

By-laws under the Municipal Corporations Act: building controls in the 1870s

Nigel Isaacs, School of Architecture, Victoria University

ABSTRACT: Although the Municipal Corporations Act 1867 was the first to permit local authorities to make by-laws which could impact on buildings, the coverage was expanded in the Municipal Corporations Acts of 1876 and 1886. The 1867 Act by-laws dealt with combustible materials in roofs and chimneys, distance between buildings, height and thickness of party and external walls, manufactory buildings and the erection of tents. The 1876 Act adds construction and materials of fireplaces, furnaces and chimneys, and the 1886 adds public health, lighting and gas and porters. The three top topics (by count) in the Acts were transport, sanitation and public facilities followed by buildings. The model codes provided in the Acts were inadequate for buildings, so by examination of three 1870s codes (Timaru, Auckland and Wellington) it is shown how the (London) Metropolitan Building Acts of 1844 and 1855 provided suitable details for practical by-laws. Links to Britain through imports of house construction technologies and materials are also discussed.

Introduction

Local councils were given authority to undertake their various tasks by central government through the Municipal Corporation Acts¹ - five of which were passed between 1842 and 1900 plus amendments, with a consolidated Act in 1908. This paper is concerned with the evolution of the ability of local councils to create by-laws relating to buildings, first permitted under the 1867 Municipal Corporations Act.

Table 1 lists the various Municipal Corporations Acts from 1842 to 1886, with the principal acts indicated by a "*". The

Title	Legislation	Signed	Pages
Municipal Corporations Act 1842*	5 Vic 6	18 Jan 1842	9
Municipal Corporations Ordinance 1844*	7 Vic 12	9 Jul 1844	10
Municipal Corporations Act 1867*	31 Vic 24	10 Oct 1867	122
Municipal Corporations Amendment Act 1868	32 Vic 52	20 Oct 1868	3
Municipal Corporations Acts Amendment Act 1871	35 Vic 7	15 Nov 1871	11
Municipal Corporations Amendment Act 1872	36 Vic 53	25 Oct 1872	2
Municipal Corporations Act Amendment Act 1873	37 Vic 41	29 Sep 1873	2
Municipal Corporations Act Amendment Act 1874	38 Vic 12	31 Aug 1874	2
Municipal Corporations Amendment Act 1875	39 Vic 57	18 Oct 1875	6
Municipal Corporations Act 1876*	40 Vic 52	31 Oct 1876	66
Municipal Corporations Amendment Act 1877	41 Vic 13	14 Nov 1877	3
Municipal Corporations Act Amendment Act 1878	42 Vic 38	2 Nov 1878	7
Municipal Corporations Acts Amendment Act 1880	44 Vic 48	1 Sep 1880	5
Municipal Corporations Act 1876 Amendment Act 1882	46 Vic 45	15 Sep 1882	3
Municipal Corporations Act 1876 Amendment Act 1884	48 Vic 38	8 Nov 1884	3
Municipal Corporations Act 1886*	50 Vic 50	18 Aug 1886	99

Table 1: Municipal Corporations Acts 1842 to 1886

¹ Isaacs ""Each Council Shall Appoint a Competent Person for the Borough, Hereinafter Called "Inspector of Buildings"": The Development of Building Controls in the Second Decade of the Twentieth Century" p 57. Legislation was sourced through the New Zealand Legal Information Institute.

legislative reference, the date the legislation was signed, and the number of pages (to provide an indication of the detail of the coverage) are also given. None of the

amendments related to council powers to control buildings. This paper reviews the coverage of the three Municipal Corporations Acts as they related to buildings, and then

explores the use of the model by-laws provided in the Acts through examination of a selection of 1870s by-laws.

Municipal Corporations Acts: 1842 to 1886

The English Laws Act 1858 (21 & 22 Vic cap.2) made English law at 14 January 1840 the law of New Zealand, making the English Municipal Corporations Act 1835 in force until replaced. The first New Zealand Municipal Corporations Ordinance 1842 gave local councils the power to consider the "good order health and convenience of the inhabitants of towns and their neighbourhoods" as they "themselves are best qualified ... by their more intimate knowledge of local affairs" and in order to "keep alive a spirit of self-reliance and a respect for the laws, and to prepare men for the due exercise of other political privileges" (Preamble), although this legislation was disallowed by England, for reasons of revenue and loan raising.² It was replaced by the Municipal Corporations Ordinance 1844 which continued to exclude issues of concern to buildings, so councils were only allowed:

to provide for the prevention of fires, the prevention and abatement of nuisances, the establishment of markets ...

² Sutch *Local Government in New Zealand* p 5.

the watching paving and lighting ... and for all such purposes as they may deem necessary for the good order health and convenience of the inhabitants thereof.

It too failed to win English assent.³

Next followed the Municipal Corporations Act 1867, which was based on the British Municipal Corporations Act 1835.⁴ It extended the coverage of the 1844 Act with the goal of creating one consolidated system covering all towns - replacing 19 different laws for the management of just 20 incorporated towns.⁵ As well as giving councils the right to operate gasworks, libraries, gymnasium, reserves and charitable institutions, it permitted building by-laws. Part III, section 181 permitted councils to make, and provided a model set of, by-laws to cover the 11 issues in the Thirteenth Schedule: Streets and Footways; Waterworks Drains etc.; Wharves etc.; Places of Improvement and Recreation etc.; Regulation etc. of Buildings; Buildings etc. for public meetings etc.; Fire Prevention; Nuisances etc.; Miscellaneous Matters; Carriage of Persons and Goods; and Proceedings of Council Officers etc. Part V of

³ Bush *Local Government & Politics in New Zealand* p 4.

⁴ Webb *Government in New Zealand* p 126.

⁵ New Zealand Parliament *Parliamentary Debates [Hansard]* (2 August 1867) v 1 pt 1 p 302.

the Thirteenth Schedule sets out the building issues able to be regulated:

- (a) Prohibiting or restraining use of combustible materials in alteration, repair or renewal of roofs chimneys flues smoke vents or stove pipes
- (b) Distance between buildings
- (c) Height thickness construction or materials of party walls and external walls and chimneys
- (d) Buildings for fireplaces or furnaces, mill brewery bakehouse gasworks or any manufactory
- (e) Erection of tents
- (f) Establishing time limit (but less than 7 years) requiring approval for use fireplace furnace or chimney
- (g) Fee (less than £2) for inspection superintendence or other service

Nine years later, Hon. J. Hall⁶ noted the new Act provided "consolidation, amendment and extension" of the previous Act. The Municipal Corporations Act 1876 continued the bylaw coverage but added issues relating to connection of gasworks. The 1876 Act also gave adult women ("of the full age of twenty-

⁶ New Zealand Parliament *Parliamentary Debates [Hansard]* (29 September 1876) v 22 p 600.

one years" section 38) franchise, although this was granted as a citizen who was a property-owner.⁷ Section 349 permitted the making of by-laws, with sub-section 5 dealing with aspects of buildings able to be regulated:

- (a) prohibiting or restraining the use of combustible or dangerous materials
- (b) distance from any other building at which it shall be lawful to construct any building.
- (c) wall construction including dimensions and materials
- (d) construction & materials of fireplaces & furnaces, and the mode of enclosing & securing chimneys.
- (e) the erection of tents and other temporary structures
- (f) limiting time to use or leave any building, roof, fireplace, furnace, or chimney contrary to any subsequent by-law; and
- (g) fees, not exceeding £2, for any Council inspection, superintendence, or other service

The Abolition of Provinces Act 1875 (39 Vic cap. 21) was assented on 12 October 1875 and came into operation on 1 November 1876. It

⁷ Webb *Government in New Zealand* p 134.

allowed for provincial legislation to remain in force until altered (Section 5). The Provincial Ordinances Act 1892 (56 Vic cap. 11) allowed the Auckland Building Act, Dunedin Building and Christchurch Fire Prevention Ordinances to remain in force,⁸ until Auckland and Christchurch legislation were repealed by the Statutes Repeal Act 1907 (7 Edw VII cap. 40) and Dunedin by the Building Amendment Act 1993.

The Municipal Corporations Act 1886 was again termed a consolidation, with Premier Robert Stout noting it now included the provision of the Public Health Act, aspects of rates and rating and the management of councils.⁹ In addition to some extension of the powers in the 1876 Act, there were changes to the ability of councils to make by-laws, removing reference to animal pounds but adding:

- * Public health and convenience, including overcrowding and sale of fresh foods
- * Lighting, including supply and metering of gas

⁸ Isaacs "Building Legislation 1840-1870" pp 180-183.

⁹ New Zealand Parliament *Parliamentary Debates [Hansard]* v 54 (20 May 1886) p 67.

- * Porters, including licensing, charges and requirement to take work

The inclusion of any topic within the by-laws section did not limit the coverage of council powers covered within the main body of the Act. Thus, in the 1876 Act, Parts XVIII to XXI dealt with sewerage, lighting, water supply, markets and the catch-all "miscellaneous," which included animal pounds, baths, places of recreation, charitable institutions, obtaining Acts of Parliament, co-operation of councils, fencing, notice and remedies, and a further 12 "Other Matters." For the 1876 Act, Part XI included separate sub-parts dealing with streets, drainage, nuisances, waterworks, prevention of fires, lighting, tramways, markets, buildings for public meetings, charitable institutions, baths and washhouses, pounds, and wharves & jetties. The 1884 Act included the same sub-parts as in 1876, except for removing pounds and adding public health and convenience.

An analysis of the powers given explicitly to councils to make by-laws in the 1867, 1876 and 1886 Municipal Corporations Acts is given in Table 2 as a count of the subsections for different categories. The shifting of powers from the section of the Act dealing with by-

laws limits this comparison. An example in Table 2 is the fall in the number of subsections dealing with "Administration" from 69 in 1867 to 5 in 1876 - the powers still existed but had been shifted elsewhere within the Act. For this analysis, "Administration" includes by-laws relating to the administration of the council, while other administrative powers or penalties are counted as being part of the relevant category. Contrary to the argument put forward by Miller, Table 2 shows that the majority of the roles allocated to local councils did not have "sanitarianism at their heart."¹⁰

"Building" was only a small percentage by number of the permitted by-laws. Table 2 shows the top three topics over the three Acts were:

- * Transport (including streets, tramways, and the carriage of persons and goods),
- * Sanitation (including drainage, night-soil, slaughter houses and waterworks) and
- * Public Facilities (such as markets, public buildings, public reserves, pedlars and hawkers, and porters)

Each Act provided councils with the ability to

¹⁰ Miller "The Shared History of Public Health and Planning in New Zealand" p 7.

Category	Count of Subsections			% of Subsection		
	1867	1876	1886	1867	1876	1886
Administration	69	5	3	27%	4%	2%
Energy		7	7		6%	6%
Building	8	9	9	3%	8%	7%
Safety	26	11	13	10%	10%	10%
Sanitation	23	21	30	9%	19%	24%
Public Facilities	16	22	23	6%	19%	18%
Transport	109	38	42	43%	34%	33%
Sum:	251	113	127	100%	100%	100%

Table 2: Bylaw Coverage of Municipal Corporations Acts 1867-1884

	1867	1876	1886
2018 Value of £2	\$228	\$309	\$400

Table 3: Present-day value of the £2 (1867-1886).

set fees for "inspection, superintendence, or other service performed by the Borough Survey or other officer of the Council" not exceeding £2. Table 3 gives the present-day (2018) value of the £2 from the Acts from the Reserve Bank of New Zealand CPI calculator.

Origins of New Zealand Council Building Controls

Bush notes that the Municipal Corporations Act 1867 "not only prescribed how by-laws were to be promulgated, but provided voluminous model regulations."¹¹ But were these models suitable for buildings? For

¹¹ Bush *Decently and in Order* p 102.

example, section 1, Part V, Thirteenth Schedule begins:

1. It shall be lawful for the council from time to time to make regulations for all or any of the purposes following that is to say:
For prohibiting or restraining the use of combustible materials in the construction alteration repair or renewal of buildings roofs or chimneys flues smoke-vents or stove pipes hereinafter in this subdivision called in common "chimneys" or of parts thereof respectively to be specified in the regulation.

Examples from three sets of 1870s regulations were examined to see how this requirement was implemented.

The 1870 Building Regulations for the

Borough of Timaru (Regulation number 6) were published over three pages in the *Canterbury Provincial Gazette*:¹²

1. ... and every chimney to such building shall be constructed of brick or stone, and the flues of the same properly parged
2. ... and that every chimney erected within any portion of the Borough of Timaru shall be constructed of brick or stone, and the flues of the same properly parged.

The 1871 Regulation of Buildings for the City of Auckland were published over six pages in the *Auckland Provincial Gazette*.¹³ The quoted regulation originated in Schedule D of the City Building Act 1854 (17 Vic cap. 13):

Chimneys, Jambs, Openings, &c.

26. The jambs of every chimney must not be less than 8 ½ inches wide on each side of such opening. The breast of every chimney, and the front, back, width or partition of every flue must be at the least 4 inches in thickness of bricks, and the joints of the work must be filled in with mortar or cement, and all the inside thereof, and also the outside, or face thereof, next the interior of any building must be rendered or pargetted. And no flue may be used for a smoke flue which is of less internal diameter in any section than 8½ inches.

¹² Canterbury Provincial Government *Canterbury Provincial Gazette* (23 August 1870) pp 142-143.

¹³ Auckland Provincial Government *Auckland Provincial Gazette* (15 December 1871) pp 337-342.

The Building Regulations for the City of Wellington 1873 (By-law number 4) were published in the *Wellington Provincial Gazette* over six pages:¹⁴

10. The jambs of every chimney must not be less than eight and half inches wide on each side of such opening; the breast of every chimney, and the front, back, width, or partition of every flue must be at the least four inches in thickness of brick, and the joints of the work must be filled in with mortar or cement, and all the inside thereof, and also the outsides or faces thereof, must be pargetted and rendered, and no flue must be used as a smoke flue which is of less internal diameter in any section than eight and half inches.

Similarities in the council implementations are apparent - notably the use of "parge," which is the application of a layer of cement render to provide a sealed surface, in this case to the inside of chimneys.

The Metropolitan Buildings Act 1844 (7&8 Vic cap. 84) under Schedule F dealt with chimneys¹⁵:

And with regard to Chimneys and Flues, in reference to the Thickness of the Brick-work thereof, —
The Breast of every Chimney, and the Front, Back,

¹⁴ Wellington Provincial Government *Wellington Provincial Gazette* (5 June 1873) pp 128-133.

¹⁵ Gibbons *The Metropolitan Buildings Act* p 143.

Withe, or Partition of every Flue, must be at the least 4 Inches in Thickness of sound Bricks, properly bonded, and the Joints of the Work must be filled in with good Mortar or Cement, and all the Inside thereof, and also the Outside or Face thereof next the Interior of any Building, must be rendered or pargetted.

So did the revision of the Metropolitan Buildings Act 1855 (18 &19 Vic cap. 122) but under Part I, section XX¹⁶:

4. The inside of every fine, and the back or outside, unless forming part of the outer face of an external wall, must be rendered, pargetted, or lined with fireproof piping;
...
6. The breast of every chimney, and the front, withe, partition, and back of every flue, must at the least be four inches in thickness;

A comparison of the three quoted New Zealand building regulation clauses with the Metropolitan Building Acts reveals strong similarities, with the 1871 Auckland and 1873 Wellington regulations largely repeating that of the Metropolitan Act 1844, while the 1870 Timaru regulations appear to have been slightly rewritten. This use of the Metropolitan Building Act is unsurprising particularly, as has been noted, the underlying

¹⁶ Glen & Glen *The Metropolitan Building Acts: 1855 to 1882* p 6.

legislation was based on this Act.

There are other examples of the use of British legislation to support New Zealand codes. The British engineer Charles Swyer travelled firstly to Melbourne and then to Dunedin where he was appointed Otago Provincial Engineer in March 1862.¹⁷ One of his tasks was to develop the Dunedin Building Ordinance 1862 which he reported was based on the Metropolitan and Melbourne Building Acts, with "such modification, additions or deductions" as necessary.¹⁸ In 1876 the English-trained Colonial Architect¹⁹ William Clayton reviewed the building regulations for the City of Wellington. As well as recommending the city be divided into five districts and each, except for the fifth outer district, to have its own regulations, he concluded "that the Metropolitan Building Act (Great Britain) be used as the basis for framing the regulations."²⁰

Discussion

Analysis of the evolving coverage of the

¹⁷ Knight *Buildings of Dunedin* pp 229-230.

¹⁸ Otago Provincial Council "Departmental Reports" pp 12-13; "Otago Daily Times" p 4.

¹⁹ Crighton "Clayton, William Henry" p 89.

²⁰ "New Zealand Times" p 2.

Imports by Value >50%	1870	1875	1880	1885	1890	1895	1900	1905
Galvanised Iron	UK	UK	UK	UK	UK	UK	UK	UK
Cement	-	-	UK	UK	UK	UK	UK	UK
Window Glass	UK	UK	UK	UK	UK	UK	UK	Other
Wood Nails	UK	UK	UK	UK	UK	UK	Other	USA
Gypsum	Other	Other	USA	USA	USA	USA	USA	USA
Roofing Slate	UK	UK	UK	UK	UK	UK	USA	UK
Legend:	UK	U.K.			USA	U.S.A.	Other	Other

Table 4: Country of Import Providing Over 50% of Value 1870-1905

Municipal Corporations Acts from 1867 to 1886 has shown that buildings never played more than a minor part (less than 8% by count, see Table 2) in the by-law coverage. It has also been demonstrated for one example that the practical implementation of the permission provided under the Act was achieved using London Metropolitan Buildings Act 1844. Two examples have been provided suggesting it is highly likely that these links to Britain were made through the training of the architects and engineers involved either in the development or implementation of the legislation.

There was at least one additional link between New Zealand and Britain. Analysis of 64 technologies used from 1792 to 1982 in the construction of New Zealand houses found that 26% of them could be traced to the UK. Further analysis of this data found that, over

the period 1850 to 1910, the percentage was higher at 33%. The analysis also examined the country of origin for the imports of six selected materials, shown in Table 4. The table divides the originating countries into four (UK, Australia, USA and Other) and indicates which was responsible for over one half of the imports (>50%) for each material for the given year. Where material imports were not recorded in a given year, a dash is shown. For all but gypsum, the UK was responsible for over half of the imports by value in the large majority (over 90%) of the assessed years. The strong colonial links, coupled with the extensive production of galvanised corrugated iron, cement and window glass, and the large resources of slate quarries make it unsurprising that the UK played such an important role in the development of New

Zealand construction.²¹

Conclusion

This paper has presented an initial review of the evolution of building by-laws in New Zealand from the late 1860s to the mid-1880s. It has demonstrated that there were links to Britain both through the national legislation and in the implementation of by-laws. Further research exploring these (and other links) into the development of building by-laws from 1870 through to the 1930s, prior to the implementation of NZSS 95:1936 "NZ Standard Model Building By-law," is planned for the coming year.

²¹ Isaacs "Making the New Zealand House 1792-1982" pp 55-56, 248.

REFERENCES

- Auckland Provincial Government *Auckland Provincial Gazette [Electronic Version 1853 to 1876]* Auckland: Auckland Provincial Government.
- Bush, Graham William Arthur *Decently and in Order; the Government of the City of Auckland 1840-1971: The Centennial History of the Auckland City Council* Auckland: Collins for the Auckland City Council, 1971.
- Bush, Graham William Arthur *Local Government & Politics in New Zealand*, Auckland: Auckland University Press, 1995.
- Canterbury Provincial Government *Canterbury Provincial Gazette [Electronic Version 1853 to 1875]* Christchurch: Canterbury Provincial Government.
- Crighton, Anna "Clayton, William Henry" *The Dictionary of New Zealand Biography. Volume Two 1870-1900* ed Claudia Orange, Wellington: Allen & Unwin, 1993:89-90.
- Gibbons, David *The Metropolitan Buildings Act. 7th & 8th. Vict. Cap. 84. With Notes and an Index* London: John Weale, 1844
<http://archive.org/details/metropolitanbui00britgoog> [accessed 2 July 2017]
- Glen, Reginald Cunningham, and William Cunningham Glen *The Metropolitan Building Acts, 1855 to 1882* London: Shaw & Sons, 1883
<http://archive.org/details/b28717041>
- Isaacs, Nigel P "Building Legislation 1840-1870" *New Zealand Law Journal* 2012:179-184.
- Isaacs, Nigel P ""Each Council Shall Appoint a Competent Person for the Borough, Hereinafter Called "Inspector of Buildings"": The Development of Building Controls in the Second Decade of the Twentieth Century" *"Nothing to Be Ashamed of in a Good Nail": New Zealand Architecture in the 1910s a One Day Symposium* ed Christine McCarthy, Wellington: Centre for Building Performance Research, Victoria University of Wellington, 2017:57-63.
- Isaacs, Nigel P "Making the New Zealand House 1792-1982" Wellington: Victoria University of Wellington PhD thesis, 2015.
- Miller, Caroline "The Shared History of Public Health and Planning in New Zealand: A Different Colonial Experience" *Progress in Planning* (2016) 106:1–21 <https://doi.org/10.1016/j.progress.2015.02.002>
- New Zealand Legal Information Institute "NZLII Databases"
<http://www.nzlii.org/databases.html>
- New Zealand Parliament, *Parliamentary Debates (Hansard)* [Electronic Version (1867-1968)] (Wellington: Government Printer)
<https://catalog.hathitrust.org/Record/007119315>
- "New Zealand Times" *New Zealand Times* (4 August 1876):2.
- "Otago Daily Times" *Otago Daily Times* (13 June 1864):4.
- Otago Provincial Council "Departmental Reports" *Votes and Proceedings of the Provincial Council* Dunedin: Otago Provincial Council, 1862.
- Reserve Bank of New Zealand "Inflation calculator"
<https://www.rbnz.govt.nz/monetary-policy/inflation-calculator>.
- Sutch, W. B., *Local Government in New Zealand: A History of Defeat: Reprint of a Paper Read on 23 May 1956 at the Annual Convention of the Institute of Public Administration at Auckland University College* Wellington, N.Z.: Industries and Commerce, 1964.
- Webb, Leicester C., *Government in New Zealand, New Zealand Centennial Surveys, 5*, Wellington, N.Z.: Dept of Internal Affairs, 1940
<http://www.nzetc.org/tm/scholarly/tei-WebGove.html>
- Wellington Provincial Government *Wellington Provincial Gazette [Electronic Version 1853 to 1876]* Wellington: Wellington Provincial Government.