2023

Legal and Institutional Arrangements Report

Fiji National Building Code Update

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Acronyms for Government and Agencies

DBGA	Department of Building and Government Architect
DTCP	Department of Town and Country Planning
MOE	Ministry of the Environment
MOH	Ministry of Housing
MHMS	Ministry of Health and Medical Services
MLG	Ministry of Local Government
MPWM	Ministry of Public Works, Meteorological Services and Transport
MRMD	Ministry of Rural and Maritime Development and Disaster Management
PRIF	Pacific Region Infrastructure Facility

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1.0 BACKGROUND

.1 PURPOSE

The Government of Fiji in partnership with the Asian Development Bank is currently undertaking an update to the Fiji National Building Code (FNBC) and the Fiji Home Builders Manual (FHBM) as part of a strategy to improve health and safety, and incorporate climate resilience into the Building Code as required in the recently approved Climate Change Act, 2021. The 15-month project began on May 31st, 2022, and is expected to be completed in July, 2023.

To prepare for the approval and implementation of the two documents, the following supporting documents and activities are required to be prepared by the Consulting Team:

- Legal and Institutional Arrangements Report
- Compliance and Enforcement Report
- Capacity Building 5-Year Terms of Reference
- Media Strategy
- Parliamentary Submission
- Website Launch

The intent of the above-noted Legal and Institutional Arrangements (LIA) Report is to examine the current legal and institutional framework in Fiji and outline a strategy for a new legislative structure for the approval and implementation of the FNBC. The report will also inform the preparation of the following

- Compliance and Enforcement Report
- Capacity Building 5-Year Terms of Reference
- Parliamentary Submission Report

As the first in a series of implementation documents, the LIA Report will be the basis from which other documents will be created.

Specific objectives for the LIA Report, as indicated in the Terms of Reference, include the items listed in Figure 1 below. It should be noted that since the LIA Report precedes the other documents listed above, it may contain strategies or recommendations that may later be updated as more information and stakeholder feedback become available.

1. Review institutional arrangements, regulatory frameworks and building control legislation including:
   - Public Health Act 1935;
   - Public Health (NBC) Regulations 2004;
   - Regulations of Building Permits Act 2017;
   - municipal bylaws, and
   - related governance, environmental, climate change, trade standards, planning, and development legislation.

2. Review, investigate, summarize, and benchmark Fiji's building control legislation against comparable Pacific Island country legislation and building codes.

3. Recommend how the building control legislation should be improved and rationalized, the building legislation harmonized with related legislation and how institutional arrangements can be strengthened and better administered, including:
   - drafting a new FNBC Bill;
   - moving administrative and management responsibilities from the Ministry of Health and Medical Services (MHCD) to the MOIMS;
   - mandating a National Building Board and central control body responsible for the administration and management of the legislation;
   - clearly defining the lines of responsibility between the public and private sectors, central government, administrative divisions, municipal councils, and provincial authorities;
   - how arrangements for building application processing, including consideration of a "one-stop-shop", and enforcing compliance can be improved, and
   - mandating a process for periodic review to keep the FNBC up-to-date and relevant.

Figure 1: Objectives in the Terms of Reference for the LIA Report

.2 SYNOPSIS

The Fiji National Building Code (FNBC) and the Fiji Home Building Manual (FHBM) were both published in 1990. The FNBC was approved as a Regulation under the Public Health Act, 2004, with full compliance required, and the FHBM was adopted as a Guideline that is recommended to be followed. However, until Cyclone Winston struck in 2016, the FNBC and FHBM were not widely known or used. As a result of a promotion strategy by the Government of Fiji, there is now a wider appreciation of the FNBC within the building industry. In the public sector, most buildings constructed through the Ministry of Economy's Construction Implementation Unit are largely compliant with the FNBC, as well as public buildings and works constructed by the Department of the Government Architect.

Due to the high cost of building construction, FNBC compliance was not regularly enforced and only used for buildings needing cyclone certification for insurance purposes in urban boundaries. No change is proposed to the legal status and enforcement of the two documents as a result of the update. That is, the FNBC will continue to be a mandatory regulation that must be complied with, while the FHBM will remain as a guideline.

In 2016, the Government of Fiji decided to transfer the responsibility of administering the building permit approval process from the Ministry of Health to the Local Authorities with the Ministry of Public Works, Meteorological Services and Transport (MPWM) as the primary administrative body of the

FNBC. Consequently, processing of building permit applications and inspections during construction also changed ownership as shown in Table 1:

Table 1: Change in Administrative Structure

Task	Administrative Body (prior to 2017)	Current
Processing Building Permit Applications	MHMS (Ministry of Health and Medical Services)	**Urban + leased rural land (building permit required)** Large-scale projects – Local Authority, sometimes MPWM Small-scale projects - Local Authority Government projects – MPWM **Rural iTaukei (no building permit required at present)** Ministry of Housing (MOH), Ministry of Local Government (MLG) and Ministry of iTaukei (MIA)
Site Inspections During Construction	MHMS, in association with NFA (fire), EFL (electrical) and WAF (water)	**Urban + leased rural land** – Local Authorities in association with NFA (fire), EFL (electrical), WAF (water). MOE (environmental impacts), MHMS (kitchens, plumbing) **Rural iTaukei** – MOH, MRWD,, MIA and iTaukei Land Trust Board

As a result of the administrative change, there are a greater number of people that are required to understand and administer the FNBC than previously so capacity will have to be increased.

To assist in the execution of the change-over from Ministry of Health and Medical Services (MHMS) to Local Authorities, MOH, MRWD, and MPWM, the Legal and Institutional Arrangements Report will suggest a framework to support the transfer of responsibilities within a new legislative framework. The framework will be a starting point for further refinement as the project progresses.

Analysis and recommendations for compliance, enforcement and capacity building are not part of this report and will be covered in separate documents, however, a summary is provided in Appendix B.

.3 EXPECTED OUTCOME

The Legal and Institutional Arrangements Report is the first of the supporting documents for the update to the FNBC and FHBM, and sets the stage for the remainder of the implementation strategy. The in-depth investigation of the legal framework in Fiji is necessary to ensure the proposed implementation strategy is relevant, practical and achievable.

Once approved by the Government of Fiji, the recommendations should be used as a plan of action to enable the approval of the updated Fiji Building Code, associated legislation (Building Act and Building Regulations) and the execution of the building permit approval process. The recommendations will inform the preparation of the parliamentary submission report.

2.0 EXISTING LAWS AFFECTING BUILDING PERMIT APPROVAL PROCESS

.1 PUBLIC HEALTH ACT (1935)

Overview

The Public Health Act came into force in 1934 and is the governing legislation that regulates the FNBC.

Part II establishes the Central Board of Health to primarily administer both the Act and Regulations, and a public health officer in each Local Authority to perform inspections. Part II further extends the functions of the Medical Officer of Health to include among other things, matters relating to buildings. However, the Central Board of Health is no longer a decision-making body that determines matters relating to the Building Code since the transition of the administration of the FNBC to the Local Authority (for small-scale building approvals) and DTCP (for large-scale building approvals) respectively.

Part III Buildings at present continues to have health and safety standards for building sites, demolition and removal of buildings, and sanitation, as follows:

Housing outside of Town Boundaries – Sanitation, Grading and Drainage

Clauses 18 to 20 set standards for site drainage and grading for dwellings used for business purposes, requiring that dwelling sites show access and the course of proper drainage, and are filled in with levelled areas to the satisfaction of the local authority.

Clauses 30-36 require that all existing and new buildings intended for human habitation be provided with privies and proper drainage for sufficient carrying off of storm and slop water (including construction of a main drain) to the satisfaction of the local authority.

Clause 37 provides standards regulating the construction, relocation and removal of cesspits, and the requirement for the owner/occupier of house or building to do so within a reasonable time. Provision of privies and cesspits are mandatory and failure to do so is a punishable offense as indicated in Clause 38.

All Buildings – Demolition and Removals

Clauses 21 to 29 apply to all buildings and contain standards for when a building is considered to be unsafe and unfit for human habitation, and establishes the authority of the Medical Officer of Health to order demolition if the dwelling is rendered unfit for human habitation or occupation (Clause 24). Although inspections for buildings during construction were transferred from the Ministry of Health to local authorities, inspections and declaring a building unsafe for human habitation and ordering it to be demolished and removed remains with the Ministry of Health under the Public Health Act and also with the FNBC which at present is a regulation of the Public Health Act.

Regulations to Authorize the FNBC

The authority to create the National Building Code is contained in Clause 39 of the Public Health Act 1935, which indicates such regulations may contain standards for:

a) type, position, construction and maintenance of privies and the number of privies to be provided in respect of any particular class of buildings

and

b) construction of buildings including the sites, plans, building lines, air space, drainage, access, materials, workmanship, ventilation, overcrowding, maintenance and occupation thereof, and such matters relating to buildings as the Board may consider necessary.

Regulations for Buildings Used for Manufacture, Preparation, Storage, Distribution, Sale or Consumption of Food

Health and safety of food handling and consumption in buildings is laid out in Clause 40, with Section (11) enabling the Board of Health to create regulations for securing the suitable construction, maintenance, decoration, lighting, ventilation, water supply, sanitation and cleanliness of any such premises or vehicles used for the manufacture, preparation, storage, packing, carriage or delivery of food or drink for sale. Standards for these items are contained in the FNBC 1990 and will be transferred to the FNBC 2023 update.

Bakehouses

Clauses 43 to 47 have specific requirements for bakehouses in that they must be equipped with privies, ensuring drains to convey sewage are properly sealed, and providing ventilation. Clause 44 lists the penalty (fine) for not complying with Clause 43.

Common Lodging-House

Part X contains requirements for the operation of common lodging-houses in Clauses 92 to 102. Clause 98 enables the Board of Health to make regulation for sufficiency of water supply for privy, washing, drainage and dustbin accommodation as well as collection and removal or refuse. All of these provisions are included in the FNBC 1990, and will be transferred to the FNBC 2023 update.

Wells

Clause 106 provides that wells should be sufficiently covered and properly protected to the satisfaction of health inspector to prevent ingress of mosquitos.

Water Supply

Part XIII, Clauses 120 – 126 contain requirements for the supply of safe drinking water to houses, and for covering of wells. Penalties for every person who in any way defiles or pollutes or permits or suffers drainage or refuse from his land to flow into or be deposited in any watercourse, stream, lake, pond or reservoir are provided in Clause 126.

.2 PUBLIC HEALTH (NATIONAL BUILDING CODE) REGULATIONS 2004

The Public Health (National Building Code) Regulations 2004 is a subsidiary legislation to the Public Health Act 1935 that enacts and regulates the FNBC. As part of its regulatory role to enforce the FNBC, the Regulations prescribes the offence and liability for failure to comply with the FNBC, to a conviction not exceeding $200, and a further fine of $4 per day for the continuation of the offence post conviction.

PUBLIC HEALTH (NATIONAL BUILDING CODE) REGULATIONS 2004

[PHA 29,040] National Building Code

3 **(1)** The National Building Code set out in the Schedule shall be used for construction of all buildings to which the Act applies, for all classes of occupancy.

(2) If a regulation or by-law made under the Act or under any other written law before or after the commencement of these Regulations is inconsistent with any requirement under the National Building Code, the requirement in the Code prevails.

.3 REGULATION OF BUILDING PERMITS ACT 2017

The RBPA Act, 2017, sets up procedures to fast-track the building permit approval process for applicants who wish to pay a fee for the fast-track service. It also sets up the establishment and operational procedures for the Building Permit Evaluation Committee, an organization consisting of members appointed by the Minister responsible for industry and trade.

The functions of the Building Permit Evaluation Committee include but are not limited to the following:

a) Receive and administer building permit applications

b) Expedite the process for obtaining building permits

c) Oversee the responsiveness of government agencies to execute appropriate assessments and processing

d) Provide a tribunal to make decisions on any administrative issues that may arise

The Act allows any person seeking to obtain a building permit (excluding buildings for a residential purpose where the owner of the building is not in the business of owning or leasing real property) to choose to apply to the Committee instead of undergoing the typical process of applying through the local authority. The application form and drawings must be submitted along with a substantial application fee.

A Regulation of the Act was approved in 2020 and specifies the length of time for approval agencies to issue a building permit for sections 6, 7, 9 and 13 of the Act, and includes a schedule of an Application Form for a Building Permit. The Schedule also includes provisions for a Traffic Impact Assessment, Environmental Impact Assessment, water connection, fire inspection / approval, occupational health and safety, and electricity installation.

.4 OTHER SECONDARY LEGISLATION

.1 CLIMATE CHANGE ACT 2021

The CCA, 2021, establishes a framework for the Government of Fiji to address the impacts of climate change and develop a comprehensive strategy to reduce, measure and report greenhouse gas emissions to achieve the United Nations Sustainable Development Goals of net zero emissions by 2050 as per section 38(1) of the Act. It identifies the sustainable objectives that must be considered in all undertakings by government, agencies, development and other land use activities. It is applicable to all things "done in, on, above, or below Fiji's land and airspace, including its internal waters, territorial seas, archipelagic waters, contiguous zone, exclusive economic zone, continental shelf, and seabed" according to Clause 2. As such, the update to the National Building Code is required to conform with the principles, standards and directives in the Act.

GUIDING POLICIES

According to Section 8 (2), the Government of Fiji must prepare the following documents, to which all other policies in Fiji must conform:

National Climate Change Policy (NCCP) 2018-2030 - describes the guiding vision, principles, institutional arrangements, approaches, and objectives for tackling climate change issues in Fiji which affects all activities in Fiji. Other than requiring conformity with climate and sustainability objectives and principles, there are no specific standards for building that would affect the update to the FNBC.

Fiji's Low Emission Development Strategy (LEDS) – created in 2018, the overall aim is to enhance Fiji's ability to plan for decarbonisation of its economy by providing a framework and a pathway under Fiji's NDC to reduce greenhouse gas (GHG) emissions to 2030 and beyond. There are no standards or policies that would affect the update to the FNBC.

National Adaptation Plan (NAP) – Launched in 2018, the NAP is a 5-year overarching plan that provides public, private and civil society stakeholders and development partners a list of 160 prioritised adaptation needs across various sectors. There are 12 provisions for human settlements, including ensuring that every rural community has at least one building resilient to

a Category 4 cyclone and others requiring that decisions on permitting development in areas vulnerable to climate impacts be strengthened. Adaptation Measure 14.8 requires that the National Building Code be strengthened and enforced for critical facilities and public assets.

National Development Plan (NDP) – a 5-year and 20-year plan of action to implement the vision and objectives in the NCCP published in 2017. Section 3.2.9 Sustainable Cities and Towns envisions that town and city centres will promote green growth initiatives including green energy, effective and environmentally friendly transport systems, security for inhabitants, green building construction, technology advancement and new techniques for solid waste management–all for the purpose of promoting a clean and green environment.

The goal for creating sustainable urban centres includes the following directives that directly affect the update to the FNBC:

a) Incentivise households and businesses to invest in renewable energy and adopt energy efficiency practices and technology including provision for subsidies.

b) Develop and legislate energy efficiency standards for new buildings. All new buildings should have an energy conservation plan before they are approved.

c) Introduce a rating system based on energy efficiency level of buildings (both existing and new) relative to legislated standards. Achievement of certain standards will earn certification and receive benefits from government. Start with voluntary assessment then move to mandatory assessment 10 years after standards have been adopted.

d) Examine options for effective and efficient rainwater harvesting systems within urban centres. The recommended solutions for each urban centre to be integrated into Municipal plans.

National Ocean Policy (NOP) 2020 – 2030 - establishes the process and principles to encourage coordination across sectors, to facilitate collaboration among stakeholders and ultimately maintain a healthy ocean through ecosystem-based management approaches. There are no policies that directly affect the update to the FNBC.

As per the date of this report, the CCD (Climate Change Division) of the Government of Fiji has completed the above documents and is now in the process of developing implementation strategies.

In addition, Sustainable Development Goals or "SDGs" developed by the United Nations as adopted in Resolution 70/1 of the United Nations General Assembly for the year 2030, and any subsequent sustainable development goals agreed by the United Nations are to provide standards and direction.

PART 5 – CLIMATE CHANGE OBLIGATIONS OF STATE ENTITIES

According to Section 18, the Government of Fiji and agencies must ensure consistency with the objectives and principles of the Act in all undertakings, and in particular, be consistent with the NCCP and other approved policy documents. Section 19 indicates that decision-makers must promote and ensure consistency with climate objectives, climate policies, and any guidelines issued by the Minister.

The potential impacts of climate change relevant to the decision under subsection (3) that must be considered in development decisions include:

- potential biogeochemical and biogeophysical impacts
- potential long and short term economic, environmental, health and other social impacts
- potential contributions to climate resilience
- potential beneficial and detrimental impacts
- potential direct and indirect impacts
- potential cumulative impacts

PART 9 – CLIMATE CHANGE MITIGATION

Under Section 43, the Minister may introduce and implement fiscal incentives and national levies to encourage public and private investment in energy efficient infrastructure and zero-waste infrastructure and processes. The Minister also has power to make regulations and develop policies for the construction of sustainable, low-emissions, energy efficient and climate resilient infrastructure and buildings. This suggests a potential for cooperation between the Office of the Prime Minister (responsible for climate) and the Ministry of Public Works, Meteorological Services and Transport (responsible for the FNBC update) to collaborate on regulations and policies for climate resilient buildings.

CLIMATE RESILIENT INFRASTRUCTURE

All infrastructure proposals are required to have a climate risk assessment prepared according to Section 71 that will be used to decide whether to proceed with the proposed infrastructure project. Guidelines for how to prepare the climate risk assessments are to be published by MOE. Preparing a climate risk assessment, when this process is approved, will likely influence building design, and may be a tool that is used in reviewing and approving building permit applications.

CLIMATE RESILIENT BUILDINGS

Requirements for the National Building Code to be strengthened to include standards for climate resilience are contained Section 72. The content, scope and scale of the FNBC is to be amended to comply with the objectives and principles of the Act and must take into consideration the mitigation and adaptation objectives expressed in the National Development Plan, NDC, NCCP, NAP and any other relevant policy instruments.

SUSTAINABLE FINANCING

Part 14 sets up a framework to develop a sustainable financing strategy to assist with the increased costs associated with implementing climate and sustainable development. The CCD is currently developing a strategy that implements the objectives in this section. Opportunities for financial support for climate resilient buildings are established here and is an avenue that should be explored for the implementation of the climate resilient policies in the FNBC update.

PART 16 – ENFORCEMENT

This section establishes that any person who willingly defies the Act, willingly provides false information, or does not provide information required by the Act is guilty of an offence and could be fined up to $750,000.

The Court has the authority to require the demolition or removal of infrastructure or reinstatement of infrastructure or land to the state the infrastructure or land was in immediately before the offence or breach. The Court can also require restoration, improvement or remediation of the area. These standards are examples of strong penalties that relate to today's economy that could be used for the compliance section in the FNBC update.

.2 DRAINAGE ACT (1985)

The Drainage Act is relevant to building construction in Fiji as it defines drainage works, among other things, as the "construction, repair, raising, lowering, widening, strengthening, altering or removal of any embankment, dam barrier, sluice, weir, wall, bridge, culvert or groyne or of any structure or erection for the purpose of defense again water", which is applicable to buildings constructed in coastal or flood-prone areas.

The Act defines the process for establishing a drainage area, and an appointed Drainage Board to oversee the maintenance and improvements of the drainage area. Each Drainage Board can draw from the drainage fund to achieve its agenda.

The Drainage Board, by virtue of Clause 20, can require landowners to lay, build, dig, construct, improve, maintain or alter any private drain to further the operations and effectiveness of public drainage throughout the affected area. The Drainage Board can require landowners, at their own expense, to modify or remove any tree or vegetation whose fruit, leaves, branches tree-trunk or other part might impede the free flow of water in a public drain, or otherwise interfere with its function.

Any person found guilty of interfering, compromising or damaging any public drainage works will be found guilty of an offence and liable to pay a fine up to $200 and/or imprisonment for up to 6 months.

Drainage areas established by the Act include:

1) Ba/Tavua Drainage Area
2) Dreketi/Bua Drainage Area
3) Labasa Drainage Area
4) Lautoka Drainage Area
5) Nadi Drainage Area
6) Ra Drainage Area
7) Sigatoka Drainage Area

Drainage areas have been deleted by the Amendment Act 2018.

Given the increasing threat that flooding causes to the community at large as a result of the impacts of climate change, Fiji passed the Drainage (Budget Amendment) Act 2018 which came into force on 1st August 2018. The 2018 Amendment Act transitions the maintenance of drainage systems and management of waterways as the responsibility of the Ministry of Waterways.

Penalties upon conviction for non-compliance with the Act include: a fine not exceeding $25,000 or imprisonment for a term not exceeding 10 years or both; in the case of a body corporate, a fine not

exceeding $100,000; for a director, manager or officer in charge at the material time, a fine not exceeding $25,000 or imprisonment for a term not exceeding 10 years or both.

.3 HEALTH AND SAFETY AT WORK ACT 1996

The Health and Safety at Work Act ensures a minimum safety standard for workplaces in Fiji regarding the protection of workers (excluding domestic workers) resulting from, among other things, improper use of chemicals, improper ventilation or air quality, and the like. Although the Act principally refers to the operation of a building or workplace after a Certificate of Occupancy is granted, the Ministry of Employment, Productivity and Industrial Relations (MEPIR) who is responsible for the Act is circulated all building permit applications that involve a workplace for comments and suggestions. The MEPIR representative reviews the building permit application to see if the building post-construction would result in a situation that would compromise the standards in the Health and Safety Act. If MEPIR's representative's opinion is that the Health and Safety Act would be compromised, they will report on that to DTCP or the Local Authority as part of the building permit approval process.

Although not required, it would be prudent for an architect or engineer designing a place of employment to refer to the Health and Safety at Work Act to ensure that safety standards will not be compromised.

.4 ENVIRONMENTAL MANAGEMENT ACT, 2005

The purpose of the EMA is to regulate and manage the impacts of development on significant environmental resources and establish the Environmental Management Board and other mechanisms for regulation and enforcement of provisions in the Act. The EMA requires all development proposals that may pose potential environmental impacts to be submitted to the Department of Environment for an Environmental Impact Assessment (EIA).

The process for preparing and evaluating Environmental Impact Assessments is provided in Part 4, and has an indirect impact on the FNBC update. Section 27 establishes that a development proposal must not proceed unless an EIA Report has been approved. The content of a typical EIA includes identification of pre-construction environmental features that are vulnerable, and recommendations for protection measures to be employed during site construction to protect the vulnerable features.

The preparation of the EIA is typically completed during the Development Consent stage since it allows the Government of Fiji to refuse a development if it does not comply with the Act. Site plans and EIA prepared for Development Consent are reviewed at the Building Permit stage and help to inform decision-making. During construction, inspectors from the Ministry of the Environment monitor the implementation of the recommendations in the EIA so that there is minimal impact to the environment during construction.

.5 RIGHTS OF PERSONS WITH DISABILITY ACT, 2018

The RPDA was approved in 2018 to protect people with disabilities and ensure they have full access, enjoyment, and use of public lands, buildings and facilities in Fiji. Although much of the Act is devoted

to administration in setting up the National Council for Personal with Disability committee, section 29 refers to the rights of people with disabilities to:

a) have reasonable access to all indoor and outdoor places
b) have existing buildings adapted to enable people of all abilities to use them
c) have public buildings provide information, signage and forms in Braille.

There are no specific standards for buildings other than Section 29, but it effectively sets the framework for detailed regulations or standards to be developed elsewhere.

The Pacific Accessibility Tool Kit was recently prepared (September, 2023) and is endorsed by the NCPD. It provides detailed guidelines to accommodate accessibility in buildings and on sites, and serves as a valuable resource. Many guidelines from this document will be incorporated into the FNBC update.

.6 TOWN PLANNING ACT, 1978

The Town Planning Act, 1978, is an update of the 1946 Act, and has provisions for the administrative powers and operations of the Director of Town and Country Planning, and the Town and Country Planning Advisory Committee. It also has standards for the creation and content of town planning schemes which regulate the location of land uses, transportation, parks, open space, etc., within an urban area. The Town Planning Scheme must be complied with when applying for permission to build within an urban area. Therefore, it has standards for the principle of use and does not relate to the FNBC except that obtaining permission for Development Consent is required prior to being permitted to apply for a building permit.

.7 WATER AUTHORITY OF FIJI ACT, 2007

The WAFA contains the Water Supply By-laws 1955. The WAFA establishes the Water Authority of Fiji and sets its functions and powers for the management of water and sewerage systems in Fiji. There are no standards in the Act that directly affects the construction of buildings, other than that a safe and secure connection to the reticulated water supply must be provided, and if not, penalties will be imposed.

.8 FIJI PINE ACT, 1985, UPDATED IN 1990

The FPA was approved five years prior to the adoption of the FNBC and FHBM, and provides a very detailed set of standards relating to the construction of lightweight timber houses that will not exceed 1.5kPa on timber floors and are two storeys (up to 10m) in height or less, among other criteria. Detailed standards and diagrams are provided for all building components including selection and quality of timber, fastenings, site requirements, foundations and sub-floor framing, floors, walls, posts, interior wall linings, roofs, roof coverings and ceilings. The detailed content is similar to a prescriptive-style building code, which is very different from the content of the current FNBC which is performance-based.

It is not clear whether the FPA must be used for lightweight construction, or whether the designer can choose to use it or not. Compliance is indicated in the following clause:

Section 1.1.1

This code of practice sets down construction requirements for light timber frame buildings not requiring specific design within the limitations specified by clause 1.1.2 for domestic buildings including other single storey buildings supported on a concrete slab on ground which has been designed to carry the imposed floor loads.

Since there are no standards for penalties for not complying, it may be discretionary whether the FPC is used for lightweight construction within the specified design parameters.

3.0 EXISTING ADMINISTRATIVE STRUCTURE FOR BUILDING PERMIT APPROVAL

.1 URBAN AREAS

The Government of Fiji has two distinct processes for development applications depending on the size and development type, as well as whether the document is submitted for Development Consent or Building Permission. All applications are submitted to Local Authorities.

If an application submitted for Development Consent is considered to be one that complies with all Acts and Regulations including the FNBC, it is considered a small development. However, if it does not comply or is of a larger scale or level of importance, it is considered a large development.

SMALL DEVELOPMENTS / BUILDINGS

Applications for development consent and/or building permit considered to be small scale and compliant with the Town Planning Act and Fiji National Building Code are processed by the local authority that receives it. The application is not circulated to any agencies since the proposed building complies with all legislation and regulations. During construction, site inspections are conducted by local building inspectors, EFL (Energy Fiji Limited) and potentially WAF (Water Authority of Fiji) or other agencies or departments if applicable. After the building is constructed and is deemed to be acceptable to the local building inspector, a Certificate of Occupancy is granted and the building and/or site is permitted to be used.

LARGE DEVELOPMENTS / BUILDINGS

Development Consent

After a Local Authority has deemed a development consent application to be large scale, the application is sent to the Department of Town and Country Planning (DTCP) for processing. DTCP will assess the development consent application for compliance with the Town and Country Planning Act and related regulations, and will circulate it to the following departments and agencies who provide comments and recommendations:

- National Fire Authority
- Energy Fiji Limited
- Water Authority of Fiji
- Department of Environment
- Fiji Roads Authority

After all issues are resolved, DTCP will make a recommendation to the Local Authority to approve the Development Consent Application. The Local Authority will then provide a Certificate of Development Approval, which signifies that the applicant can then apply for a Building Permit.

Building Permit

An application for a building permit for a large-scale development is submitted to the Local Authority, who then processes the building permit application. If a Local Authority deems an application to be large-scale and complicated, the Local Authority can request the Department of Building and Government Architect (DBGA) to review and provide feedback. DBGA will provide recommendations to improve the development so that it complies with the FNBC. The Local Authority will then consult with the applicant and advise of any needed amendments. Once satisfied that all outstanding issues have been addressed, the Local Authority can approve the Building Permit which allows construction to begin.

Either the Local Authority or DBGA can request the following agencies to review and provide comments and recommendations as follows:

National Fire Authority

NFA reviews building permit applications (Class 2 – 9 only, which excludes single detached homes) that are within the urban areas and some peri-urban areas of Fiji, and issues comments and suggestions to ensure fire safety standards in the FNBC are complied with, as well as fire-related sections in the Australian and New Zealand building codes. NFA does not have its own standards or policies that buildings or sites must comply with.

NFA, in consultation with MPWM, may decide that the building permit application should be reviewed by a registered Fire Engineer if the building is greater than 6-8 storeys, is complex, or uses, manufactures or stores hazardous and/or flammable substances. At present, there are no registered Fire Engineers in Fiji, so building permit applications are typically sent to an expert in Australia or New Zealand for review and assessment of compliance and recommendations to improve health and safety.

Energy Fiji Limited

EFL reviews the electrical portion of the building permit applications for all building types. It also has its own Electrical Permit Application form that must be submitted and processed prior to receiving a connection to the electric supply grid. Since the electrical/ energy standards in the current FNBC are sparse, EFL relies on the Australian Wiring Rules as the master document that building permit and electrical permit applications must comply with.

EFL is also responsible for reviewing any developments using alternative energy (solar, wind), whether or not they are connected to the grid.

At present, EFL will only conduct site inspections of the connection to the reticulated grid system, and not the electrical installation in the building. The electrical system in the building must be installed by a licensed electrician, who also certifies that the electrical system has been properly installed. EFL will not issue a Certificate to connect to the grid system without first receiving a certification notification from a licensed electrician.

Water Authority of Fiji

WAF reviews all building permit applications with regard to connections to the municipal water supply system. They ensure that the standards in the Water Supply Act are followed and that provisions are made for proper water connections. Similar to EFL, they do not inspect plumbing inside a building or on a site. At present, the Association of Plumbers in Fiji does not have a license or certification program similar to the List of Valid Electrical Contractors issued quarterly by EFL.

Department of Environment (Environmental Impact Assessment)

DOE reviews all building permit applications for which an Environmental Impact Assessment was prepared during the Development Approval stage. If an EIA is prepared, it typically has detailed requirements for protection of existing natural features, and control of dust, erosion and noise during construction. DOE will review the building permit application to ensure that the requirements in the EIA are not compromised by the proposed development.

Ministry of Employment, Productivity and Industrial Relations (MEPIR)

MEPIR reviews building permit applications that involve places of employment where buildings to ensure that standards in the Health and Safety at Work Act will not be compromised by the proposed development. While the HSW Act has standards that apply post-construction, the MEPIR reviews building permits to determine if the construction details are such that they could potentially compromise the HSW Act in future.

Fiji Roads Authority

The FRA reviews building permit applications for which a Traffic Impact Assessment has been prepared to ensure the construction details would not potentially compromise the TIA. If there are any recommendations in the TIA that affects the building or site, the FRA will notify the Local Authority and provide recommendations for compliance.

Department of Building and Government Architect (MPWM)

DBGA's primary scope is to provide professional services and advice for the construction of public buildings, including design, documentation, costing, tender, construction monitoring and asset management. especially in a post disaster situation. DBGA also prepares construction drawings for public sector developments.

If a building permit application is sent to DBGA for review by the Local Authority, DBGA will perform all necessary review activities, including consulting with any of the preceding agencies, and then provide recommendations for compliance with the FNBC. After the application is passed back to the Local Authority for processing, DBGA will continue to monitor the progress if required.

.2 RURAL AREAS

All lands situated outside of designated urban areas that are not in a Schematic Plan are considered rural and these lands are mostly owned by the Ministry of Housing (MOH), Ministry of Rural and Maritime Development and Disaster Management (MRMD), and Ministry of iTaukei (MIA). Under the iTaukei Land Act, 1905, and iTaukei Land Trust Act, 1940, land can only be owned by iTaukei people, although lands are sometimes leased for the construction of a school, commercial or employment use, government use, tourism or residential.

Since the passing of the Public Health Act in 1935, development in iTaukei villages is not required to conform with the Public Health Act, and therefore, the FNBC. However, buildings on iTaukei land that is leased for a non-domestic land use are subject to approval of a building permit. Prior to 2017, Public Health Officers as part of the Rural Local Authorities provided consultation, review and site inspection services for new buildings in urban and rural areas since the FNBC is a regulation of the PHA. After the Rural Local Authorities were removed in 2017 and processing of building permits became the responsibility of MLG, building construction that occurs on iTaukei land is overseen by a combination of the MOH, MRWD, iTaukei Land Board and the iTaukei Village Council.

Ministry of iTaukei Affairs

MIA is the lead agency for all matters on iTaukei lands. As such, MIA oversees the iTaukei Land Trust Board that is the decision-making body for land matters.

iTaukei Land Trust Board

TLTB is the governing organization that determines whether an application to lease native land is granted. The maximum term of lease that the Board can grant is 99 years. The Board can only grant the lease if a minimum of 51% of the Village Council where the land is located approves of the land lease. After the land lease is granted, a building permit application must be submitted to the nearest Local Authority.

Village Council

Each iTaukei village has a Council that is the ultimate decision-making authority for all matters in the village. For any proposed land use change or lease, the Village Council must provide a majority vote for the development or building to proceed.

MOH and MRMD

MOH and MRMD are supporting agencies for development on rural and iTaukei lands, providing funding, incentives and administrative assistance for housing and building construction. For example, MOH recently launched (July, 2023) a "Core House" program that provides a financial incentive for construction of a building that has a portion of it designed to withstand a Category 4 cyclone.

4.0 COMPARISON TO OTHER PACIFIC ISLANDS

A comparison of the building permit approval and construction process in the Pacific islands was conducted to gain an understanding of how the administrative structure differs from place to place. In many ways, this type of analysis is like comparing apples to oranges because the islands differ in size, location, sovereignty, population density, degree of urbanisation, and most importantly, cultural differences. But there are similarities that are shared, and that is that all are considered to be a SIDS country (Small Island Developing state) that face issues related to being in an isolated location that relies on shipping for most building supplies, use of local timber, threats from rising sea levels and other climate resilience factors, limited regulation in building industry members, and large indigenous populations in rural areas that own the vast majority of available land and construct housing without a building permit.

The comparison includes the following countries in the three Pacific subregions:

Table 2: Counties Associated with the 3 Pacific Subregions

Melanesia	Micronesia	Polynesia
Fiji, pop. 911,148	Kiribati, pop. 123,593	American Samoa, pop. 54,914
Solomon Islands pop. 724, 936	Marshall Islands, pop. 60,064	Cook Islands, pop. 17,000
Palau, pop. 18, 239		Nauru, pop. 10,978
		Niue, pop. 1,651
		Samoa, pop. 201,398
		Tokelau, pop. 1,395
		Tonga, pop. 108,397
		Tuvalu, pop. 12,121

The comparison of the different legislative and institutional structure of the Pacific island nations listed in the above chart is contained within two charts below … one that illustrates similarities, and one that illustrates differences. The countries included in the comparison reflect the list of countries used in a number of PRIF's documents of Pacific Island countries. A summary of some of the key findings is below, while the complete comparison details can be found in Appendix A: Pacific Island Comparison Chart. Important findings are:

- More than 50% have a Building Code and Building Act, but only 41% have Building Regulations
- The largest difference between countries is the structure of the Building Permit Committee
- Most countries have a planning department, but not necessarily a building department
- One country (Tonga) uses an outside agency to review building permit applications, but the other countries review it internally.
- Only 2 countries have a registered architectural association, indicating that buildings may be designed without quality control

Table3: Summary of Common Traits in the Building Approval Process in Pacific Island Countries

Common Traits	Findings
Building Code	○ 12 out of 14 countries have one, except Nauru and Palau
Building Code T of C	○ 7 countries have a similar structure and T of C, originally published from 1990 -1994 and based on the NCC of Australia – Cook Islands, Kiribati, Niue, Samoa, Solomon Islands, Tonga, and Tuvalu
Administered by:	○ Department of Public Works or Infrastructure administers the building approval process in all countries
Building Act	○ 7 out of 12 countries with a Building Code have a Building Code Act, all of which have been published since 2013 – Fiji, Kiribati, Niue, Solomon Islands, Tonga, Tuvalu, Vanuatu
Building Regulations	○ 5 out of 12 countries with a Building Code have Building Regulations, the oldest in Samoa (2002) and the newest in Solomon Islands (2022) – Niue, Samoa, Solomon Islands, Tokelau, Tonga
Planning Department	○ 11 out of 12 countries have one, but not Cook Islands
Registered Architectural Association	○ Only 2 countries – American Samoa, Fiji
Registered Engineering Association	○ Only the more populous countries – American Samoa, Cook Islands, Fiji, Samoa, Solomon Islands, Vanuatu
University or College with a building or engineering program	○ Fiji, Nauru, Kiribati, Marshall Islands, Palau, Samoa, Solomon Islands

Table4: Differences in the Building Approval Process Between Pacific Island Countries

Differences	Findings
Building Permit Review Committee	○ American Samoa – Zoning Board administers all planning and building approvals ○ Palau – Division of Land Resources and Information administers all planning and building approvals ○ Fiji – Local Authorities process building permits; Building Permit Review Committee only administers fast-track applications ○ Tokelau – Building Committee in each village ○ Tonga – Building Control Authority ○ Tuvalu – Building Authority ○ Palau – Division of Land Resources and Information administers all planning and building approvals ○ Vanuatu – Planning and Enforcement Committee administers all planning and building approvals
Outside Agency to Review Building Permit Applications	○ Tonga uses BuildCo, a corporation of 2-3 registered building professionals who review all applications and are remunerated
Tiered Development / Building Permit Review	○ Only one country other than Fiji has a tiered building permit approval system – American Samoa

5.0 STAKEHOLDER CONSULTATION

As part of the FNBC and FHBM update, a stakeholder engagement program consisting of one-on-one interviews was carried out from June to July, 2022, and involved over 30 consultations with government departments agencies such as National Fire Authority and Energy Fiji limited, and organisations such as the Fiji Association of Architects, Construction Industry Council, Fiji Master Builders Association, and Engineers Fiji.

Stakeholders expressed ideas and opinions on a full array of issues, and these are recorded in the meeting minutes. The primary concern that relates to legal and institutional arrangements is that compliance and enforcement of the FNBC is lacking.

Other concerns related to legislation and institutional arrangements include, but are not limited to:

- There is a disconnect between approved plans which comply with the FNBC and the buildings that are actually constructed
- Lack of training and inconsistent quality of building inspections
- No one follows or uses the FHBM because it is out-of-date and it is a guideline which is not required to be complied with
- Most buildings that collapse are on iTaukei lands that do not have to comply with the FNBC due to affordability … all buildings should be required to comply with the FNBC
- Inspections in the rural area are only conducted by EFL and only if there is an application for a building permit.
- Lack of procedures for coordinating permit approvals among EFL, NFA and WAF
- Lack of regulations and monitoring for the quality of building material and equipment, particularly those that arrive from overseas
- Lack of effective process for builders who violate the building code … current system is that when a deficiency is noticed, after several weeks it is sent to court, and by the time the court processes the application the building is already constructed and an Occupancy Permit has been issued
- Lack of standards or licensing for qualified and skilled builders
- Concern that government staff who review building applications are not registered professionals and may lack the skills to effectively evaluate the details
- Concern that there is no appeal procedure if a building permit application is rejected

The Government of Fiji has also been involved in a number of stakeholder engagement activities over the last few years to examine options for the update to the FNBC and FHBM, and to brainstorm ideas for improved compliance, enforcement and capacity. Most notably, government and building industry stakeholders participated in a program hosted by PRIF involving one-on-one interviews with stakeholders and a workshop that was held on January 23, 2019. The results of the stakeholder consultation are recorded in the document entitled, "Regional Diagnostic Study on the Application of Building Codes in the Pacific: Fiji Case Study, Consultant's Report, August, 2021.

Some of the key findings expressed by stakeholders in the PRIF report that relate to legislation and implementation include:

- All buildings should be required to comply with the FNBC, not just public buildings
- Regular updates to the FNBC should be completed
- The FNBC should be the overriding legal document containing structural standards while the FHBM should be a workbook or manual targeted to a wider range of housing forms than the current version
- A three-tier compliance and enforcement system should be enacted, consisting of the following tiers:
    - Gold: buildings designed to comply with FNBC standards, and building permit drawings require the stamp of a registered professional engineer
    - Silver: buildings designed to comply with the FHBM, and building permit drawings must be prepared by a construction practitioner with technical qualifications
    - Bronze: buildings are constructed by the landowner in accordance with a simple pictorial guide for housing standards
- The FNBC update should be harmonized with related legislation, eg, environment, health, workplace safety, etc.
- The FNBC is not being enforced. Inspections and supervision by building inspectors is lacking and compliance enforcement needs to be improved
- A Building Board Committee needs to be established to replace the Central Board of Health and oversee the administration of the building permit process. Members of the Board should have building-related qualifications and expertise.
- Noncompliance should attract heavy penalties and fines
- A Building Code Review Committee should be established to collect data, initiate dialogue, review existing codes and recommend code updates

The consultation undertaken for the FNBC and FHBM update echoes the above opinions and feedback. Much of the feedback relates more to compliance and enforcement, and this will be discussed in detail in the Compliance and Enforcement Report prepared later in the process.

6.0 RECOMMENDATIONS

The following section presents a number of options to enhance the capacity of the Government of Fiji to administer the update to the FNBC and FHBM to benefit stakeholders. The recommendations are based on:

- Analysis of the legal and institutional framework in Fiji
- Comparison of the legal and administrative structures in other Pacific Island countries
- Stakeholder input

The following assumptions provide a framework for the discussion:

1) *That the FNBC update will retain a similar status (as a regulation that must be complied with) and the FHBM will continue to be a guideline that supplements and supports the FNBC*
2) *That the administrative transfer from MHMS to MPWM is the preferred option*
3) *The current division of responsibility for processing building code applications and site inspections will remain relatively the same as in Table 1 (except for a few suggested modifications outlined below)*
4) *That the FNBC will ultimately be applicable to all buildings in Fiji*

All recommendations below should be considered as topics for further discussion.

.1 LEGISLATION

The Government of Fiji has already enacted the transfer of administration of the FNBC from the MHMS to MPWM, and the processing of building permit applications, site inspections and compliance certificates to Local Authorities and the DTCP as shown in Table 1. However, there is no legislation, regulation or policy that provides details of the transition. The next steps is to strengthen the legislative and institutional framework and formalise the building permit approval process within the new framework.

To ensure that the FNBC update is properly legislated and set up for compliance and enforcement to be effectively administered, we suggest the following 3-tier legislative framework:

1) **A New Building Act** to replace / supplement the standards in the Public Health Act. The new Building Act will be similar to other Acts of Parliament in Fiji where it will set up the framework for administration and regulation of building and construction and will focus on general principles, compliance, enforcement and penalties for non-compliance. Topics recommended for inclusion are the following:
    a) Definitions
    b) Authorisation of the FNBC as a Regulation of the Act

c) Setup or confirmation of a Building Committee

d) Purpose / objectives / scope

e) Compliance requirements

f) Penalties for non-compliance

2) **New Building Regulations** as a regulation of the Building Act to provide additional requirements that govern the administration of the building permit approval process such as submission forms, drawing requirements, and approval procedures. New topics recommended for inclusion are the following:

   a) Compliance details

   b) Enforcement

   c) Site Inspections

   d) Building Permit Approval

   e) Issuance of Building Permit

   f) Issue of Compliance Certificate

   g) Appeals

   h) Review Process

   Alternatively, the above standards could instead be included in the new Building Act.

3) **Rescind the Regulation of Building Permits Act, 2017** and merge it into the new Building Act. This Act establishes a fast-track process and a building review committee with powers to review and approve fast-track applications. Since the new Building Act will establish a Building Committee, and there is no need for two similar committees, it is recommended that the power to approve fast-track applications be transferred to the Building Committee under the new Building Act, and the committee that deals only with fast-track applications be abolished. All powers of the Regulation of Building Permits Act can be transferred to the Building Regulations.

4) **Building Code adopted as a Regulation of the New Building Act.** Since the existing FNBC is a regulation of the Public Health Act, it is recommended that it instead becomes a regulation of the new Building Act. This will allow continuity between the approval authorities and legislative documents.

It should be noted that the FHBM is not included in the above list at this time since it is recommended to continue its status as a guideline, rather than a regulation. However, if further stakeholder consultation reveals there is a desire for the FHBM to have the same status as the FNBC, then the FHBM could be upgraded to a regulated document, and would therefore have content that reflects that status. But for now, the FHBM is expected to have diagrams and wording that means it will be more of a guideline or manual than a compliance document.

.2 ADMINISTRATIVE TRANSFER

The administrative transfer of the FNBC from the Ministry of Health and Medical Services (MHMS) to the Ministry of Public Works, Meteorological Services and Transport (MPWM) is an appropriate decision because MPWM contains the Department of Building and Government Architect which is the review agency with the most qualified staff for building construction.

However, an argument could be made that the agency responsible for the administration of the FNBC and FHBM should be DTCP since they are responsible for processing nearly 99% of all development consent applications for large developments since the transfer from MHMS.

The following table lists the pro and cons of both possibilities:

Table 2: Administrative Transfer Pros and Cons

Administration of FNBC with MPWM	Administration of FNBC with DTCP / MOH, MRWD,
Pros ○ Contains Department of Building and Government Architect which will have a supervisory role for the administration of the building code, so the legislative authority has a logical path ○ Currently oversees and/or prepares construction drawings for public buildings which tend to be large-scale developments, so MPWM has experience with large-scale construction projects ○ MPWM is the governing body for EFL and WAF ○ Maintains the status quo	**Pros** ○ Currently process 99% of all large-scale development consent and building permit applications, so have hands-on knowledge and experience with applying the FNBC
Cons ○ MPWM has little experience or opportunity to interact with private sector developments since Local Authorities would continue to process most building permit applications ○ The final authority for building will rest in a different department (MPWM) than the department granting approval (Local Authorities under MLG) which may be confusing	**Cons** ○ DTCP currently relies on MPWM to have the technical expertise that is lacking in their department, therefore they may require MPWM to step in and assist.

Perhaps the strongest argument for the administration of the FNBC to be assigned to MPWM is that it maintains the status quo.

As mentioned above, the Government of Fiji identified the need for a committee of peers to oversee fast-tracking building permit applications some time ago and passed the Regulation of Building Permits Act in 2017. The Act gives applicants the option to submit a building permit application to the BPEC to obtain a faster response. So far, the BPEC has not had a strong presence in the building industry in Fiji as applicants need to pay a substantial fee to engage the process. The function of the BPEC as per the Act is the following (see Section 2.2 for more information):

a) To receive and consider building permit applications

b) Expedite the process for obtaining building permits

c) Oversee the responsiveness of government agencies to execute appropriate assessments and processing

d) Provide a tribunal to make decisions on any administrative issues that may arise

Stakeholder consultation for the FNBC update identified a number of related administrative activities to be undertaken, and in particular, to have a committee with the following powers:

a) Oversee, regulate and prepare updates to the FNBC on a regular basis

b) Monitor the building permit approval process

c) Administer an appeals process

Rather than have two separate committees, we recommend that the new Building Committee formulated by way of the Building Act absorb the powers of the BPEC committee so that there is one committee in total.

Our analysis of the scope of the new Building Act is that it would be suitable to accommodate the additional scope transferred from BPEC, and that many of the same stakeholders would likely be asked to be on both committees. So it will be much more efficient to have one all-encompassing committee rather than two.

.3 BUILDING PERMIT PEER REVIEW COMMITTEE

Stakeholders from the public and private sector identified that one of the challenges in the building industry is that there is a lack of qualified people in the government to review building permit applications and ensure the standards in the FNBC are fully complied with.

As suggested by stakeholders, a strategy to alleviate this is to undertake a peer review of building permit applications by registered professionals who are recognized as experts in their field. Sections 6 and 7 of the Regulation of Building Permits Act, 2017, supports this peer review process.

A number of different options are currently practiced in the Pacific Region for peer review of development and/or building applications. Potential alternatives include the following:

1) Set up a committee of volunteers (registered professionals in their field) who agree to meet regularly to review, evaluate, and suggest improvements to building permit applications. The

comments and suggestions are conveyed to DTCP or the Local Authority who then review the feedback and request the applicant to modify plans accordingly (commonly known as a Design Review Panel)

2) Set up a committee of volunteers (professionals in their field) who have the power to approve or deny building permit applications

3) Appoint a committee of professionals in their field who are paid to provide their professional opinion on the merits of a building permit application and provide recommendations for improvement. Feedback is conveyed to the approval authority (DTCP) who then reviews the feedback and asks for the applicant to modify plans accordingly

The first and second options are typically used in Australia and New Zealand, while the first and third are typical in North America. An example of the third option is in Tonga, where two professionals were hired to evaluate building permit applications. They formed a corporation called BuildCo which is the administrative body responsible for the review and evaluation carried out by the professionals. BuildCo provides review and evaluation services whenever requested by the government.

For Fiji, we recommend the following option:

a) A Peer (Design) Review Committee be established, comprised mainly of certified professionals from the private sector (architects, engineers, quantity surveyors, builders) who will evaluate selected complex building permit applications for compliance with the FNBC, and provide recommendations to improve compliance to MPWM. The advantage of this option is that it has a limited scope so it may be more amenable for busy professionals in the private sector to willingly participate, with or without compensation.

.4 QUALIFIED BUILDING PERMIT REVIEWERS AND INSPECTORS

The Building Permit approval process as it currently stands consists of the following:

Building Permit Submission and Processing

All building permit applications are submitted to local authorities who evaluate and determine if it complies with the FNBC and other legislation and regulations, and if so, the municipality will process it. If the application is non-compliant or is a large-scale development, the building permit is periodically sent to MPWM for comments and advice before approval or rejection by the Local Authority.

One of the key challenges with this arrangement is that there is a lack of qualified people in Local Authorities for plan review and building inspections, and a concentration of qualified staff in DBGA who only review large-scale applications upon request. At present there is no policy to determine the type or scale of application that is referred to DBGA, it is subjectively chosen, so a number of buildings are being processed and approved without the proper scrutiny.

An alternative scenario would be that MPWM takes on the role of processing all large-scale building permit applications (Class 5 to 9) since they are the ministry responsible for the administration of the

Building Code and MPWM has the greatest number of qualified building professionals on staff. We also see validity in this alternative because it would streamline the process …. DTCP would be solely responsible for development consent applications, and MPWM would be solely responsible for building permits. A set of procedures should be developed to bring clarity to when a large-scale development should be reviewed by DBGA.

Building Inspections

All building inspections during construction are performed by:

a) *Local building inspectors (structural, servicing, and all other items not listed below)*
b) *EFL (electrical)*
c) *National Fire Authority (fire protection)*
d) *WAF (water)*
e) *MOE (environment)*

Since a lack of qualified building inspectors within Local Authorities has been identified as a challenge to overcome, as well as an apparent disconnect between approved building permit drawings and what is actually built, we recommend a slightly different arrangement, as followings

a) MPWM should conduct building inspections for all building applications that they process (government projects and any private sector projects they offer advice on). This will allow better continuity between the approved application and the final built form.

b) All other inspections should remain the same

c) Increased building application fees should be implemented to cover the cost of building inspectors travelling to remote islands

Certificate of Occupancy

All Completion Certificates are currently issued by local authorities after substantial completion and acceptance of the construction.

If inspections for large developments are transferred to MPWM as recommended above, it follows that the issuance of the Completion Certificate should follow suit, meaning that MPWM would issue the certificate for large scale developments while Local Authorities would administer small scale.

There are two methods by which this administrative change could happen:

1) The process could be detailed in the Building Regulations created to support the new Building Act
2) A policy for the issuance of a Certificate of Occupancy could be formulated and approved by the Government of Fiji

Either method would be effective.

Increase Capacity for Training and Certification

It is clear that there is a need for education, training, apprenticeship and certification of plan reviewers and building inspectors. This topic is discussed in detail in the Compliance and Enforcement report.

7.0 NEXT STEPS

After the Legal and Institutional Framework report has been reviewed by stakeholders and any clarifications, changes additions or deletions have been made based on stakeholder feedback, the document will be finalized and ready for use. It is intended to inform the preparation of the more detailed reports for compliance, enforcement and capacity building. It will also be available for review by stakeholders and the public so they are informed of the rationale and decision-making behind proposed legislation and institutional arrangements.

APPENDIX A

PACIFIC ISLANDS COMPARISON CHART

PACIFIC ISLANDS COMPARISON CHART - FOR THE UPDATE TO THE FNBC AND FHBM

	American Samoa	Cook Islands	Nauru	Niue	Samoa	Tokelau	Tonga	Tuvalu	Fiji	Solomon Islands	Palau	Vanuatu	Kiribati	Marshall Islands
	Polynesia	Polynesia	Polynesia	Polynesia	Polynesia	Polynesia	Polynesia	Polynesia	Melanesia	Melanesia	Melanesia	Melanesia	Micronesia	Micronesia
Sovereignty	Territory of the US	State associated with NZ	Sovereign state	State associated with NZ	Sovereign state	Non-self-governing territory of NZ	Sovereign state	Sovereign state	Sovereign state	Sovereign state association with Great	Sovereign state in association with the US	Sovereign state	Sovereign state	Sovereign state
Population	54,915	17,600	10,978	1,651	201,398	1,395	108,397	12,121	911,148	724,936	18,289	323,398	123,593	60,094
Building Legislation and Policy														
Building Code	Uniform Building Code	Cook Islands Building Code	N.A.	Niue National Building Code	National Building Code of Samoa	Standards and controls related to construction of buildings set out in Building Rules 2007 document shall be the "Tokelau Building Code"	National Building Code of Tonga	Tuvalu National Building Code	Fiji National Building Code	Solomon Islands National Building Code	N/A	Vanuatu National Building Code - Building Code Act No 36 of 2013	National Building Code of Kiribati	National Building Code of the Republic of the Marshall Islands
Date of Approval	1964	2019	N.A.	Building Code Act 1992; National Building Code 2020	1992; 2017 update but not approved	2007	2001; reviewed and updated in 2018	Originally published in 1990. NBCT is currently being reviewed and updated under World Bank GFDRR. (Not Approved)	1990; under review and proposed for update by 2023	Developed in the late 1980s under an Australian Aid program and published in 1990. Reviewed and Updated in 2021. A National Building Code Bill 2022 has been drafted and is soon to be enacted. (Not Approved)	N/A	Originally published in 1990, updated in 2000 and legislated in 2013. (Approved)	Originally published in 1990 and approved, updated in 2010. Final draft completed in 2012. Currently under review and update should be available by 2023	Yes in 1987 and is legislated. Updated in 2019 and is appearing before cabinet
Administered by: (list department)	Department of Public Works, Building Division	Infrastructure Cook Islands	N.A.	Ministry of Infrastructure	Ministry of Works, Infrastructure and Transportation	Council for Ongoing Government of Tokelau	Ministry of Infrastructure	Public Works Department	Ministry of Health, Ministry of industry, Trade and Tourism	Ministry of Infrastructure and Development	N/A	Ministry of Internal Affairs, Ministry of Infrastructure and Public Utilities	Ministry of Infrastructure and Sustainable Energy, Quality Control and Inspection Unit	Ministry of Works, Infrastructure and Utilities
Building Act	No - the Universal Building Code contains provisions for planning, zoning, construction, administration and approval procedures	Final Consultation Paper - New Building Related Laws for Cook Islands–Specific Features Proposed for the New Building Act	N.A.	Building Code Amendment Act	N.A.	N.A.	Building Code and Standards Act	Building Act Act No. 11	Regulation of Building Permits Act (now cited as Regulation of Building Permits Regulation 2022)	National Building Act	N/A	Building Code Act No 36	Kiribati Building Act	N/A
Date of Approval	N.A.	2017	N.A.	2021	N.A.	N.A.	2004	2019	2017	2021	N/A	2013	2006	N/A
Administered by: (list department)	N.A.	Infrastructure Cook Islands (ICI)	N.A.	Ministry of Infrastructure	N.A.	N.A.	The Ministry of Lands and Natural Resources	Building Controller, Ministry of Works issuing permits and arranging inspections	Ministry for Industry and Trade	Ministry of Infrastructure Development	N/A	Public Works Department	Ministry of Infrastructure and Sustainable Energy, Quality Control and Inspection Unit	N/A
Building Regulations	For power, electrical, water, sewer, emergency energy, telecommunications, but	N.A.	N.A.	Building Code Regulations	Building Regulations	Building Rules	Building Code Regulations	N.A.	Regulation of Building Permits Regulation	Building Code Regulations (set of standards and procedures issued under the National Building Code	N/A	N/A	N/A	N/A
Date of Approval	N.A.	N.A.	N.A.	2021	2002	2007	Originally published in 2001, Revised in 2016.	N.A.	2020	2022	N/A	N/A	N/A	N/A
Administered by: (list department)	N.A.	N.A.	N.A.	Ministry of Infrastructure	Ministry of Works Transport And Industry	Tokelau Public Service	Ministry of Works	N.A.	Ministry for Industry and Trade	Ministry of Infrastructure Development	N/A	N/A	N/A	N/A
Institutional Arrangements														
Agencies responsible for approving building permits enforcing compliance and issuing completion certificates	Department of Public Works, Building Inspection Division	Attain a Building Permit from one of the three: Infrastructure Cook Islands (Large Developments), National Environment Service (NES), Ministry of Health, Electrician will apply for internal wiring permit from the following agencies: ICI Regulatory Division, Electrical Inspectorate.		Ministry of Infrastructure (Public Works Officer office)	Ministry of Works Transport And Infrastructure	Tokelau Public Service	BuildCo to submit 3 sets of drawing (the specifications are provided in the law). One copy will be distributed to each department at the same time for approval: 1. Fire Services Department -- checking for safety regulations 2. With the implementation of the Environmental Impact Assessment 2010 – BuildCo must submit Form 1 for Assessment. 3. Ministry of Health	Public Works Department	Ministry of Local Authority, Housing And Environment(Councils and Provinces)	Ministry of Infrastructure and Development, Honiara Council, Provincial Government	Ministry of Public Infrastructure and Industries	Ministry of Infrastructure and Public Utilities - Municipal and Local Government Councils, Ministry of Lands and Natural Resources	Land Management Division (Kiribati / Melad)	Ministry of Works, Infrastructure and Utilities. NBC is not enforced on non-government buildings
Building Permit Review Committee (list purpose and scope)	Zoning Board makes decisions on all planning and building applications					Building Committee for each village and consist of Pulenuku, carpenter, plumber, electrician, Chairperson and inspector.	Building Control Authority. Minister will appoint a cabinet. Applicant to obtain a building permit from the Building Controller	Building Authority		Development	Division of Land Resources and Information (DLRI) compiles an inventory of all land and mineral resources of Palau, including submission of Building Permit	Planning and Enforcement Unit, application form is filled out and applicant is checked against outstanding land rent, submitted to Planning Unit. Application for	Public Utilities Board, Amalgamated Telecom Holdings Kiribati Ltd. (Submit Land Development Form and Obtain clearance form	
Building Department (list name)	Department of Public Works, Building Division					Submit to inspector	Building Controller	Public Works Department		Development		Planning and Enforcement Unit works in collaboration with Chairman of Land Management and Planning Committee		
Planning Department	Department of Planning	N.A.	Planning and Aid Division of Department of Finance	Finance and Planning	Economic Planning and Policy Division of the	Planning and Monitoring Unit	Ministry of Finance National Planning Division	Planning Department, Ministry of Finance and	Department of Town and Country Planning	Honiara and Provincial Town and Country	Office of Planning and Statistics, Government of	Planning and Enforcement Unit	National Economic and Planning Office, Ministry of	The Economic Policy, Planning and Statistics
Agencies (Fire, Electrical, Water, Energy)	American Samoa Environmental Protection Agency, Department of Public Safety - Fire Department, Airport Rescue & Fire Fighting (ARFF), American Samoa Power Authority (ASPA)	Water connection (To Tatou Vai), Power Connection and Wiring (Te Aponga Uira (TAU) who then undertake a Technical Assessment), Internal Wiring (registered electrician), Telecommunications (Vodafone)	Energy (Dismantling of the Nauru Phosphate Corporation and government restructuring lead to the government-run Nauru Utilities Authority taking responsibility for the power supply), Water (Nauru Utilities Authority), Sewage (Nauru Rehabilitation Corporation), Telecoms (Ministry of Telecommunications, state-owned RONTEL, Cenpacnet Inc - jointly owned and operated by RONTEL and Ministry for Nauru Phosphate Royalties Trust)	Energy (Niue Power Corporation), Water (Public Works Department), Telecommunication (Telecom Niue Ltd)	Power (government-owned Electric Power Corporation of Samoa), Water (the Ministry of Agriculture, Forestry, Fisheries and Meteorology deals with watershed management and hydrology while the Ministry of Health monitors water quality standards. Samoa Water Authority is the national service provider of water), Communication (Office of the Regulator. BlueSky SamoaTel, Digicel Samoa)	Energy (solar powered), Water (Rainfall collection), Telecommunication (Teletok)	Fire (Fire Services department), Water (Tonga Water Board - There is no centralised reticulated sewerage system in Tonga. All wastewater is managed by on-site systems, with supervision by the Ministry of Health (MOH) when resources permit), Electricity (Tonga Power Limited, Tongan Electricity Commission), Telecommunication (Tonga Communications Corp (TCC) - government-owned company)	Water (Public Works Department), Energy and Electricity (Tuvalu Electricity Corporation TEC), Fire (Tuvaluan Fire Services)	Telecoms (Telecom Fiji, Vodafone Fiji and Fintel), Water (Fiji Water Authority), Power (Government owned Telecommunications Authority of Kiribati). Government has recently granted licenses to three companies for exploration rights in the country's sovereign waters – these companies are Akura Fiji, South Pacific Petroleum and Gas, and Seo Tuinaivalu	Electricity (state-owned Solomon Islands Electricity Authority, Ministry of Mines, Energy and Rural Electrification - Government body responsible for regulation), Water (Solomon Islands Water Authority (SIWA), Ministry of Health and Medical Services' Environmental Health Division serves the majority of rural areas), Communications (Solomon Telekom Company, Government body responsible is the Ministry of Communications and Aviation)	For Power, Water and Waste Management (Palau Public Utilities Corporation), Telecommunication (Palau National Communications Corporation)	Electricity (mainly in rural areas by private company UNELCO VANUATU LTD, wind power from Devils Point Wind Farm), Water (supply owned by the state and monitored by the Ministry of Infrastructure and Public Utilities), Communication (Private companies - Digicel and Pacific Data Solutions)	Electricity (Kiribati Solar Energy Company), Energy (Ministry of Public Works and Utilities), Bio-fuel industry (Kiribati Copra Milling Company and the national Kiribati Oil Company), Water (Ministry of Environmental Health, the Ministry of Health and Family Planning, and the Water Unit of the Ministry of Works and Energy Public Utilities Board), Telecommunication (Government owned Telecommunications Authority of Kiribati)	Energy (Marshalls Energy Company), Water (MWSC on Majuro and Kajur on Ebeye)
Building Permit Approvals														
Small Developments	Land-Use permit application through American Samoa Coastal Management Program to identify if project is minor or major	Land Development Guideline											Land Management Divisions	
Medium Developments	Federal and Territorial permits and approval from Zoning Board and Territorial Planning Commission	Land Development Guideline												
Large Developments		If you are constructing a building, you must get a building permit from Infrastructure Cook Islands prior to construction.												
Informal / Traditional Developments														
Licensing and Registration														
Architects	Architectural Engineering (A&E) Division	N.A.			Required		BuildCo	N.A.	Fiji Association of Architects	Solomon Islands Building Professionals and Engineering Association		N.A.		
Engineers	Architectural Engineering (A&E) Division	South Pacific Engineers Association (SPEA)			Institute of Professional Engineers of Samoa, South Pacific Engineers Association (SPEA)		BuildCo, South Pacific Engineers Association (SPEA)	Broadcast engineers at the Tuvalu Media Corporation, International assistance	Construction Industry Council, South Pacific Engineers Association, Fiji Institute of Engineers	Solomon Islands Building Professionals and Engineering Association		South Pacific Engineers Association (SPEA)		
Designers	N.A.	N.A.			N.A.		N.A.	N.A.	Fiji Building Designers Association	Solomon Islands Building Professionals and		N.A.		
Builders	N.A.	Ministry of Health Registered wastewater treatment system designer.			National Builders Registration Database		Builder	N.A.	Fiji Master Builders Association	Solomon Islands Building Professionals and Engineering Association		N.A.		
Inspectors	Department of Public Works, Building Inspection Division	NES Environment Officer, Building Controller at ICI		Building Inspector	N.A.	Building Inspector from Tokelau Public Service	Inspector	2 Building Inspectors accompanied by police officer	N.A.	N.A.		N.A.		
Education														
University	N.A.	University of South Pacific	University of South Pacific	Lord Liverpool University, Royal Academy of Fine Arts, St. Clements University, University of South Pacific	National University for Samoa, University of South Pacific	University of South Pacific	University at 'Atenisi Institute King's International University Tonga Institute of Science and Technology University of the Nations - Tonga campus University of the South Pacific - Tonga campus	University of South Pacific	FIJI National University	Solomon Islands National University, University of South Pacific	Pacific Islands University	Port Vila School of Nursing Revans University Tagabe Agricultural School Talua Ministry Training Centre University of the South Pacific - Vanuatu campus Vanuatu Institute of Teacher Education	University of South Pacific, Kiribati Institute of Technology	University of South Pacific
College	American Samoa Community College	Takamoa Theological College	N.A.	N.A.	Piula Theological College	N.A.	Tupou College, Hango Agricultural College	N.A.	N.A.	N.A.	Palau Community College	Vanuatu Institute of Technology, Vanuatu Rural Development & Training Centre Association.	N.A.	College of the Marshall Islands
With a Building or Construction Program or Degree	N.A.	N.A.	University of South Pacific, Technical and Vocational Education Training	N.A.	National University for Samoa, Australia Pacific Training Coalition	N.A.	N.A.	N.A.	FIJI National University, Australia Pacific Training Coalition, Trade Colleges	Solomon Islands National University, Rural Training Centre	N.A.	Vanuatu Institute of Technology, Vanuatu Rural Development & Training Centre Association	Kiribati Institute of Technology, Australia Pacific Training Coalition	College of the Marshall Islands

APPENDIX B

POTENTIAL LEGAL AND ADMINISTRATIVE CHANGES

Legal

- New Building Act
- New Building Regulations or update to the Regulation of Building Permits Act, 2017
- Rescind Public Health (National Building Code) Act, 2004

Approvals

- Municipal governments to process and issue Building Permits for small developments that comply; DTCP or MIMS to process and issues Building Permits for larger developments
- Expand powers of Building Review Board (appeals, monitoring, update Code)
- Peer Review of Building Permit Applications for large, complicated buildings – by registered, qualified professionals (roster system)

Compliance

- Have a tiered system for building approvals … over two storeys require a registered engineer's certificate while 2 storeys and under do not require it.
- Work to develop a formal building inspection and review process

Inspections

- DTCP/MIMS should have their own Site Inspectors for buildings for which they grant approval, and the inspectors must be qualified, trained professionals with certification … all other inspections will be done by municipal inspectors
- Develop procedures for coordination and information sharing between organizations who perform site inspections
- Develop procedures for site inspections by qualified professionals in rural areas (iTaukei), such as having a member of the Carpenter group in each Village trained to do proper building inspections and register Completion Certificates

Education

- Building Inspector Certification Program at the Universities

Institutional

- Develop a Registered Designer Certification program at the Fiji Building Designers Association, which guarantees a minimum competency for all construction projects with a building permit
- Develop a Builder Certification program for FMBA members that guarantees minimum competency for building workers in Fiji where a building permit is issued
- Create a Fiji Construction Standards organization that will approve, monitor and assist in preparing new construction standards for Fiji

Funding

- Funding programs for rural areas, such as the Green Bond by IFC, to be administered by MIMS or MOE Construction Implementation Unit

- Funding Committee to coordinate resources from NDMO, MIA and Ministry of Housing for rural areas and ITaukei lands

Insurance

- Work with ICF and the Banks to determine if there could be a 2-tier system … large-scale and buildings of importance must have the stamp of a registered engineer (either FIE or members of pre-selected overseas professional organizations), and taller buildings (4 stories and under, non-hazardous substances) to be stamped by a registered Fiji professional
- Work with ICF and the Banks to develop minimum standards to be achieved so that insurance can be issued for cyclones, landslides and floodings

Climate Resilience and Environmental Protection

- MOE to upgrade their construction standards/procedures to:
    a. ensure there is a time limit from the time construction begins and lands are cleared to final construction, with a penalty for violation
    b. Include compliance and penalties if standards are compromised or not followed (as there currently are not any)
- Develop Green Rating System for large scale projects to guarantee a minimum standard of sustainable construction

Quality Assurance

- Set up program to test quality of building material which could include:
    - Create list of banned materials or equipment, and have a penalty or fine for use of any on the list
    - Set up testing procedure at all ports to test material before it leaves the port of entry to ensure it is of acceptable quality, fabrication and workmanship
    - Assign fines for the use of banned materials within the new Building Regulations
- Pursue issuing of a Completion Certificate / Certificate of Occupancy by the government (rather than the project engineer) and registration of such documents at MIMS so that these documents are accessible to the banks and insurance companies and can be used as a quality assurance indicator
- A road addressing system should be developed for Fiji to assist insurance companies and government stakeholders to identify the channel and others
- Create a new timber certification program that supports Fiji projects a new timber certification program that supports Fiji projects

Safety

- Standards / procedures should be developed to monitor electrical wiring installation and ensure that it is installed in a timely manner, and if now, it must be updated.