

{Original on BAPE letterhead}

Dear Minister Clarke,

The Barbados Association of Professional Engineers has reviewed the latest revision of the Draft Building Standards Act, and present our comments and suggested changes in the attached table.

Most of these comments were previously communicated by our representative on the Building Authority Advisory Committee at a meeting held by the Committee on December 20th 2005. We have reviewed the minutes of that meeting as well as the latest draft of the Act received electronically from the BNSI on May 17th 2006. It appears to us that most of our suggestions have been ignored in both of these documents.

We are of the view that the overall objective of the Act should be to **ensure safe buildings** by **facilitating** the construction of buildings in accordance with the Barbados Building Code. Instead, this Draft Building Act appears to focus on creating a highly bureaucratic and heavily staffed Building Authority, aimed at punishing building practitioners for failing to comply with the requirements of the Director.

In summary, we believe that the existing Draft Building Standards Act will impose undue costs and delays to the building industry in Barbados, by seeking to establish a Building Authority of engineers and architects to oversee the work of other engineers and architects. It would be far more efficient, and effective, to utilise the large number of professional engineers and architects already practicing in the private sector, to certify compliance of building designs with the Barbados Building Code.

We fully support Government's efforts to establish mandatory standards for the construction of buildings in Barbados and stand ready to lend our assistance in the development of a Building Act. In this regard, we would welcome the opportunity to meet with you and your team to discuss these concerns in greater detail.

Yours sincerely,

Roger A. Blackman
BAPE - President

Cc: Permanent Secretary – Ministry of Public Works and Transport
Eng. Tony Gibbs – Chairman, Building Authority Advisory Committee
President - BCCI
Deputy Director (Ag.) BBSA
Chief Technical Officer - MPWT

Table 1 – BAPE’s Comments on the Draft Building Act

Codes

GC – General Comment

IR – Incorrect Reference

SE – Spelling or Grammatical Error

Clause	Code	Comment
2	GC	2 (a) “..the conservation of fuel and power energy. ”
2	GC	2 (f) The Act, as currently proposed, does not achieve the aim stated here. Rather than duplicate expertise already existing in the private sector, the aim of the Act should be to require building projects to be certified by professional engineers within the private sector who are already registered and bound by ethical codes of practice. This would reduce the cost and staffing requirements of the Authority and result in more timely results.
2	GC	2 (h) This proposal is not cost effective . See previous comment.
3	IR	Incorrect reference to section 108(1) under “authorized officer” Incorrect reference to section 4(2) under “building area” Incorrect reference to section 60 under “building notice” Incorrect reference to section 63 under “building order” Incorrect reference to section 66 under “fire upgrading report”
3	GC	Many definitions are missing. “Emergency lighting” as a definition seems out of context. If this is included here then several similar definitions are required. “Owner” – refer to relevant existing legislation which defines owner rather than attempt to define it here. “Person with disability” – refer to relevant existing legislation which already defines this. “Regulations” – refer to section in Act that addresses regulations i.e. section 114.
4	GC	In addition to the official gazette, reference should be made to publication on a web site.
6	SE	6 (1) (b) Consumers s affairs...
6	GC	6 (1) (b) and (c) seem misplaced – the composition of the authority should reflect its responsibilities. A more appropriate statement would be that people appointed to the authority should have (a) the qualifications and competence to carry out there duties, (b) the responsibility to carry out their duties, (c) should maintain technical competence in their areas of specialty by updating through continued professional development, (d) should carry out their duties expeditiously and (e) can be dismissed if they fail to perform their duties up to the required standard.
7	GC	This section is very weak. No responsibilities are assigned, no penalties for non-conformity are indicated, (a) what is meant here? The Minister does not need to be advised about how to administer the

		<p>act. Perhaps the authority needs to provide monthly reports to the Minister indicating how much delays are being introduced into the system by the Authority. (b) Can it also investigate matters which are not referred to it by the Minister? (c) who produces the documents for their approval? (d) “promote research” is very vague. Is the authority going to finance it? Will they have the staff to do research? What exactly are “building matters”? (e) does not indicate who will be advised</p> <p>(2) Why isolate the fire service? Surely the Authority should be able to consult with whom ever it needs to in carrying out its function. “Review consultant” has not been defined. Several omissions are evident e.g. Transparency: The authority should be required to provide complete and timely information on applications received, their status, and any decision that the Authority takes with respect to the application.</p>
8	GC	<p>Who exactly is the Minister going to consult with at the authority before appointing a Director?</p> <p>The engineers and architects associations should be consulted before appointments are made.</p> <p>The Director should be appointed for a maximum of 3 years with a renewal of contract after review of performance. The Minister should also have the right to dismiss the Director under specified conditions.</p>
9	GC	<p>The functions of the director seem very limited. Who will be responsible for its finances, HR issues etc.? This sounds like an armchair job, with no responsibilities for running the Authority, no penalties for non-performance and no possibility of dismissal.</p> <p>9 (2) is superfluous – it says nothing. It does not confer any powers on the Director.</p> <p>9 (3) This should be a function of the Authority, not the Director. Additionally, this information should be published on the Internet.</p>
10	GC	<p>How many members are to be appointed to this Board? What will be their qualifications? Will they have to be registered by this Board?</p>
11	GC	<p>The approach to registering building practitioners is impractical. Is it really the intent of the Authority to register the approximate 30,000 building practitioners in Barbados by category e.g. tilers, masons, plumbers, electricians etc? How is this going to be controlled? Will there be a team of inspectors on each site watching what everyone is doing?</p>
14	GC	<p>The Director should not be a member of the appeals Board, as the Appeals Board will be reviewing his decisions. None of the people involved in making a decision that could go to the appeals Board, should be on the appeals board. Conflict Of Interest.</p> <p>Members of the appeals Board should be required to declare their interest in any project to which they are connected and have a competent authority.</p> <p>How many members are to be appointed to this Board? What will be</p>

		their qualifications? Will they have to be registered by this Board?
15	IR	15 (1) (a) Incorrect reference to section 78.
18	GC	This clause seems misplaced it is right in the middle of Registration of Building practitioners and seems to refer to fees for the entire Act. The whole issue of how the Authority will be financed needs to be spelled out. 18 (2) It is not clear whether the Exceptions for Engineers Architects etc. relate to applications, fees or both.
19	SE GC	19 (2) "...Practitioner's Register in which at shall..." 19 (3) (a) can be removed. Repetitive with 19 (3) (b).
20	GC	20 (3) by referring to the entire section, this clause implies that a Corporation that does not "cause the name of the person to appear in all advertisements in respect of the relevant function..." will be liable on summary conviction to a fine of \$10,000. This seems unreasonably harsh.
21	SE	21 (e) what does "false in a material particular" mean? 21 (e) "...enter into a contact for..." Should this be "contract"?
21	GC	This section on discipline is very weak. Who will gather evidence? Who will establish fraud? Can you reasonably withdraw a license for a conviction? – this seems to be a double penalty and probably legally flawed. Who will establish negligence? How will it be established which practitioner is negligent?
22	GC	How is an enquiry triggered? Who initiates it? Who provides evidence? Will lawyers be allowed to represent practitioners?
23	GC	23 (1) this is too wide open and needs to be more specific. 23 (2) "with as little formality and technicality, and with as much expedition" – this should be removed. The inquiry should be formal and technical. What happens in the interval between the complaint and the enquiry? How long a delay is expected?
24	GC	The entire proceedings of the Authority should be open – not only the hearing.
31	GC	31 (1) & (2) If an artisan on a site does not have on his person the registration card issued by the Authority, he can be fined \$2,000 on summary conviction? This seems unduly harsh, and unenforceable. Who prosecutes this offence? The police?
31	SE	32 (1) "...to which the public have access or for hazardous or for buildings..." – What does this mean? 32 (3) "... in a format decided by the Director..."
33	GC	The review consultant should review designs not prepare them. 33 (2) Is this the only condition under which the Director can withhold issuance of a building permit? If not, this clause needs to be strengthened to indicate more generally under what conditions the Director can issue/refuse to issue a permit.
34	GC	The descriptions in this section are too vague to be useful. More generally, it would seem that a review consultant could be used for any building. If this is the intention, why have a list? Simply say that

		<p>a review consultant can be used for any project.</p> <p>We believe that the Authority should not think in terms of hiring any technical staff, but should make full use of the review consulting process. This would avoid any liability being incurred by the building Authority staff and reduce administrative costs.</p>
34	SE	34 (2) (d) "...thereof that ate are of unusual..."
35	GC	35 (1) (a) should not be allowed to be unregistered.
36	IR	Section 114 incorrectly referenced.
36	SE	36 (2) "Standards prescribed d ..."
37	GC	<p>This entire section should simply refer to the Barbados Building Code.</p> <p>The management of the Barbados Building Code should be left to the BNSI. It is inappropriate for the Authority to determine which code should be used – this is not their mandate. Their mandate is to enforce the codes <u>established and managed</u> by BNSI.</p>
38	GC	The definition given here should be part of the general definitions provided in section 3.
42	GC	<p>42 (b) A building cannot comply with an Act. Surely what is meant is "The drawings and specifications indicate that the building will conform to the Building Codes". There is no need to refer to regulations. The requirements should be spelled out in the Code.</p> <p>42 (3) why does the Authority not want to comply with its own rules? This clause should be struck out.</p>
43	GC	The Barbados National Trust already has a list of historic buildings. Why should this be registered with the Authority? If the application is for a historic building why not ensure that this is stated on the application and supported as appropriate to ensure that the statement is correct.
45	SE	This clause is not clearly written. "...carrying out the building work the inspection stage..." What does this mean?
45	SE	Two occurrences of 45 (2) i.e. should insert 45 (3)
45	GC	45 (2) how can anyone fail to comply? The building permit is not issued unless the insurance is in place.
46	GC	A specific time for inspecting the building work should be specified. The performance of the Authority needs to be spelled out along with penalties and liabilities for failing to perform duties.
50	SE	50 (1) "or by the owner's agent" seems to be in the wrong place. This clause needs to be rewritten.
51	GC	51 (1) "...occupy on a temporary basis a building for which a building permit has not or could not be granted". Should this be "completion certificate" rather than "building permit"? The fact that temporary occupation is contemplated here suggests that a building permit would have previously been issued.

51	SE	51 (2) "...an approval to occupy a building in on a temporary basis..."
52	GC	52 (1) These types of declarations are usually incorporated into the form on which the application is made and do not need to be included in the legislation. All the legislation needs to say is that the application shall be made on the prescribed form.
54	GC	54 (1) Controls are needed here. The Director should have to comply with all requirements in conducting the work described here. The work has to be carried out professionally, skillfully and economically by registered building practitioners and the costs passed on to the owner have to be reasonable.
56	SE	56 (1) "...or temporary structure as it is required..."
58	IR	58 (2) Section 54 incorrectly referenced.
60	GC	Building Code should be defined.
62	GC	The Authority should be required to provide the owner with sufficient detail to allow the owner to respond to specific violations rather than, as implied here, prove that every aspect of the whole building is in compliance with the Building code. 62 (c) This sentence is unclear. It is not in keeping with context of (a), (b) and (d).
64	GC	64 (1) This suggests that even if the "representations" are complete, the Director has to wait until the expiry of the notice period before issuing an order.
67	GC	This clause is superfluous. Fire does not need a special section in the Act. All the requirements stated previously also apply to situations where there may be a fire hazard. The Act should avoid dealing with issues that are better dealt with in the regulations and the Building Code. Was the intent here that this apply to old buildings? If not, why would fire upgrading be required for a building already certified by the Authority.
69	IR	Section 67 incorrectly referenced.
70	GC	70 (3) this sentence is unclear and needs to be rewritten.
73	IR	73 (2) section 71 incorrectly referenced.
80	GC	This needs clarity. Why is the owner of land being singled out here?
80	GC	80 (2) suggests that the appeal board needs to consider "the public interest" Why not make the appeals board subject to the same considerations that the Director has to make, since it is reviewing the Director's decision.
81	GC	81 (2) is superfluous.
82	GC	This section should be placed where the appeals board is set up (i.e. section 14). 82 (c) Why would you want a new member if the proceedings will

		continue “without the new member applying his own judgment to the matter”?
86	GC	86 (2) What Board is being referred to here? “the appeals board is not bound by a previous determination of the Board ”???
89	GC	Why not publish these on the Internet? Why is a fee required to view a decision of the Board?
100	GC	What does this clause mean?
102	GC	Why is this clause needed?
98	GC	98 (2) is superfluous
99	GC	99 (1) this sounds like “guilty until proven innocent”. Doesn’t the law work the other way around?
101	GC	Interestingly, the Director and staff of the authority are “innocent until proven guilty”. Why isn’t this ‘tone’ and approach used in Clause 99?
102	IR	Incorrect references to “sections 102, 103, 104 and 105”. Should this be 103 to 106?
102	GC	If a building is constructed in accordance with the requirements of the building Authority, does the Authority take no part of the responsibility? Surely these issues are already covered by existing law. If new law is to be introduced on these issues the existing law should be repealed. Should this act be dealing with this issue?
113	GC	Why are clauses 113 & 114 part of this Act?
115	GC	Several of these references to specific standards are unnecessary, and can be replaced by simply referring to the Barbados Building Code. E.g. Items 1-2, 4-16, 18-25, 37, 44
116	GC	Why should the Crown be treated any different to any other citizen?
Sched. 5	SE	5 (1) “... misbehaviour of or physical or mental incapacity.”
Sched. 8	IR	Incorrect reference to subparagraph 5 – should this be subparagraph 7?
	GC	How will the performance of the practitioners and appeals boards be assessed?
	GC	There appear to be several omissions to this legislation e.g. how will employees of the authority be appointed, evaluated, remunerated, disciplined, dismissed?
	GC	The Building Authority should not exist as a separate entity from the Government Electrical Engineering department which also reviews compliance to standards. The operation of these two entities should be amalgamated to reduce potential duplication of effort and improve efficiency. The overall relationship of both entities with BNSI should also be reviewed. BNSI should be responsible for setting the standards, while the Authority should be responsible for ensuring that they are enforced.

RB:
06/29/2006