 30 days or less during any 6 months;
 - (d) a mast, pole, or radio or television aerial, that does not exceed 6 meters in height above the point of its attachment or base support;
 - (e) a caravan, vehicle, or chattel whether fixed or movable when used at a site for not more than 30 days during any 6 months; and
 - (f) minor repairs whether structural or otherwise.

6. Application for a building permit - (1) Any person who wishes to erect a building shall so apply to the Building Controller in the prescribed form (Schedule 1) along with the appropriate building permit fees shown in Schedule 4. The application shall include the following documents as relevant, as well as any other in order to enable the Building Controller to determine whether the proposed building complies with the requirements of these Regulations and the Code -

- (a) a site plan drawn to scale that shows the site of the proposed building along with any likely future extensions planned, as well as the streets, public places, private access ways, location of nearby power poles and power cables and the like, immediately surrounding the site and sufficient to enable the Building Controller to locate the site;
- (b) complete working drawings showing all structural details, plumbing and sanitation details, and excavation and earthwork details;
- (c) complete architectural drawings showing the layout of all the rooms with their intended use, as well as fire exits and escape routes;

- (d) a summary of the structural design criteria used such as wind and other design loadings and properties of materials, as well as the assumptions made in performing the design;
 - (e) structural design calculations and diagrams;
 - (f) fire engineering calculations and assumptions, based on test reports or reports from well-recognized authorities;
 - (g) test reports on the materials and methods of construction as well as on the relevant soil properties at the site; and
 - (h) detailed specifications for carrying out the work.
- (2) Except as otherwise approved by the Building Controller the plans and drawings in subsection (1) shall be to the following sizes and scales -
- (a) site plan to A3 or A4 size and scale of 1:200 and
 - (b) structural and architectural drawings to A1, A2 or A3 size and to a scale of 1:100 for layout and 1:20 for details.

Details shall be shown to a larger scale in the plans and drawings as may be required by the Building Controller.

(3) The Building Controller may require that a site plan be certified by a registered surveyor as setting forth the correct boundaries or street building lines, as determined by the surveyor.

(4) An Applicant may request the Building Controller for exemption from or variation of the operation of specific provisions of the Code or of these Regulations for the proposed building. Every such request shall show evidence that such exemption will not have any adverse effect of a material nature on the users of the building and on the public.

(5) Where the details of an application are based on the performance requirements of the Code, the Applicant shall provide proof that is acceptable to the Building Controller that the performance that will be met, will be equal to or better than what is achievable by using the corresponding deemed-to-satisfy provisions of the Code.

(6) All documents shall be submitted in triplicate.

7. Provision for supervision on behalf of the Applicant - The Building Controller may require that an application under section 6 be accompanied by details (Schedule 2) showing the names, titles, experience, and qualifications of persons who are to observe, inspect, or supervise the permitted work or any part of it on behalf of the Applicant.

8. Documents to be signed - All applications shall be signed by the Applicant. All connected documents shall be signed at each page by the person or persons responsible for their preparation. Each copy of the document shall clearly indicate the application to which it relates.

9. Documents to become the property of the Department of Works - (1) The documents under section 6 shall become the property of the Department of Works from the time they are lodged with the Building Controller.

(2) When a building permit is issued, two copies of the documents connected with the application under section 6 shall be

returned to the Applicant. The Applicant shall maintain one copy of the documents at the building site during the erection and make them available to the Building Controller during his inspections.

(3) The Building Controller's office shall retain and record the remaining copy of the documents along with the application and relevant correspondence. This record shall be prima facie evidence of the statements made in relation to the application.

(4) Any of the documents retained by the Building Controller under subsection (3) shall be made available to the public for inspection within the premises of the office of the Building Controller on payment of the fee prescribed in Schedule 4.

(5) Documents retained under subsection (3) shall be kept by the Building Controller for at least 10 years. All drawings, specifications and other documents relating to buildings with an estimated life of 20 years or more shall be kept for the life of the building.

10. Issue of a building permit - (1) Subject to subsections (2) and (3), where the Building Controller is satisfied -

- (a) that the application under section 6 and the connected documents are in accordance with these Regulations; and
- (b) that the proposed building will comply with the requirements of the Code;

he shall issue a building permit (Schedule 3) within 21 working days of the last date on which the application and all connected documents under section 6 were received by him.

(2) The Building Controller may delay the issue of a building permit beyond the limit under subsection (1) if in his opinion there are suitable reasons. In such a case he shall advise the Applicant of the reasons for the delay within 5 working days of the last date on which the application and all connected documents under section 6 were received by him.

(3) Any request under subsection 6(4) for exemption from or variation of specific provisions of the Code shall be referred by the Building Controller to the Building Control Committee. The Committee shall give due regard for the safety, health, and amenity of the users of the building and of the public before reaching a decision to recommend acceptance or rejection of the request. When conveying his decision to the Applicant, the Building Controller shall list the reasons which influenced the decision.

11. Refusal to issue a building permit - The Building Controller shall refuse to issue a building permit if he considers -

- (a) that the information given to him is not adequate; or
- (b) that the proposed building may not comply with the Regulations.

In either event the Building Controller shall advise the Applicant of his refusal along with his specific reasons. Such advice shall be given within 5 working days after the last date on which the application and all connected documents under section 6 were received by him.

12. Effect of permit - (1) A building permit allows a building to be erected on the site, in the position and to the description given in the application and connected documents, on the basis of which the building permit is issued.

(2) All conditions subject to which the building permit is issued, shall be fulfilled by the Applicant in performing the permitted work.

(3) A building permit does not constitute a representation -

- (a) that the building or the erection of the building complies or will comply with all existing laws; or
- (b) that the approved documents specify in all necessary detail how the building is to be erected so as to comply with these Regulations.

(4) A building permit, permission, certificate or authority given by the Building Controller does not authorise any work to be done other than in compliance with all existing laws.

13. Fees and deposits - (1) Applications and requests shall not be accepted by the Building Controller unless the relevant fees shown in Schedule 4 have been paid to the Cook Islands Government through the Building Controller. Such fees are not refundable except in the case of building permit fees paid under subsection 6(1) and as provided under section 15.

(2) After the examination of any application the Building Controller may determine and ask the Applicant to deposit -

- (a) a sum of money as security against any probable damage to Government property such as roads, water supply lines, sewers, etc. while carrying out the permitted work; and
- (b) a sum of money to cover the cost of any vehicular crossing or other similar alteration to a roadway, or alteration to other Government property that may result from the execution of the permitted work.

(3) The Building Controller may assess any application to see if the complexity of the proposed work requires the help of independent consultants to examine compliance with specific provisions of the Code. If so he shall ask the Applicant to deposit an estimated sum of money to cover the cost of such consultation.

(4) Where the sums of money deposited under subsections (2) and (3) are in excess of the actual final expenditure on the related work, the Building Controller shall refund the unspent sum of money to the Applicant within 14 working days of closing of the accounts relating to the work.

(5) As and when it is known that the actual expenditure on the work covered by subsections (2) and (3) may exceed the earlier estimates, the Building Controller shall ask the Applicant to deposit such additional sums of money as appropriate.

14. Deviation from permitted work - (1) After a building permit has been issued, no deviation or omission shall be made from the approved documents during the execution of the work unless -

- (a) amended particulars clearly describing the intended deviation or omission have been submitted to the Building Controller; and
 - (b) the Building Controller has approved the amendment.
- (2) Section 9 shall apply to the documents used for the purpose of subsection (1).

15. Refund of building permit fee - Where site work has not been started and the building permit remains valid as specified in section 16, the Applicant may apply to the Building Controller for a refund of the related fee paid under subsection 13(1). In such a case the Building Controller shall refund up to forty percent (40%) of the fee paid under subsection 13(1).

16. Currency of building permits - (1) A building permit issued under section 10 remains valid only if the Applicant has commenced the work on site within 12 months from -
- (a) the date of issue of the permit; or
 - (b) the date of renewal of the permit.
- (2) An application to renew a building permit shall be made to the Building Controller along with the fee prescribed in Schedule 4 before the validity of the permit has lapsed.
- (3) The renewal of any building permit shall be subject to the effect of any amendments to the Act, these Regulations or the Code that may have come into effect since the previous issue or renewal of the permit was made.

17. Facilities for inspection - (1) A building permit shall be deemed to include a condition -
- (a) that the Building Controller is entitled during normal working hours, and at other times when the permitted work is in progress, to enter the premises and inspect the whole or any part of the work; and
 - (b) that the Applicant, his contractors, agents and servants engaged in carrying out the permitted work shall give all reasonable facility to inspect the work.
- (2) Without limiting the generality of subsection (1) an Applicant shall give 36 hours clear notice of the following being available for inspection -
- (a) excavation for foundations in final form before concrete, steel or other construction materials are placed in the foundation;
 - (b) reinforcing steel, grillages, foundation bolts, and such like placed in or about the foundation, and before they are embedded in concrete or other construction material;
 - (c) plumbing and sanitary work before such work is covered over by earthwork, concrete or other construction material;
 - (d) any other part or stage of work that the Building Controller may require with prior notice.
- (3) The Building Controller may ask the Applicant to open, cut into, pull down or otherwise reveal any work that he believes has been done in contravention of these Regulations. The Applicant, his contractors, agents, and servants shall forthwith comply. As a consequence if it is found -

- (a) that these Regulations have been breached, the Applicant shall comply with the Regulations and bear all the costs; or
- (b) that these Regulations have not been breached, then subject to subsection (4), the Government of the Cook Islands shall bear the direct costs of compliance and reinstatement.

(4) An Applicant who does not give the notice required under subsection (2) shall bear all costs of compliance and reinstatement resulting from any opening, cutting into, pulling down, or otherwise revealing any work to the Building Controller's orders.

18. Stop-work notices - (1) The Building Controller may serve a notice (Schedule 5) on the Applicant to stop the permitted work to the extent and for the period considered necessary if he is satisfied that the work contravenes these Regulations or the Code.

(2) Where the work is stopped under subsection (1) neither the Applicant nor any other person shall have any claim against the Cook Islands Government or any of its officers on account of any reason connected with the stoppage.

19. Remedial action - If any work is commenced or done contrary to these Regulations or the Code, on receipt of a notice from the Building Controller, the person commencing or doing the work shall carry out all remedial action (including removal, alteration or pulling down of the work) required by the Building Controller.

20. Inspection on completion of work - (1) On completion of any permitted work, including the removal of temporary sheds, site workshops, site offices and such like at the site, the applicant shall advise the Building Controller of the completion and request him to inspect it. The appropriate fee prescribed in Schedule 4 shall also accompany the request.

(2) In the case of large works the advice under subsection (1) may be given progressively in separate well-defined portions of the work, with the prior agreement of the Building Controller.

(3) The Building Controller shall inspect the work or portions of work within 7 days of receipt of the advice and determine as far as superficial inspection may allow, whether the work materially conforms with the approved documents, and otherwise conforms with these Regulations and the Code.

21. Certificate of Completion - (1) If the Building Controller is satisfied with his inspection under subsection 20(3), he shall prepare a certificate of completion (Schedule 6) in duplicate and send the original copy to the applicant within 7 days of the inspection.

(2) If the Building Controller determines from his inspection under subsection 20(3) that there are particular deviations or omissions from the approved documents or that there are other breaches of these Regulations or the Code, he shall -

- (a) withhold the issue of a certificate of completion; and
- (b) advise the applicant to remedy the deviations, omissions and breaches and to advise him of the completion of remedial action.

(3) On receipt of advice of completion of remedial action under subsection 2(b), the Building Controller shall re-inspect the work to the requirements of subsection 20(3).

(4) A certificate of completion shall state the purpose or the occupancy of the building.

(5) A certificate of completion does not constitute a representation by the Building Controller that the work complies with -

- (a) these Regulations or the Code in any respect;
- (b) any other existing law.

(6) A certificate of completion does not exempt the Applicant or any other occupier of the building from the necessity to obtain any other certificate, registration, or license or such other permission required in respect of the use of the building or the business or undertaking carried on from the building, under any other law.

(7) An Applicant shall not use or occupy, or permit or suffer another person to use or occupy a building or any part of it unless a certificate of completion has been issued in respect of the building or the part.

(8) A person shall not use or occupy, or permit or suffer another person to use or occupy a building for a purpose or occupancy other than that stated in the certificate of completion unless a certificate of suitability for that other purpose or occupancy has been issued under section 24.

(9) A certificate of completion shall not be issued unless all moneys due from the Applicant have been received by the Building Controller.

22. General requirements for permitted work - Subject to other laws, during the validity of a building permit an Applicant shall take all necessary precautions to ensure that the safety and health of all persons who have access to the site are not put to undue risk.

23. Permission to use public places including streets or roads - (1) Where the permitted work or any repair, renovation, demolition or maintenance of any building is adjacent to a public place including streets or roads, and where any person finds it necessary to enclose, cover up or use a portion of the public place in order to carry out the work or to protect the public, he shall separately apply to the Building Controller (Schedule 7) along with the fee prescribed in Schedule 4 for permission to take such action in respect of the public place.

(2) The application under subsection (1) shall be accompanied by -

- (a) details for the consideration of public safety, convenience, and any likely property damage;
- (b) details of the notices, warning devices, screens, gantries, barricades and such like, that the Applicant undertakes to provide in order to ensure public safety and convenience and to prevent any likely damage to property;
- (c) the estimated times and durations over which the public place will be affected; and
- (d) the details of the public liability insurance policy that the Applicant agrees to take before permission can be given.

(3) The Building Controller shall consider the application with due regard for public safety, convenience, and any likely property damage.

(4) The Building Controller shall also consult other Government departments and authorities in whose jurisdiction the public safety, convenience, and likely property damage may rest. He shall ascertain if the departments and authorities concerned require any measures or terms and conditions in addition to those undertaken by the Applicant.

(5) The Building Controller shall advise the Applicant whether the details provided and undertakings made are sufficient, and if not what further actions are required before the application can be approved.

(6) Upon receipt of -

(a) confirmation from the Applicant of his willingness to take all actions required under subsection (5); and

(b) proof that an appropriate insurance policy to cover public liability which will remain valid for the duration of the work has been taken; the Building Controller shall convey his approval (Schedule 8) of the application.

(7) A person shall not erect in a public place any scaffolding, gantry, hoarding, or barricade or such like, in connection with any work, on any building unless -

(a) approval has been obtained under this section; and

(b) such amount as the Building Controller considers appropriate as security has been deposited with him.

(8) This section does not relieve a person from the responsibility of providing the necessary safeguards to protect the user of a public place from danger resulting from an excavation made, an obstacle placed, or any material dropped by that person.

24. Existing buildings - (1) A person shall not change the use of a building unless a certificate of suitability for the proposed new use has been obtained from the Building Controller.

(2) An application (Schedule 9) for a certificate of suitability shall be made to the Building Controller with all relevant particulars and along with the fee prescribed in Schedule 4.

(3) The information required for the purpose of subsection (2) may include tests and checks to be carried out at the cost and expense of the Applicant.

(4) The Building Controller shall not issue a certificate of suitability unless he is satisfied -

(a) that the building complies with the proposed new use; and

(b) that the proposed use does not contravene the current planning regulations and appropriate physical planning principles.

(5) Where the Building Controller does not issue a certificate of suitability, he shall advise his reasons to the Applicant.

(6) The Building Controller shall issue a certificate of suitability (Schedule 10) if he is satisfied that the proposed new use will not unduly endanger the safety and health of the

public or of the users of the building or materially reduce any of their amenity.

(7) If the proposed new use of a building requires work to be done on or about the building for which a building permit is necessary under these Regulations, a certificate of suitability may be waived. Instead the new use of the building and any revised classification shall be shown on the completion certificate that will be issued after the changes to the building are completed.

25. Additional functions of the Building Controller - In addition to the powers and responsibilities of the Building Controller under the Act, he shall have the following functions.

(1) The Building controller shall not dispense with or relax the observation or performance of the Regulations or otherwise modify them except as provided in these Regulations.

(2) The Building Controller shall exercise all of his powers or functions under these Regulations reasonably. A person does not commit a breach of these Regulations by failing to comply with any unreasonable request, notice, or order of the Building Controller.

(3) The fact that the Building Controller may have unreasonably failed to issue a permit or certificate, serve a notice, make a request or give an order, is not a justification or excuse for a breach of these Regulations by the Applicant.

(4) A person shall not have a claim against the Government of Cook Islands or any of its officers on account of any loss suffered by reason of a failure by the Building Controller as specified in subsection (3).

(5) Where the Building Controller is required by these Regulations to consider, determine or satisfy himself on a particular matter on which it is reasonably necessary to exercise specialist professional skills and judgement that he does not possess, then he shall

- (a) delegate to some other person who is so qualified, those of the powers, duties, authorities, and jurisdiction of the Building Controller as are relevant to the specialised aspects of that particular matter; or
- (b) follow the procedure for the acceptance of design and construction given in Part A2 of the Code.

(6) Where the Building Controller has to consider matters, the jurisdiction of which overlaps with that of other Government officers or authorities, or where such jurisdiction is entirely with other Government officers or authorities, he shall discuss such matters with the officers and authorities concerned and obtain their consent, approval or determination before taking any action.

26. Building controller not obliged to consider other existing laws - The Building Controller in exercising his powers and functions under these Regulations is not obliged to consider, determine, or satisfy himself as to whether or not a matter or thing complies with any existing law other than the Act, these Regulations, and the Code.

27. Building Controller to interpret Regulations liberally and to be a judge of good practice unless established by the Code

-(1) The Building Controller shall interpret these Regulations in favour of public good and to prevent or punish the doing of things that are against public good. He shall accordingly give them such fair construction and interpretation as will best ensure the true intent, meaning and spirit of these Regulations.

(2) Subject to subsection (1) the building Controller shall when considering, determining or satisfying himself as to whether or not a matter or thing complies with these Regulations and the Code, apply the established principles of engineering and building design and construction, and of good trade practices in workmanship.

(3) Subject to subsections (1) and (2) any components, materials, or proprietary products not specifically covered by the Code; may be used subject to the following conditions -

- (a) that the Building Controller shall be satisfied that they have an established record of satisfactory performance in their intended use over a considerable time; or
- (b) that the manufacturer has -
 - (i) specifically designated them for the intended use;
 - (ii) supplied to their potential users clearly presented and adequate technical information on their relevant properties, method of installation and the like for the intended use; and
 - (iii) provided to the Building Controller relevant test information and assessments of their performance in the intended use, by an authority acceptable to the Building Controller.

28. Voluntary demolition - (1) A person who wants to demolish or pull down a building or part of a building shall apply (Schedule 11) to the Building Controller with details of the method proposed, safety precautions that will be taken, and precautions against nuisance and pollution.

(2) An application under subclause (1) is not required if -

- (a) only a small part of the building is proposed to be demolished;
- (b) it is a non-habitable outbuilding of 15 square meters or less;
- (c) it is a traditional Cook Islands Maori building such as a kikau house of 25 square meters or less; or
- (d) it is a structure such as a mast or antenna of less than 15 meters height, fence, retaining wall or free-standing wall or the like.

(3) The Building Controller may ask for supporting drawings and calculations for the demolition of complex buildings and structures, to ensure that the demolition will not endanger anyone and that adequate precautions for safety and against nuisance are taken.

(4) If the Building Controller is not satisfied with the method and precautions proposed, he shall ask the Applicant to make appropriate additions and alterations to his proposal so that the requirements are met.

(5) The Building Controller shall examine the application under subsection (1) with all the supporting

documents and if he is satisfied that the demolition will not endanger safety or health or create any nuisance or pollution, issue a demolition permit (Schedule 12).

29. Demolition under Section 13 of the Act - (1) As soon as it comes to the notice of the Building Controller -

(a) that a building is being erected or has been erected since coming into force of the Act, without a building permit under these Regulations, or

(b) that a building or structure constitutes a danger to the public or is derelict,

he shall serve a notice (Schedule 13) on the Owner or Lessee of the land concerned.

(2) The notice under subsection (1) shall ask the Owner or Lessee to stop forthwith any use or occupancy and further work on the building and either -

(a) apply (Schedule 1) for a building permit with the fee shown in item 7 of Schedule 4 as well as any penalty applicable under subsection 31(1), and with full details required under these Regulations; or

(b) demolish the building within 15 working days of service of the notice.

(3) Where an application for a building permit and the penalty fee stated in subsection (2)(a) have been received by the Building Controller, he shall process the application to consider the issue of a building permit under these Regulations.

(4) If an application, or the fee together with the penalty under subsection 2 (a) has not been received, and if no demolition of the work has been started within 5 working days of the service of the notice under subsection (2)(b), or if the work is not progressing satisfactorily after the issue of a building permit, the Building Controller shall serve an intent-to-demolish notice (Schedule 14) on the owner of the land concerned.

(5) The notice under subsection (4) shall state that if the offending work is not demolished within the period stated in the notice under subsection (2), the Building Controller shall take steps to demolish the building at the risk, cost and connected expenses of the owner of the land.

(6) If after the issue of the notice under subsection 4 the offending work has not been demolished within the period stated, the Building Controller may get it demolished and take expeditious steps to recover the debt from the owner of the land under subsection 13(4) of the Act.

(7) When it is warranted the Building Controller may treat any structure including a building, whether erected before or after the Act, to be dangerous to the public or derelict.

(8) Where the danger declared under subsection (6) is imminent, the Building Controller shall forthwith arrange for its immediate demolition without being obliged to give any notice to the owner of the land concerned or anyone else. The Building Controller shall treat the cost and associated expenses of such demolition as a debt due to the Crown from the owner of the land concerned, and shall take action to recover it expeditiously.

(9) Where the danger declared under subsection (7) is not imminent, the Building Controller shall serve a notice (Schedule 13) on the owner of the land concerned asking him to demolish the structure or building within 15 working days of the date of service of the notice.

(10) If demolition has not been completed after the service of the notice under subsection (9), the Building Controller shall treat the danger as imminent and take steps under subsection (8).

30. The Building Control Committee - (1) The Committee appointed by the Minister under Section 7 of the Act shall meet as often as its work may demand, but not less than once every 3 months.

(2) The decisions reached during the meetings of the Committee and the reasons for taking those decisions shall be recorded along with the signatures of the members attending. If any member has an opinion which is contrary to the decision of the majority of the members, such opinion shall also be recorded. The majority decision shall prevail.

(3) In addition to the provisions of subsection 10(3), the Committee shall carefully consider the likely effects on other provisions of the Code when considering requests under subsection 6(4).

(4) When there have been 4 or more requests under subsection 6(4) within any 12 month period, each from a different Applicant, for the exemption or variation from any particular provision of the Code, the Building Controller shall bring this information to the notice of the Committee. The Committee shall consider the detailed implications of such requests on the practicality of the subject provisions of the Code and examine whether there is a need to alter or delete the provisions.

(5) The Committee shall periodically examine the operation of the Code and these Regulations to see if there are any provisions in them which may inadvertently allow sub-standard work to be done on buildings or which may adversely affect the safety, health or amenity of the public and of the users of the building.

(6) Any proposed alteration or deletion of particular provisions of the Code or these Regulations that the Committee may feel necessary as a result of its examination under subsection (4) or (5), shall be fully discussed by it in the context of their implications to the safety, health and amenity of the public and of the users of the building, as well as of their implications to any other provision of the Code and these Regulations.

(7) The Committee shall submit to the Minister any decision arising from the operation of subsection (6) to amend or delete any provision of the Code or of these Regulations, along with the justification for their submission.

(8) The Minister may take steps to bring into effect the amendment or the deletion recommended by the Committee in its submission under subsection (7).

31. Offences and penalties - Every person who commits any of the following offences shall be liable on summary conviction, to the penalty shown against each offence -

(1) Erecting a building or part of a building without a valid building permit for which a permit is necessary under section 5 -

A fine equal to the building permit fee shown in Schedule 4 that is applicable to the building concerned, for every week or part of a week on which the offence is continues.

- (2) Failure to observe the provisions of the Code or acting contrary to the provisions of the Code while erecting a building, without obtaining an exemption from the Building Controller under these Regulations -
A fine not exceeding the building permit fee and not less than 20 percent of it, that is shown on Schedule 4 that is applicable to the building concerned, for every week or part of a week on which the offence is continued.
- (3) Committing a deviation or omission from the permitted work without obtaining prior approval from the Building Controller under section 14 -
A fine not exceeding one half of the building permit fee and not less than 20 percent of it, that is shown in Schedule 4 that is applicable to the building concerned, for every week or part of a week on which the offence is continued.
- (4) Obstructing the Building Controller or his delegate while carrying out his inspection, under section 17 or not facilitating such inspection -
A fine not exceeding the building permit fee and not less than 20 percent of it, that is shown in Schedule 4 that is applicable to the building concerned, for every occurrence of the event.
- (5) Occupying a building or part of a building without a certificate of completion under section 21 -
A fine not exceeding the building permit fee and not less than 20 percent of it, that is shown in Schedule 4 that is applicable to the building concerned, for every week or part of a week on which the offence is continued.
- (6) Using public places including streets or roads without prior permission under section 23 where it is necessary -
A fine not exceeding Five hundred dollars (\$500.00) and not less than One hundred dollars (\$100.00) and in the case of a continuing offence, a further fine of equal amount for every day on which the offence is continued.
- (7) Changing the use or occupancy of a building without a certificate of suitability under section 24 when it is necessary -
A fine not exceeding Five hundred dollars (\$500.00) and not less than Fifty dollars (\$50.00) and in the case of a continuing offence, a further fine of equal amount for every day on which the offence is continued.
- (8) Demolishing a building or part of a building without a demolition permit that is necessary under section 28 -
A fine equal to the demolition permit fee shown in Schedule 4 that is applicable to the building concerned, for every week or part of a week on which the offence is continued.

32. Appeals against the determinations of the Building Controller - (1) Any person who is not satisfied with any decision or order of the Building Controller or his delegate may submit relevant details to the Appeals Board appointed by the Minister under Section 18 of the Act.

(2) One member of the Board shall be from the building industry, another from among consultants associated with the

building industry and the third, a government servant other than from the Building Controller's office but with reasonable interest in and knowledge of buildings. The Minister shall nominate one of the members as the Chairman of the Board.

(3) The secretarial assistance for the Board shall be provided by the office of the Crown Law and all correspondence shall be addressed to the Chairman of the Appeals Board and sent to the Solicitor General.

(4) The Board shall meet once every month to consider outstanding appeals. If there are no outstanding appeals the meeting concerned shall be postponed.

(5) Unless circumstances dictate otherwise, the Board shall give its decision on any appeal during its first two sittings after the receipt of the appeal.

(6) Any evidence called by the Board under Section 18 of the Act shall be given with utmost promptness.

(7) The Board shall take into account the public good as regards safety, health and amenity as well as the individual circumstances of the case, in reaching its decisions.

(8) All decisions of the Board shall conform to the Act, these Regulations, and the Code.

(9) When conveying its decisions to the appellant and the Building Controller, the Board shall allocate reasonable costs against the appellant if his appeal is wholly or partly rejected.

(10) All appeals sent to the Board shall be accompanied by a deposit equal to 20 percent of the total monetary amount claimed in the appeal, but in no case greater than Five thousand dollars (\$5,000.00). The Crown Law's office shall temporarily credit the deposit to the Government Account. After the Board has given its decision on the appeal, any costs allocated to the appellant under subsection (9) shall be finally credited from the temporary credit of the deposit. Any balance shall be refunded to the appellant within 7 working days after the Board's decision. If the deposit falls short of the Board's allocation of costs, the appellant shall be given 7 days to pay the outstanding debt to the Government.

33. Recognition of only written communication - All orders, notices, applications, requests and such other communication shall be recognised only if in writing.

M. Taruia.

Clerk of the Executive Council

These Regulations are administered by the Ministry of Works

Sect. 6

SCHEDULE 1

Building Permit Application

To:

Place: -----

Date: -----

The Building Controller
P O Box 102
RAROTONGA

Dear Sir

I, ----- of -----
(name) (address)

apply for a permit to build -----
(brief description of building)

The building will be used for -----
(show use or occupancy)

*I attach the following details for your reference.

- (a) Locality plan.
- (b) Working drawings including structural details, plumbing, sanitation and earthwork.
- (c) Architectural drawings which also show the use of each room.
- (d) Structural design criteria used.
- (e) Design calculations and diagrams.
- (f) Fire engineering calculations.
- (g) Test reports and certificates
- (h) Specifications
- (i)
- (j)
- (k)
- (l)

My builder is -----
(name and address)

Yours faithfully

*(Owner/Lessee)

*Delete as appropriate

Sect. 7

SCHEDULE 2

Place: -----

Date: -----

To:

The Building Controller
P O Box 102
RAROTONGA

Dear Sir

With referencetomyapplicationdated-----

for building -----

(brief description of building)

I have arranged for the following to supervise and direct the work on my behalf:

Names) -----

Titles) -----

Qualification) -----

and experience) -----

I undertake to treat all lawful instructions given by you and your officers to -----

(name and title)

----- as if they are instructions given by you to me.

Yours faithfully

*(Owner/Lessee)

*Delete as appropriate

Sect. 10

SCHEDULE 3

Building Permit

Permit No.: -----

Date: -----

To:

Dear Sir\Madam

Please refer to your building permit application dated -----, supporting documents given by you, and further correspondence between us. You are hereby permitted to erect

----- for use as -----
(brief description of building)

(show use or occupancy)

You shall erect the building to the complete details shown on the documents as finally approved by me and conforming to all the relevant requirements of the National Building Code for the Cook Islands.

In case you intend to make any change to the approved details or to the intended use or occupancy of the building, you are required to take my prior approval.

The currency of this building permit will expire at the end of 12 months from the date of issue unless extended before its expiry.

Enclosed are two copies of the documents connected with your application and approved by me with alterations as were required. One copy shall be maintained by you at the building site and shall be available during my inspections.

Yours faithfully

Building Controller

SCHEDULE 4Schedule of Fees

The following shall be the fees for applications and requests made to the Building Controller.

1. Subsection 6(1) - Building permit fee

- | | | |
|-----|---|---|
| (a) | Class 1, 2, 4 and 10 buildings and structures the floor area of which can be measured | For buildings located in Rarotonga, \$1 per square meter of total floor area of the buildings, subject to a minimum of \$10. For buildings located in Aitutaki the fee shall be 60 percent of that for Rarotonga, subject to a minimum of \$10. For buildings located in all other islands the fee shall be 25 percent of that for Rarotonga, subject to a minimum of \$10. |
| (b) | Class 10 structures which require a building permit and which cannot be measured by floor area, such as retaining walls, fences, masts etc. - | |
| | - water tanks and solar water heaters | Exempt from fees |
| | - retaining walls | \$100 in Rarotonga, \$60 in Aitutaki and \$25 in all other islands. |
| | - fences, free standing walls masts, etc. | \$50 in Rarotonga, \$30 in Aitutaki and \$10 in all other islands. |
| (c) | Class 3 buildings | \$4 per square meter of the total floor area of the buildings, subject to a minimum of \$200. |
| (d) | Class 5, 6, 7, 8 and 9 buildings | \$2 per square meter of the total floor area of the buildings, subject to a minimum of \$100. |

Notes:

- (1) The classification of buildings correspond to the Code classification.
- (2) Total floor area of a building means the sum of the floor areas of all the storeys in the building.

2. Subsection 9(4) - Fee for examination of documents

The fee for the examination of documents under subregulation 9(4) shall be 10 percent of the building permit fee paid for the building concerned, subject to a minimum of \$10.

3. Subsection 16(2) - Application to renew a building permit

The fee payable for the renewal of a building permit shall be 20 percent of the fee that was paid to get the permit originally.

4. Section 20 - Request for inspection on completion of work

The fee payable for the inspection of a building on completion of the work shall be 10 percent of the fee paid for the building under subsection 6(1), subject to a minimum of \$10 for each inspection.

5. Subsection 23(1) - Permission to use public places

The fee shall be \$100 for each application.

6. Subsection 4(2) - Application for Certificate of Suitability

The fee shall be 20 percent of the building permit fee payable under subsection 6(1) for the building concerned as if it was being built for the proposed new use.

7. Subsection 29(2)(a) - Application for a building permit resulting from a demolition notice

The fee accompanying an application for a building permit which has resulted from the service of a demolition notice under Section 13 of the Act shall be 4 times the corresponding fee which shall otherwise be applicable against item 1 of this Schedule under subsection 6(1).

Sect. 18

SCHEDULE 5

Stop-work Notice

Date: -----

To:

Dear Sir\Madam

Reference -----

It has come to my notice that the work you are carrying out at -----
does not comply with the Building Regulations. I understand that -----

Therefore I ask you under Section 18 of the Regulations to stop work forthwith to the extent

----- for a period of -----

During the period that the work is stopped under this notice you may submit -----

On receipt of these details you may be allowed to resume work on the condition that you shall meet all of the relevant requirements of the Building Regulations and the National Building Code.

Yours faithfully

Building Controller

Sect. 21

SCHEDULE 6

Certificate of Completion

Date: -----

To:

Dear Sir/Madam

Reference: Building Permit No.----- of -----

I have inspected -----
(brief description of building)

----- on -----, I have determined within the limitations imposed by the completed nature of the work and of my responsibilities, that the building complies with the Building Regulations and the National Building Code for use as -----
-----.

The classification of the building under the Code is Class -----.

You shall not use or occupy nor allow nor suffer any other person to use or occupy the building for any other purpose than what is permitted by the classification given in this certificate.

If any change in use is contemplated, you are required to submit an application under Section 24 of the Building Regulations for my consideration.

Yours faithfully

Building Controller

Subsection 23(1)

SCHEDULE 7

Application for Permission to Use Public Places

Date:

To:

The Building Controller
P O Box 102
BAROTONGA

Dear Sir

The following work is in *progress/contemplated at

Details of work

Permit No.)

if applicable)

In order to carry out the work there is a need to use the public *place\road\street known as -

.....from to

The reasons for this request are:-

.....
.....
.....
.....

I enclose the following details and undertakings for your reference and consideration:-

.....
.....
.....
.....

I request permission under Section 23 of the Building Regulations for my proposal.

Yours faithfully

*(Owner/Lessee)

*Delete as appropriate

Subsection 23(6)

SCHEDULE 8

Permission to Use Public Places

Date: -----

To:

Dear Sir/Madam

Please refer to your application dated ----- regarding the use of -----
----- from ----- to -----
(date) (date)

Permission is hereby granted to your request in consideration of the following:-

- (a) You have deposited \$----- as security against

- (b) You have taken public liability insurance to a cover of
\$----- with -----

for the period for which permission is required.
- (c) You have undertaken to:-
 - (i) -----
 - (ii) -----
 - (iii) -----
 - (iv) -----

This permission will lose its validity if any of your undertakings are not fulfilled or if the insurance policy lapses.

Yours faithfully

Building Controller

Subsection 24(2)

SCHEDULE 9

Application for Certificate of Suitability

Date: -----

To:

The Building Controller
P O Box 102
RAROTONGA

Dear Sir

The building to the following particulars is currently permitted to be used for -----

I request you to consider a change of use of the building to -----

In justification of my request I enclose the following particulars:

- (a) -----
- (b) -----
- (c) -----
- (d) -----

Yours faithfully

*(Owner/Lessee)

*Delete as appropriate.

Subsection 24(6)

SCHEDULE 10

Certificate of Suitability

No.: -----

Date: -----

To:

Dear Sir/Madam

Please refer to your Application dated ----- for a certificate of suitability in relation
to ----- located at -----.

I hereby authorise you to use the building for -----.

The revised classification of the building is Class -----.

Yours faithfully

Building Controller

Subsection 28(1)

SCHEDULE 11

Application for a Demolition Permit

Date: _____

To:

The Building Controller
P O Box 102
RAROTONGA

Dear Sir

I request you to issue me a Demolition Permit in order to demolish

_____ at _____

I undertake to take precautions to the following details:

Yours faithfully

*(Owner/Lessee)

*Delete as appropriate

Subsection 28(5)

SCHEDULE 12

Demolition Permit

No.: -----

Date: -----

To:

Dear Sir/Madam

Please refer to your application dated ----- for the demolition of -----

located at -----.

You are hereby permitted to demolish the building by the method proposed by you and as approved by me. You shall take all of the agreed precautions.

Yours faithfully

Building Controller

Subsection 29(1)

SCHEDULE 13

Demolition Notice Under Section 13 of the Act

No.: -----

Date: -----

To:

Dear Sir/Madam

It has come to my notice that:-

*(a) You have *commenced/erected -----

----- located at -----

----- without a building permit.

*(b) -----

----- located at ----- is in a

*dangerous/derelict condition and that you are its *owner/lessee.

You are hereby asked under Section 29 of the Building Regulations to stop all work and any occupancy forthwith, and -

- (a) either submit an application for a building permit along with all relevant details and the prescribed fee and penalty, within 5 working days of the date of service of this notice, or
- (b) demolish the building taking all necessary precautions, and pay any applicable penalty within 15 working days of the service of this notice.

Unless I receive a satisfactory response from you to this notice, I shall take steps to demolish the building at your entire risk, cost and connected expenses, as well as take any other action available under law.

Yours faithfully

Building Controller

*Delete as appropriate

Subsection 29(4)

SCHEDULE 14

Intent to Demolish Notice

No.: -----

Date: -----

To:

Dear Sir/Madam

Please refer to my notice no. ----- served on you on ----- . We have not received any satisfactory response from you in that:-

*(a) You have failed to take any action.

*(b) You have made no satisfactory progress with the work

after Building Permit No. ----- of ----- was issued.

You are therefore served this notice of our intent to demolish the building at your sole risk, cost and connected expenses. We shall proceed with the demolition unless you have demolished the work by ----- . No further notice will be given to you.

Yours faithfully

Building Controller

*Delete as appropriate